Õiguskantsler

2018-2019 OVERVIEW OF THE CHANCELLOR OF JUSTICE ACTIVITIES

Tallinn 2019

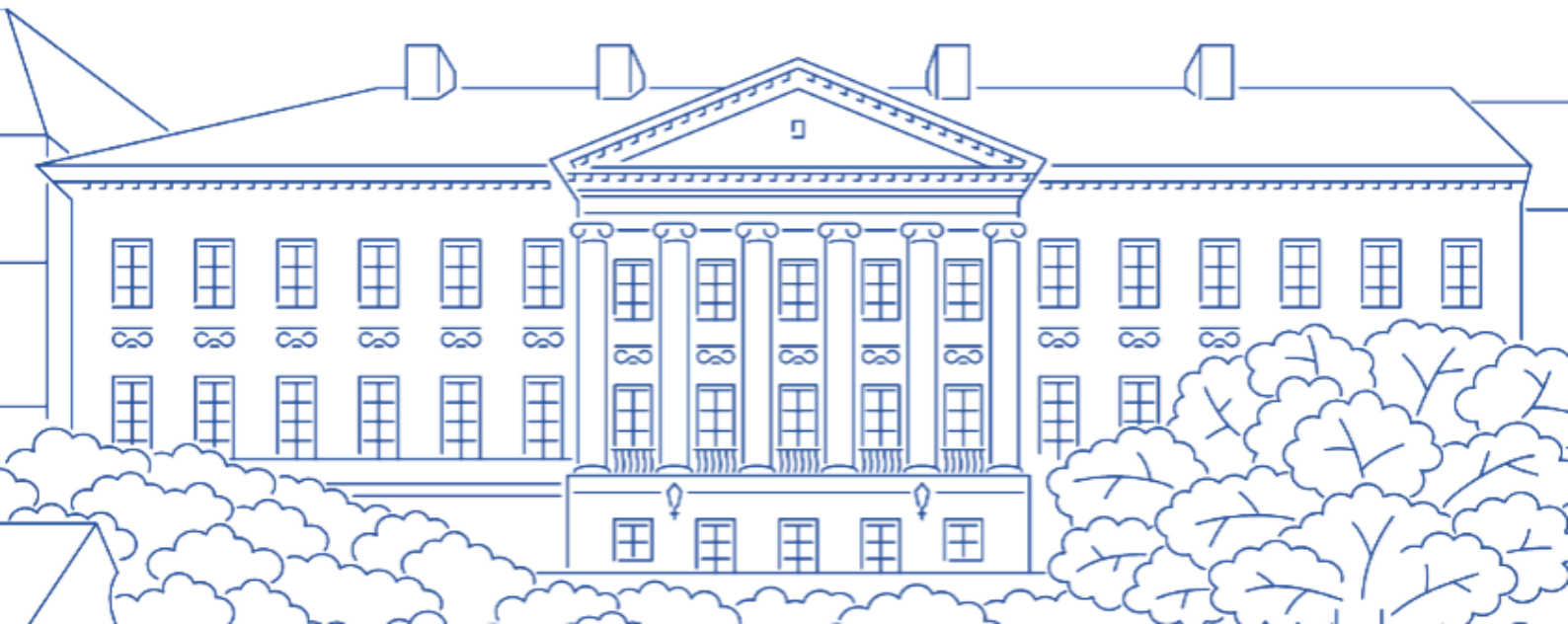

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TABLE OF CONTENTS

FOREWORD BY THE CHANCELLOR OF JUSTICE

Dear Reader

The main task of the Chancellor of Justice – constitutional review – is supported by the Chancellor's roles as ombudsman, the Ombudsman for Children, the national preventive mechanism against cruel treatment, the supervisor of surveillance agencies, the human rights institution and promoter of the rights of people with disabilities. The latter two tasks were added this year. Despite these extensive additional tasks, the Chancellor's Office has not significantly grown. Every day we try to think how to achieve optimal synergy between different departments and advisers, how to use our 'tools' swiftly and productively without wasting a minute on needless bureaucracy.

The Chancellor submits an opinion to the Supreme Court on all constitutional review cases and, if necessary, draws the attention of the Riigikogu, the Government, rural municipal councils and governments to opportunities for better developing the legal order in the spirit of the Constitution of the Republic of Estonia.

If at all within our capacity, we help, making use of the shortest possible lawful avenue. We proceed from the principle that we resolve issues, do not just carry out formal proceedings, and a working day can only be considered a success when we have really been able to help someone, promote the rule of law and improve Estonia even just a little. It is possible to work like that in the Chancellor's Office.

During the reporting year – from 1 September 2018 to 31 August 2019 – representatives from the Chancellor's Office have everywhere met public officials who do their work just as one should: dedicated, understanding the responsibility for resolving the substance of people's problems, and not being indifferent, cowardly and lazy bodies merely carrying out procedures. Disparaging generalisations that can be heard from time to time are not fair. The same applies to members of the Riigikogu and the Government: many of them work sincerely for the sake of Estonia's well-being. When assessing slip-ups by officials and politicians in their work, disapproval should be expressed against conscious abuses and failure to act arising primarily from laziness, fear and lack of conscience. However, where a mistake is due to miscalculation or misinformation, courage to rectify mistakes should be recognised instead of met with condemnation.

For example, not one good reason exists for Estonia after many years to suddenly deprive of citizenship people who have acted in good faith. If a citizen has not lied to the state then why suddenly turn their life upside down? The public learned of the concern of Estonians living in Abkhazia: what is the legal status of people who acquired Estonian citizenship on the basis of the Tartu Peace Treaty but did not return to Estonia in the 1920s. Previously, the descendants of these people were recognised as citizens

by birth but later the state changed its position. This is a typical example of reducing a person to the level of a unit, a chip that is merely a natural result of cutting wood. However, it is always possible to find a solution that does not harm the individual.

People with disabilities, the elderly and children with behavioural problems are too often seen as a unit and not as valuable individuals. And not only they but also, for example, land and forest owners who have been waiting for years for a decision by the state or local authority on establishing a protected area without having the possibility to use their land and forest during the waiting period.

On several occasions we have heard that we might indeed help that person (i.e. comply with the law!) but then others will seek the same. Examples of such situations are a well with contaminated water in a forest farmstead or a lift in a house under heritage conservation or weighing the interests of the owners against those of the environmental protection and heritage conservation authorities when deciding on preservation of valuable dams so that a reasonable and just solution – and if necessary an exceptional one – may be found.

Public authorities must, indeed, comply with the law. If a new well or lift is needed and no laws are violated when building it then a person should be able to have it. If in that process different interests need to be honestly weighed, then, for example, the environmental protection and heritage conservation authorities must indeed find the best compromise in each situation – and so that the obligations fall not only on the owner. It is probably also true that as long as the wages of officials in direct contact with the people are very low in comparison to people in ministries, on top of which they are rarely recognised, it is difficult to find workers of the right quality, and officials are overburdened.

Improving the organisation of work and better wages are actually indispensable at the 'front line', i.e. where the individual meets the state, where it is ascertained whether a protected species is present on a plot of land or whether fertiliser has contaminated a well. It is indeed bizarre if one official requires a developer to do one thing while another requires something different and then they keep arguing with each other, specifically at the expense of the developer and more generally at the expense of the taxpayer. The state should know what it requires. If merging government agencies and state-owned foundations helps to upgrade work and pay better remuneration at the 'front line', then state reform can be considered a success.

Unfortunately, during the reporting year we saw a number of Kafkaesque situations where the state or local authority issued people with conflicting demands and harmful recommendations.

As a result of several weeks of effort, a person with complete lack of physical mobility function managed to get their blocked ID card functioning again. We tried to offer discreet advice to officials on how to avoid such situations in the future. We are very happy in such situations to be able to contribute to a better future. We will try to maintain this line in the future – often it is not just a single case which is at issue but a pattern of activity predicts new mistakes that will go uncorrected while causing mistrust and resentment among the public.

This year we heard people again and again claiming that it makes no sense to protect one's rights in line with the procedure laid down and it is better to come directly to the Chancellor of Justice or go on television. This frame of mind is increasingly in evidence.

Unfortunately, it is often the case that a law that looks good on paper does not work in real life because of a shortage of specialists or money, or both. For example, the Preschool Childcare Institutions Act provides that "if necessary, the support services of a speech therapist, special education teacher or other support service shall be ensured to a child, and the possibilities for the application of support services shall be created by the manager of a preschool institution and the application thereof shall be organised by the director".

In real life, this often means that a parent themselves must find a support specialist or otherwise the child will be in an endless queue waiting for a specialist extremely important for its development. Seemingly, the decision-makers have done their job; the law does lay down the entitlement! However, the simple and under-paid people on the front line, i.e. a kindergarten teacher, a school teacher or a local authority social worker, must alleviate the anger of a parent and, in the worst case, also stand in the pillory erected by journalists.

This situation is not fair, let alone pleasant to see. Children go without assistance, the parents are concerned, and no solution seems in sight. Or perhaps a solution could still be found if rule-makers also understood that putting someone in a queue or suggesting that they seek out a specialist is not the same as providing assistance.

Language use also poses an impediment to seeing everyone as a valuable human being: speaking about a "client" and a "service" inevitably makes it easier to shrug one's shoulders indifferently. "The client did not receive the service." If one had to speak in plain terms – for example that a mother and her child in need were left in difficulty – it would probably be more difficult to 'process' people out of the door.

If another person's life, peace of mind and future are in your hands, then you have a very personal responsibility. People's limited legal awareness and poor access to sound legal advice is everywhere in evidence. This causes annoyance, in particular in cases concerning collection of debts and contact by divorced parents with their joint children.

Professional intermediation in agreements supporting the development of their children into good people is an indispensable need.

After several years, we can see the re-emergence of a mentality suited to a totalitarian society, according to which it is actually a good thing if everyone can always be punished without the burden of proof, because those who need to be brought to justice will be brought to justice! Certainly, some transborder crimes – including money-laundering – require strict counter-measures, but at the end of the day this cannot justify disregard for the rule of law. Living in a panopticon perverts the mind and untrammelled absolute power perverts the official. Therefore, we have stood against the reversed burden of proof in banking, against almost unlimited and uncontrolled background checks by the prison service, and against a plan to sell the health data of the Estonian people abroad.

Let us recognise all those who speak honestly and whose actions match their words. And, accordingly, let us condemn those who, in the name of a petty personal victory, acquiesce in wickedness, vexation, laziness, lies, distortion of the truth, and taking advantage of people. Every political decision affects the life of many people. A failed law that unfairly deprives someone of benefit or sends someone a wrong land tax notice also robs many people of their peace of mind.

The tools entrusted by law to the Chancellor of Justice are optimal for resolving many of the people's concerns. If a person is caught in the cogwheels of the state machinery because of an unconstitutional law or regulation, then we will contest it. This person does not need a lawyer and need not burden the court: for us it is sufficient that they describe their concern, then we will establish the important legal facts and, if necessary, will eventually take the matter right up to the Supreme Court. Often, an unconstitutional rule is the result of an error and will be put right at the first opportunity; constitutionality is restored without a long wait and free of charge to the individual.

If the source of someone's problem is not an unconstitutional rule but a mistake by officials, we will try swiftly and, if possible, discreetly, to direct them to correct the mistake. Sometimes a letter or a phone call to an official who has failed to resolve a matter is sufficient. As always, the Office of the Chancellor of Justice also receives cases where we are unable to help. The Constitution does not allow the Chancellor to rewrite or criticise court judgments, nor is it within our capacity to help people arrange a doctor's appointment, and we cannot resolve debt disputes with a bank or a bailiff, let alone a family quarrel or a row between neighbours. Even though it is not directly our task, we nevertheless try to tell individuals how they can protect their rights in these cases.

You can keep yourself informed of the daily work of the Chancellor's Office through the Chancellor of Justice website. I also post summaries on Facebook of selected debates I personally consider important and interesting.

Ülle Madise
Chancellor of Justice of the Republic of Estonia

I. CHANCELLOR'S YEAR IN REVIEW

1.1. Memorandums, proposals

During the reporting period, i.e. from 1 September 2018 to 31 August 2019, the Chancellor's Office received a total of 3782 petitions (3525 a year earlier). Of these almost four thousand letters, 2302 required a substantive solution.

Naturally, the work involved in resolving petitions is diverse. Some petitions, after months of analysis and correspondence, grow into an application to the Supreme Court, where the resolution may lead to changing the principles for providing social assistance and the funding of those services. Sometimes, a United Nations policy document a couple of dozen pages long needs to be analysed in just a few days in order to ascertain its possible impact on Estonian law. In yet another letter, a parent expresses concern whether their child has been treated fairly at a music school. All these issues are important.

The previous reporting year, for example, included the following cases:

- Application to the Supreme Court to declare unconstitutional and repeal unconstitutional provisions in the social services regulations in Narva city. By the end of the reporting year, the Supreme Court had not yet announced its judgment.
- Proposal to the Riigikogu to bring into line with the Constitution the Code of Misdemeanour Procedure, which does not enable persons having suffered harm as a result of a misdemeanour to access information collected in the course of misdemeanour proceedings and to protect their rights by relying on that information. The Riigikogu supported the Chancellor's proposal to amend the Code of Misdemeanour Procedure at a sitting on 11 June 2019 by 80 votes in favour. The Riigikogu Legal Affairs Committee was tasked with initiating a Draft Act.
- Memorandum to the Riigikogu Constitutional Committee with a proposal to amend the laws so as to be better able to combat and prevent corruption in local government bodies. On 23 January 2019, the Riigikogu adopted Act (574 SE) amending the Local Government Organisation Act and other related Acts. This legalised some of the proposals by the Chancellor of Justice, the most important of these being the idea to empower the prosecutor's office to claim pecuniary damage caused by a criminal offence from a person convicted of corruption if the local authority itself does not file a claim to that effect against the criminal.
- Written report to the Riigikogu on legislative amendments needed to ensure fair political competition.
- Proposal to Tallinn City Council to annul building regulations of Astangu, Pelgulinn and Nõmme city districts and a memorandum in which the Chancellor asked the Government and the Council of Haapsalu Town to bring the town's building regulations into line with the law. The municipal councils of both Tallinn and

Haapsalu complied with the Chancellor's recommendation and brought the building regulations into line with the law.

- Proposals to local authorities to bring diverse regulations and procedures into line with the Constitution and the law. For example, the procedure laid down in Tartu city on provision of social services to children with disabilities; a regulation on the procedure for exclusion from a kindergarten adopted in Jõgeva rural municipality; waste management regulations of Türi rural municipality; a Viimsi rural municipality regulation on keeping pets; a Loksa town regulation on connecting to the public water supply and sewerage system; and so forth.
- Opinions to the Supreme Court in all constitutional review cases.

1.2. Meetings with Riigikogu factions

In May 2019, the Chancellor met with the factions of all five political parties elected to the Riigikogu.

Meetings with members of parliament serve three aims. The Chancellor introduces members of the Riigikogu to her most recent opinions and the tools at her disposal in exercising constitutional review. Then the Chancellor listens to comments and observations by the members of the Riigikogu on the Chancellor's activities. In addition, members of parliament make proposals on topics and areas which they believe the Chancellor should deal with in the future.

In view of the timing of the meetings and the background to events – the new composition of the Riigikogu had just convened, the new Government with their action plan had assumed office – the discussion in May focused mainly on opinions that had been heard in debates during the election campaign and the plans of the new Government.

Arising from her status and her oath of office, the Chancellor of Justice is not a politician, which means that she does not participate in current political debates nor does she express opinions on promises of a political nature. The Chancellor's work in the Riigikogu mostly concerns the constitutionality of draft legislation and the quality of law-making in general.

The Chancellor gave members of the Riigikogu an overview of progress in fulfilling the new tasks imposed on her by amendments to the Chancellor of Justice Act entering into force on 1 January 2019: the Chancellor now also fulfils the tasks of the national human rights institution and the supervisory institution of the Convention on Persons with Disabilities.

The meetings also dealt with the problem of citizenship of Estonians living in Abkhazia, as well as distribution of tasks and resources between the state and local authorities, issues related to enforcement procedure, and problems of social welfare.

1.3. 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 190 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. Since November 2017, Ülle Madise has also been a member of the IOI Worldwide Board. Her mandate on the Board lasts until 2020.

The Chancellor of Justice also represents Estonia on 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 European Union Agency of Fundamental Rights (FRA).

As of 2019, the Chancellor of Justice is also a member of the European Network of National Human Rights Institutions (ENNHRI). She also represents the Republic of Estonia in the European Network of Ombudspersons for Children (ENOC) and the networks of European Ombudsmen (ENO), the International Conference of Ombuds Institutions for the Armed Forces (ICOAF), police ombudsmen (IPCAN), and National Preventive Mechanisms (NPM).

1.3.1. The Chancellor's foreign guests in 2018-2019

18 October 2018 – Swedish Parliamentary Ombudsman Thomas Norling with officials
9 November 2018 – Minister of Justice of Kazakhstan with delegation
14 November 2018 – advisers from the OSCE Office for Democratic Institutions and Human Rights
26 November 2018 – Political-Economic Officer of the United States Embassy, Brian Timm-Brock
3–4 December 2018 – delegation from the Albanian Ombudsman for Children
10 December 2018 – Ambassador of Serbia H. E. Saša Obradović
11 April 2019 – delegation of the Dutch Academy for Government Lawyers

14 May 2019 – doctoral student Renáta Kálmán from the Law Faculty of the University of Szeged in Hungary
30 May 2019 – delegation of Armenian government officials and non-profit-making associations
13 June 2019 – student Caleb Owens from the University of Delaware in the U.S.A.
13 June 2019 – delegation from the legal and internal affairs committee of the State Parliament of Schleswig-Holstein, Germany
9 July 2019 – delegation of senior police officers from Turkey
23 August 2019 – Director of the Finnish Human Rights Centre, Sirpa Rautio

1.4. Media

- The Chancellor's adviser Kristi Paron: kas investeerida pargi ilulihvi või pargis hängivatesse noortesse? [Whether to invest in beauty treatment for a park or the young people hanging around in the park], *Postimees*, 25 September 2018
- Ülle Madise: sõnad ja teod on jultunumalt vastuolus kui varem [More glaring discrepancy between words and actions than before], Estonian Public Broadcasting *ERR*, 26 September 2018
- Chancellor's adviser Külli Taro: jälitamisest ja jälgimisest [On surveillance and monitoring], *ERR*, 4 October 2018
- Õiguskantsler vastustab abipolitsei laiemaid volitusi [Chancellor of Justice opposed to increased powers for auxiliary police officers], *ERR*, 8 October 2018
- Chancellor of Justice: riigieelarve seaduse eelnõu ei võimalda kulude üle otsustada [The Draft State Budget Act does not enable decisions on expenditure], *ERR*, 15 October 2018
- Õiguskantsler taotleb riigikohtult Narva 11 määruse kehtetuks tunnistamist [Chancellor of Justice seeks repeal of 11 Narva city regulations in the Supreme Court], *ERR*, 18 October 2018
- Külli Taro: kas riigihalduse korraldus peaks olema mugav ainult riigile? [Should public administration be convenient only for the state?], *ERR*, 19 October 2019
- Chancellor of Justice Ülle Madise: põhiseaduse vaimust ja võimust muutuvas ühiskonnas [On the spirit of the Constitution and power in a changing society], publication *Teadusmõte Eestis*, 30 October 2018
- Chancellor of Justice Ülle Madise: õiguskantsleri institutsioon muutmist ei vaja [The institution of Chancellor of Justice does not need changing], *ERR*, 5 November 2018
- Õiguskantsler Ülle Madise kritiseeris komisjonis riigieelarve üldsõnalisust [Chancellor of Justice Ülle Madise criticises the generalised language of the state budget in a parliamentary committee], *ERR*, 5 November 2018
- Chancellor of Justice Ülle Madise: vimm ja vabadus [Spitefulness and liberty], *Postimees*, 10 November 2018
- Chancellor of Justice: ÜRO ränderaamistik ei tooks Eestile õiguslikke kohustusi [The UN Global Compact for migration would not entail legal obligations for Estonia], *ERR*, 16 November 2018

- Külli Taro: riigireformijate kava murrab sisse lahtisest uksest [State reformers' plan trying to break through an open door], *ERR*, 16 November 2018
- Chancellor of Justice Ülle Madise: juristokraatia ja põhiseadus [Juristocracy and the Constitution], *Postimees*, 26 November 2018
- Ülle Madise: inimesed ei tohi õigusküsimuste ajas muutumise tõttu kannatada [People should not suffer because of changes in legal issues over time], *ERR*, 7 December 2018
- Külli Taro: ajalooline hetk riigikogus ehk null poolthäält valitsuse eelnõule [Historic moment in the Riigikogu or zero votes in favour of a Government draft], ERR, 14 December 2018
- Chancellor of Justice Ülle Madise: ligimese märkamise vajalik kunst [The necessary art of noticing your fellow beings], *Eesti Päevaleht,* 18 December 2018
- Külli Taro, „Haldusreform riigireformi osana" [Administrative reform as part of state reform], collection „Haldusreform 2017", 15 January 2019
- Vallo Olle and Liina Lust-Vedder, „Kohaliku omavalitsuse põhiseaduslike tagatiste kaitse haldusterritoriaalses reformis" [Protection of local authorities' constitutional guarantees in administrative-territorial reform], collection „Haldusreform 2017", 15 January 2019
- Chancellor of Justice Ülle Madise, „Põhiseaduse areng ajaloolises ja võrdlevas vaates" [Development of the Constitution in a historical and comparative view], *Juridica*, January 2019
- Õiguskantsler soovitab PPA-l anda Abhaasia eestlasele uued dokumendid [Chancellor of Justice recommends that the Police and Border Guard Board issue new documents to Estonians in Abkhazia], *ERR*, 7 February 2019
- Chancellor of Justice Ülle Madise, "Eesti keel pole pelk tarbeese" [Estonian language not merely a practical commodity], *Sirp*, 15 February 2019
- Õiguskantsler: hulkuva looma toitjale omaniku vastustus ei laiene [Owner's liability does not extend to person feeding a stray animal], *ERR*, 17 February 2019
- Chancellor of Justice Ülle Madise: kodanikuõilsuse võimalikkusest [On the possibility of civic virtue], *Postimees*, 23 February 2019
- Külli Taro: valitsusest välja jäämine ei vabasta poliitilisest vastutusest [Exclusion from Government no relief from political responsibility], *ERR*, 8 March 2019
- ERJK ja õiguskantsler tahavad pettuste vältimiseks erakonnaseaduse muutmist [Political party funding supervision committee along with Chancellor of Justice seek amendment to Political Parties Act to prevent fraud], 15 March 2019
- Külli Taro: poliitikast solvamata ja solvumata [About politics without giving or taking offence], *ERR*, 5 April 2019
- Chancellor of Justice: rahvaalgatus ei pruugi võimust võõrandumise tunnet kaotada [Popular initiative will not necessarily remove sense of alienation from power], *ERR*, 18 April 2019
- Külli Taro: Riigikogu 100 aastat ja valitsuse 100 vihavaba päeva [100 years for the Riigikogu and 100 hate-free days for the Government], *ERR*, 26 April 2019

- Õiguskantsler nõustus prokuratuuri taotlusega Kallolt saadikupuutumatus ära võtta [Chancellor of Justice consents to prosecution request to strip MP Kallo of parliamentary immunity], *ERR*, 3 May 2019
- Õiguskantsler Ülle Madise palub Riigikogul tagada omavalitsuste volikogude liikmete õigused [Chancellor of Justice Ülle Madise asks Riigikogu to ensure rights of municipal councillors], *ERR*, 14 May 2019
- Chancellor of Justice Ülle Madise: Eesti mõte on olla Eesti [The meaning of Estonia is to be Estonia], preface to the song festival celebration jubilee album „Avatakt", 10 June 2019
- Õiguskantsler kutsub täpsustama erakondade karistamist keelatud annetuse eest [Chancellor of Justice invites clearer detail of sanctions against political parties for prohibited donations], *ERR*, 13 June 2019
- Õiguskantsler tahab valimistega seotud piiranguid oluliselt vähendada [Chancellor of Justice wishes for significant cutbacks on election-related restrictions], *ERR*, 13 June 2019
- Professor Eerik-Juhan Truuväli (07.03.1938–25.06.2019), õiguskantsleri institutsiooni ehitaja ja põhiseaduse hoidja [Professor Eerik-Juhan Truuväli (7 March 1938 – 25 June 2019), builder of the institution of Chancellor of Justice and guardian of the Constitution], *Juridica*, 2019/4

1.4.1. Interviews

- Chancellor of Justice Ülle Madise: riigipalgaliste arvu kärpimisel ei ole seni olnud soovitud mõju [Cutting the number of state-paid employees has not had desired effect so far], *ERR* programme „Otse uudistemajast", 19 October 2018
- Chancellor of Justice: ministeeriumide puukidest tuleks lahti saada [We should get rid of parasites subsisting on ministries], *Äripäev*, 28 September 2018
- Chancellor of Justice Ülle Madise: paljudes riikides on alahinnatud inimeste hirmu massilise rände ees [Many countries have underestimated people's fear of mass migration], *ERR* programme „Esimene stuudio", 13 December 2018
- Chancellor of Justice Ülle Madise: ka minuni jõuavad kurvad lood, kus vähihaige on jäänud toetuseta [I, too, have heard sad stories of cancer patients being deprived of support], *Postimees*, 7 March 2019
- Chancellor of Justice Ülle Madise: praegune põhiseadus ei takista rahvahääletust [The current Constitution does not rule out a referendum], *Postimees*, 2 April 2019
- Chancellor of Justice Ülle Madise: võib juhtuda ka nii, et kui pilt ei meeldi, vahetad raami ära – aga pilt ei meeldi ikka [Maybe you don't like a picture and replace the frame – but you still don't like the picture], *Postimees*, 11 April 2019
- Chancellor of Justice Ülle Madise: Riigikogu pole muutunud kummitempliks [The Riigikogu has not become a rubber stamp], *ERR* programme „Esimene stuudio", 23 April 2019
- Edmund Burke Society's debating programme on the monopoly of violence, Kuku radio, 27 May 2019

- Ülle Madise: ametnik peab inimese mure lahendama, mitte seda uksest välja menetlema [A public official must resolve an individual's concern and not process it out of the door], *Postimees*, 10 July 2019

1.4.2. Speeches

- Welcome by Chancellor of Justice Ülle Madise at the festive event „Apellatsioonikohus 100" [Court of Appeal 100], Tartu, 14 September 2018
- Presentation by Chancellor of Justice Ülle Madise on the Chancellor's activities from 1 September 2017 to 31 August 2018, Riigikogu, 18 September 2018
- Presentation by Chancellor of Justice Ülle Madise at the 35th legal scholars' days in Estonia, Tartu, 4 October 2018
- Speech by Chancellor of Justice Ülle Madise at presentation of clear message award, Tallinn, 17 October 2018
- Presentation by Chancellor of Justice Ülle Madise at conference of the Estonian Academy of Sciences on the advisory role of academies in the information-rich society, Tallinn, 23 October 2018
- Presentation by Chancellor of Justice Ülle Madise at the annual Energy conference, Tallinn, 14 November 2018
- Speech by Chancellor of Justice Ülle Madise at presentation of postage stamp of President Toomas Hendrik Ilves, Tallinn, 20 December 2018
- Presentation by Chancellor of Justice Ülle Madise at conference „Keeleseadus 30" [Language Act 30], Tallinn, 18 January 2019
- Speech by Ülle Madise as chair of the jury at the awards ceremony of the Enn Soosaar ethical essay competition, Keila, 13 February 2019
- Welcome by Chancellor of Justice Ülle Madise at the general assembly of the Estonian Bar Association, Tallinn, 7 March 2019
- Presentation by Chancellor of Justice Ülle Madise at the Mother Tongue Day, Tallinn, 14 March 2019
- Lecture by Chancellor of Justice Ülle Madise „Müüdid ja uskumused riigiõiguses" [Myths and beliefs in constitutional law], Vaba Akadeemia, 12 April 2019
- Welcome by Chancellor of Justice Ülle Madise at sitting of the Riigikogu 100th anniversary, Tallinn, 23 April 2019
- Speech by Chancellor of Justice Ülle Madise at opening of exhibition area in Patarei prison, Tallinn, 14 May 2019
- Presentation to the Riigikogu by Chancellor of Justice Ülle Madise to remove the parliamentary immunity of MP Kalev Kallo, Tallinn, 14 May 2019
- Opening words by Chancellor of Justice Ülle Madise at the first meeting of the Advisory Chamber of People with Disabilities, Tallinn, 31 May 2019
- Remembrance speech by Chancellor of Justice Ülle Madise at the funeral of Mart Nutt, Tallinn, 10 June 2019

- Remembrance speech by Chancellor of Justice Ülle Madise at the funeral of the former Chancellor of Justice and Professor of the University of Tartu Eerik-Juhan Truuväli, 2 July 2019

1.4.3. Power talks

At the end of 2015, the Chancellor of Justice initiated an academic lecture series, entitled „Võim" [Power], aiming to analyse power in all its possible manifestations. Apart from officials from the Chancellor's Office, the Chancellor's closest cooperation partners from the Riigikogu, agencies exercising public authority, as well as the private sector and NGOs, are invited to attend the lectures.

Lectures held from September 2018 to May 2019:

- **Tarmo Soomere** „Kliima võim. Mis paneb rahvad rändama?" [The power of climate. What makes peoples migrate?], 18 September 2018
- **Rainer Saks** „Luure võim ja selle muutused ajas" [The power of collecting intelligence and its changes over time], 9 October 2018
- **Krista Kaer** „Kas lugemine loeb?" [Does reading count?], 13 November 2018
- **Margus Laidre** „Venemaa võim ja vaim Euroopa kohal" [The power and spirit of Russia over Europe], 18 December 2018
- **Tõnu Lehtsaar** „Talupojatarkus" [Common sense], 15 January 2019
- **David Vseviov** „Nõukogude kunsti roll oleviku kujutaja ja kujundajana" [The role of Soviet culture in depicting and shaping the present], 26 February 2019
- **Margus Punab** „Mehe võim ja vägi" [The power and might of man], 19 March 2019
- **Mart Noorma** „Tapjarobotite võim" [The power of killer robots], 23 April 2019
- **Mihhail Lotman** „Süvariik" [Deep state], 28 May 2019

II. NEW TASKS

By an Act supplementing the Chancellor of Justice Act adopted on 13 June 2018, the Riigikogu imposed new duties on the Chancellor of Justice. As of 1 January 2019, the Chancellor's institution serves simultaneously as the national human rights institution and also performs the tasks of protection and promotion arising from the Convention on the Rights of Persons with Disabilities. The amendment to the Act will ensure better protection of human rights in Estonia, including the rights of persons with disabilities.

2.1. National Human Rights Institution

The new role as the National Human Rights Institution (NHRI) strengthens the Chancellor's current daily work in protecting and promoting human rights, adding an international dimension to the Chancellor's activities. National human rights institutions (hereinafter 'human rights institutions') are independent national institutions established under the Constitution or law and tasked with protecting and promoting human rights. These institutions are recognised partners for the United Nations and the European Union as well as for international organisations. This means, for example, that these are the institutions that UN agencies and the EU Agency for Fundamental Rights contact when seeking independent and fact-based information about the human rights situation in a specific country.

2.1.1. Network of human rights institutions

The idea of creating human rights institutions originated immediately after World War II. However, the official beginning of the network of such institutions is considered 1993 when the UN General Assembly approved the so-called Paris Principles. The Paris Principles adopted by UN General Assembly resolution set out that the member states will establish a National Human Rights Institution in line with the conditions set out in the resolution. In recent decades, the role of human rights institutions has gradually grown and their importance in promoting and protecting human rights has been repeatedly underlined by the United Nations, the European Union, as well as the Council of Europe.

The national human rights institution is an independent institution not subordinated to the Government. It is not a civic organisation but cooperates actively with civil society organisations. The national human rights institution does not administer justice.

The Paris Principles set out the principles and minimum standards to be observed when creating a national human rights institution, but do not impose restrictions on the institutional model. In line with the Paris Principles, it has to be an independent institution (inter alia, its autonomy should be ensured through adequate funding),

independent of the Government, established under the law and the Constitution, and with a mandate set forth by law for protecting and promoting human rights. Thus, 'national human rights institution' is a general term, meaning that these institutions in Europe and across the world are very diverse – having a different structure (e.g. committees, ombudsman-type institutions, institutes), functions, and mandate. There are institutions the majority of whose work is made up of surveys and research projects (e.g. the Danish Institute for Human Rights). At the same time, there are institutions that bring important human rights cases before the courts (e.g. the Northern Ireland Human Rights Commission). The diversity arises from countries' different legal systems, history, and practice of human rights protection. A human rights institution similar to the one in Estonia exists, for instance, in Latvia (accredited, A-status).

The EU Agency for Fundamental Rights is currently preparing a study on human rights institutions in the European Union. The study will compare the models and powers of these institutions, as well as best practices in protecting human rights. The results of the study will be published in 2020.

Under the Paris Principles, the role of the human rights institutions is fairly broad, but they have two main areas of responsibility:

- promotion, i.e. creating and supporting a national culture of human rights;
- protection of human rights, i.e. identifying, investigating and drawing attention to human rights abuses.

The tasks of the institution are the following:

- advising the Government and the parliament on human rights issues;
- cooperating with other national human rights institutions, civil society organisations, stakeholders, international agencies and organisations;
- presenting overviews and reports on the human rights situation to the bodies and committees of international human rights organisations.

2.1.2. Accreditation – what, how and why?

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. An international support system is extremely important for better protection of human rights, as it enables cooperation, receiving and disseminating information, seeking advice, and where necessary, finding official support. For example, in June 2019 the European Network of National Human Rights Institutions (ENNHRI) together with other organisations released a public statement in support of the Polish national human rights institution.

In charge of the accreditation process is the Global Alliance of National Human Rights Institutions (GANHRI), more specifically its Sub-Committee on Accreditation (SCA). The SCA consists of human rights institutions with 'A' status: it comprises one institution from each of the GANHRI regions (Africa, America, Asia- and the Pacific, and Europe). Institutions are appointed as members of the Sub-Committee for a term of three years.

In the accreditation process, the SCA assesses whether the specific human rights institution complies with the Paris Principles and determines the institution's status. 'A' status means that the institution is in full compliance with the Paris Principles; 'B' status means that it is not fully in compliance with the Paris Principles or has not yet submitted the relevant documentation to assess this; and 'C' status means that the institution is not compliant with the Paris Principles.

In 2019, there were over a hundred human rights institutions in the world, 79 of which are accredited and in full compliance with the Paris Principles (i.e. they have 'A' status). The full country list is available on the GANHRI website.

In January 2019, the Chancellor submitted an official request to the Sub-Committee on Accreditation to start the accreditation process. A more specific schedule will be determined in October 2019 after discussion in the SCA. 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 separate 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 civil society organisations would be complemented by analysis from the Chancellor as the Estonian National Human Rights Institution.

Since February 2019, the Chancellor's institution is also a member of the European Network of National Human Rights Institutions (ENNHRI). This network supports the Chancellor in the accreditation process.

2.1.3. Cooperation with civil society organisations and interest groups

National human rights institutions actively cooperate with several interest groups. These institutions are like a bridge between civil society organisations and the government and the international human rights protection network.

On 26 March 2019, the Advisory Committee on Human Rights set up by the Chancellor of Justice convened for the first time.

The Advisory Committee has 50 members. The purpose of the Advisory Committee is to advise the Chancellor on issues of human rights protection and promotion and in monitoring the situation, including:

- identifying the human rights protection situation;
- raising human rights problems and finding solutions to them;
- identifying the need for studies on human rights and organising those studies;
- promoting human rights education;
- improving exchange of information between interest groups.

Advisory Committee members are selected through public competition by a committee set up by the Chancellor. The competition was announced on 20 February. In the announcement, the Chancellor noted that she expected people with education or work experience in the following fields to participate in the competition:

- protection of the rights of the elderly, children and young people;
- protection of the rights of people with disabilities;
- social welfare;
- equal treatment;
- violence prevention;
- education and research;
- healthcare;
- gene technology and medical ethics;
- labour law;
- protection of personal data;
- ethnicity and language;
- religion;
- environment;
- migration.

To stand as a candidate in the competition, an individual had to submit a brief opinion on the human rights situation in the field that they know best. In selecting the Advisory Committee members, the selection committee set up by the Chancellor proceeded from principles of equal treatment, diversity, and balance.

Under the Advisory Committee's statutes, the Chancellor may where necessary invite new members to the Advisory Committee; a member's mandate is personal; membership of and participation in the work of the Advisory Committee is voluntary. The Chancellor may also ask advice from an Advisory Committee member directly or convene sectoral working groups.

The Advisory Committee is elected for a term of four years and holds meetings at least twice a year. Opinions and recommendations expressed by members of the Advisory Committee are not binding on the Chancellor.

At the opening session on 26 March, all members briefly introduced their experience and knowledge and expressed their expectations as to the Advisory Committee's work. The second part of the opening session was dedicated to discussion (both group discussion and plenary debate) on poverty and deprivation. Advisory Committee members noted that they wanted to know more about the Chancellor's activities: an overview of problems resolved by the Chancellor and the competence of the Chancellor's institution.

2.1.4. Activities of the national human rights institution in 2019

January 2019	Head of NHRI activities took up their post in the Chancellor's Office.
	The Chancellor submitted a request to the European Network of National Human Rights Institutions to become a member of the network.
	The Chancellor submitted a request to the Secretariat of the Sub-Committee on Accreditation to start the accreditation process.
February 2019	The Chancellor became a member of the European Network of National Human Rights Institutions.
	The Chancellor announced a competition to find members to serve on the Chancellor's Advisory Committee on Human Rights.
March 2019	The head of NHRI activities in the Chancellor's Office attended a meeting of the European Network of National Human Rights Institutions in Geneva.
	The Sub-Committee on Accreditation decided to schedule an overview of the Chancellor's institution for March 2020. A more precise schedule will be determined in October.
	The head of the NHRI was on a study visit to the Danish national human rights institution.
	On 26 March, the opening session of the Chancellor's Advisory Committee on Human Rights was held.
April 2019	An official from the Chancellor's Office participated in a meeting of the Asylum and Migration Working Group of the European Network of National Human Rights Institutions in Zagreb.

June 2019	The head of NHRI activities attended a meeting organised by the EU Agency for Fundamental Rights in Vienna where she provided an overview of the situation in Estonia for a comparative study.
August 2019	Meeting with the Finnish human rights institution.
September 2019	Second session of the Chancellor's Advisory Committee on Human Rights (on 24 September).

2.2. Protection of the rights of people with disabilities

The Riigikogu ratified the Convention on the Rights of Persons with Disabilities (hereinafter 'the Convention') and its Optional Protocol on 21 March 2012. By doing so, Estonia assumed the obligation to promote the opportunities of 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 to implement the rights set out in the Convention.

To attain the aims set out under the Convention, Article 33, paragraph 1, of the Convention obliges each State Party to establish an institution or organisation to deal with implementing the Convention. For years, debate was ongoing about which organisation(s) could fulfil this role in Estonia. In summer 2018, the Riigikogu decided to entrust the Chancellor of Justice with this task. The parliament supplemented the Chancellor of Justice Act with a provision, according to which, as of 1 January 2019, the Chancellor fulfils the role of promoter and monitor 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.

The new tasks were also accompanied by additional funding from the state budget that helped the Chancellor to include a Head of Disability Rigts in her Office.

In spring 2019, the Chancellor convened the Advisory Council for Persons with Disabilities, which held its opening meeting on 31 May. Members of the Advisory Council are people with disabilities and representatives of their organisations. The Advisory Council hold regular meetings at least twice a year. If necessary, working groups are formed to deal with specific subjects.

At the first meeting, problems important for people with disabilities that need to be resolved were formulated and expectations were expressed regarding the work of the Advisory Council. Plans of the Riigikogu Social Affairs Committee for the next four years in relation to ensuring the rights of people with disabilities were also heard. The Advisory Council highlighted the issue of accessibility (of buildings and transport as

well as information) and availability of services (regional differences, complicated and burdensome procedures, and inadequate amount of services).

The Chancellor's Office also closely communicates with the Estonian Chamber of Disabled People, in cooperation with whom we resolve problems of people with disabilities.

2.2.1. Reporting on implementation of the Convention

Under Article 35 of the Convention, States Parties submit reports to the Committee on the Rights of Persons with Disabilities on measures taken to give effect to obligations under the Convention and on progress made in that regard. Estonia submitted its state report in November 2015.

The Committee also expects organisations representing persons with disabilities, as well as organisations monitoring implementation of the Convention under Article 33, to express an opinion on reports submitted by States Parties.

On 9 April 2019, a meeting took place in Geneva with the Committee on the Rights of Persons with Disabilities. A Chancellor's Adviser as well as representatives of the Estonian Chamber of Disabled People attended the meeting. Together, they provided the Committee with an overview of implementation of the Convention and the situation of people with disabilities in Estonia.

2.2.2. Prevention and promotion

The Chancellor's task is to introduce the rights of people with disabilities and to ensure that they are involved in decision-making and in the life of society in general. We consider it important to raise awareness of society about the rights of people with disabilities.

The Chancellor and her advisers actively participate in public and specialist debates, speak at seminars and conferences and in the media. The Chancellor's advisers have written in the journals *Sotsiaalöö* [Social Work] and *Juridica*. Kristi Ploomi and Riste Uuesoo dealt in their article with the issue of providing information about social services on websites of rural municipalities and cities, Juta Saarevet wrote about the Chancellor's activities in implementing the Convention on the Rights of Persons with Disabilities and Vallo Olle about problems with mandatory social services organised by rural municipalities and cities.

In order for us to be able to correctly assess the situation of people with disabilities, it needs to be studied. Currently, Estonia lacks a reliable integrated picture and statistics about how well or poorly the rights of people with disabilities have been ensured. For

example, no overview of accessibility exists. It is not known how many healthcare or educational institutions or places of provision of social services are accessible to people with disabilities; data is also lacking as to the extent of accessibility of public transport for everyone. To obtain an overview, the Chancellor asked for information from the Estonian Health Insurance Fund, the Health Board, the Ministry of Education and Research and the Social Insurance Board. An overview is necessary to enable moving step by step closer to a situation where the rights of people with disabilities are fully ensured.

2.2.3. Access to elections

The state must take care that all voters, including people with disabilities, can exercise their political rights on an equal basis. This means that voting procedures, facilities and materials should be adapted to the needs of people with disabilities, appropriate, accessible and easy for them to understand and use (Article 29 of the Convention).

The Estonian Chamber of Disabled People, in a shadow report (page 135) prepared in 2018, drew attention to the limited possibilities of people with disabilities to participate in elections. „Persons with disabilities cannot always decide on the manner of voting – they are forced either to cast an online vote or have a ballot box delivered to their home", the Chamber noted in their report.

In 2019, two elections were held in Estonia: elections for the Riigikogu and for the European Parliament. In this connection, the Chancellor addressed rural municipal and city council chairs and rural municipal and city government mayors with a request to designate as polling stations only those buildings which are accessible to all voters. In cooperation with the national election service and the Estonian Chamber of Disabled People, information needed by voters with special needs was made more accessible and is now easier to find. Information needed by voters with special needs was added to the elections website at www.valimised.ee. Voters with special mobility needs could use the map application of polling divisions which enables a person to easily find the location of their polling station and obtain information about access to it. The map application showed whether the polling station was accessible independently in a wheelchair and, for example, also with a baby carriage.

Since not all polling stations were accessible, during the Riigikogu election the Chancellor repeated her call before the European Parliament election. On the European Parliament election day, the Chancellor's advisers visited polling stations. It was found that alongside easily accessible polling stations there were still stations which voters with special mobility needs could not access independently.

Although in the case of elections persons with special mobility needs may decide to vote online or request a ballot box to be delivered to their home, those solutions

should not be forced on them. Everyone is entitled to vote at a polling station. In order to ensure that persons with disabilities can independently access all polling stations during the next election, the Chancellor made a proposal to the Riigikogu to lay down the requirement of accessibility of polling stations in election legislation.

2.2.4. Access to buildings

Under Article 9 of the Convention, the state must ensure to persons with disabilities access, on an equal basis with others, inter alia, to the physical environment and public buildings and services. In view of the resource intensity of reorganisation and rebuilding activities and the time needed for this, movement towards this goal should occur step by step. It is certainly necessary to rule out situations where access actually deteriorates as a result of a new construction or reconstruction.

Currently, there is no overview of how many establishments performing public functions are accessible to persons with disabilities. However, taking a look at polling stations which usually operate in school or municipality buildings or community centres, it may be concluded that problems still exist with access to many public establishments.

Requirements for access to buildings arising from special needs of persons with disabilities have been established by the Minister for Entrepreneurship and Information Technology Regulation No 28 of 29 May 2018 adopted on the basis of the Building Code. As of 1 January 2019, the Consumer Protection and Technical Regulatory Authority was empowered with checking the conformity of buildings with these requirements. As no legal requirements on accessibility of buildings existed from 1 July 2015 (when the Building Act lost validity) to 3 June 2018, supervision is exercised only over buildings that were or have been built (or renovated) during the validity of the requirements.

In connection with renovation of a hobby school in Tallinn, the Chancellor received a petition referring to a contradiction between the accessibility requirement and heritage conservation restrictions. Tallinn Education Board replied to an enquiry by the Chancellor's Office that all schools (including the hobby school in question) are made accessible during renovations. Based on heritage protection requirements, the most suitable solution to achieve this is chosen.

In the Chancellor's opinion, by weighing different interests and needs, a compromise can almost always be found in the case of which neither the unique historical character of a building under heritage protection nor the needs of people with disabilities suffer. Often, however, the easiest path is taken, thus leading to a conflict between the demands of people with disabilities and prohibitions imposed by the heritage conservation authorities. In recent years, lifts have been installed, easing the effort of

the elderly and people with disabilities in accessing a building, for example, in Tallinn Town Hall and other buildings housing public entities. This demonstrates that invaluable historical buildings can continue serving public interests in line with 21st century conditions, needs and expectations.

2.2.5. Access to public transport

Article 9 requires the state to ensure equal access to public transport for persons with disabilities. Accessible public transport creates a precondition for persons with disability to be able to independently participate in the life of society. To fulfil the requirement set out in the Convention, the state must also amend laws and other legislation where necessary.

As in the case of buildings, access to public transport often also presumes large-scale investment. In this context, state and local authorities can move forward step by step. According to the „Transport development plan 2014–2020", approved by the Riigikogu, "the transport system must enable safe and environmentally sustainable mobility for everyone, and planning and building of the mobility environment must proceed from the principles of universal design and the different needs of diverse social groups". Under § 10(1) clause 1 of the Public Transport Act, public transport is intended for use by everyone, and its organisation must also take into account the mobility needs of persons with disabilities. A regional public transport centre must ensure that the residents of the region are provided with less expensive and economically more efficient public transport (§ 15(3) Public Transport Act). The law does not oblige a contracting authority or entity to procure accessible buses; accessibility requirements may be set by a contracting authority or entity themselves.

A good example of creating accessible public transport is Pärnu County where it is expected that on 1 October 2019 all county bus transport will be accessible. In Tartu, too, all passengers are able to enter a bus without assistance. However, not everywhere is the situation like that.

The Chancellor was contacted by a parent whose child could no longer travel independently on a regular bus as bus transport on her way to school had been reorganised. State-owned low-entry buses were transferred from the Tallinn-Kiili route to service other routes. A child using an electric wheelchair who had so far been able to ride the regular bus to school as well as to leisure events was deprived of the opportunity of independent mobility. In cooperation with the bus company, an opportunity was found for the child's transport to school and back, but other trips were left mostly for the local authority and the parents to arrange. The family, who until then needed no social transport, was forced to apply to the local authority for the social transport service for the child.

According to the Chancellor's assessment, the issue of accessibility needs to be resolved in cooperation between the Ministry of Economic Affairs and Communications, the Road Administration, and regional public transport centres. Unless required by law that public transport vehicles must also be accessible – for instance, to wheelchair users – in legal terms there is nothing that entities procuring vehicles through public tender can be reproached for. However, where the situation of people with disabilities deteriorates – a bus route network is changed and/or an accessible bus is replaced with a one not suitable as transport for disabled passengers – Estonia is in conflict with the Convention requirements protecting the rights of persons with disabilities. On that basis, the Chancellor made a proposal to amend the law so that at least public transport financed from public funds should be accessible to everyone.

Another example of regression is public transport organisation related to train transport. Trains are accessible to everyone and enable people with special mobility needs to move independently. For the period of planned renovations on the railway, trains are being replaced with buses which are, unfortunately, not accessible to wheelchair users.

The reply given by the Ministry of Economic Affairs and Communications shows that the Ministry does not consider it necessary, possible or reasonable to obtain buses suitable for people with special mobility needs for the period of planned railway renovations. The reason is the higher price of the service and the fact that it is complicated to find buses for non-regular transport. Several organisations and establishments (including the Chancellor's Office) have faced the same problem when needing to commission a public transport vehicle for their whole staff, also including employees with special mobility needs.

Procurement rules neither for regular nor non-regular transport include a requirement of accessibility of buses, so that no sufficient supplay for such buses has developed on the market.

Currently, Estonia is lacking a system to gradually improve the accessibility of public transport and rule out the setbacks described above. Problems with creating such a system may be understandable but hiding endlessly behind arguments of market failure, and the like, does not relieve Estonia of complying with the requirements laid down in the Convention. According to the Chancellor's assessment, the law should be amended and the requirement for accessibility of public transport made mandatory for everyone. Where necessary, flexible transition periods could apply, taking into account depreciation of the existing bus fleet and other circumstances.

2.2.6. Access to social services

Petitions received by the Chancellor reveal that the organisation of social services in Estonia is still complicated and accessibility of those services causes problems. The first to suffer are people with disabilities who are unable to participate in the life of society without receiving the necessary service. (For more detail, see the chapter "Social security".)

2.2.7. Access to e-services

By acceding to the Convention, Estonia undertook an obligation to ensure to persons with disabilities access to information and communication on an equal basis with others, including access to communications technologies and systems and public services. Estonia is a developed e-solutions based country where personal identity cards are widely used to access public as well as private e-services.

Introduction of ever new e-services means, inter alia, that some services are from the start developed only as e-services and the same service is not available by any other means at all. If IT development fails to pay sufficient attention to all users (including users with special needs), it is inevitable that new solutions are introduced that cannot be used by everyone. This excludes certain members of society, thereby violating their rights.

For example, at the beginning of 2019 the Estonian Information System Authority introduced new ID card software Digidoc4, but it turned out that the new version failed to function with screen readers used by visually impaired persons. However, when working with a computer and IT tools visually impaired persons use screen readers that read out the text to them. These people lost the opportunity to safely give digital signatures and verify their validity. Visually impaired people contacted the Chancellor for assistance.

For many people with disabilities, e-government means a convenient opportunity to independently communicate with the state and fulfil their duties. With the help of the ID card, they can carry out banking transactions, order food, books and commodities from an e-shop for delivery to their home, enter into contracts, operate as members of the board of an association, etc. However, if something happens with the electronic identity of these people (forgetting the password, the card getting locked, software renewal that is no longer interoperable with the screen reader, etc.), they also lose independent access to the state and the services offered by it.

The Chancellor resolved problems related to Digidoc4 in cooperation with the Information System Authority and the Estonian Chamber of Disabled People. The

Chancellor's Office asked the Minister of Information about resolving the problems of Digidoc4 as well as more generally about all IT developments and new e-services.

The Data Protection Inspectorate has been given a new task: to verify whether public websites and mobile applications conform to the requirements of accessibility. According to a study, only a small share of public websites conforms to the requirements of the WCAG 2.0 standard (WCAG 2.0 is an international standard administered by the World Wide Web Consortium and dealing with different user technologies for web content accessibility, including technologies intended for people with special needs). Naturally, upgrading websites requires money and time. A positive development is that several essential websites have been upgraded, for example the website for government agencies. According to the Minister of Foreign Trade and Information Technology, no additional funds have yet been allocated to the Data Protection Inspectorate for fulfilling the new task.

2.2.8. Children with special needs in kindergarten and school

During the reporting year, the Chancellor received several petitions asking about creation of necessary conditions for children with special needs, including children with behavioural problems, in kindergartens and schools. Assistance was sought by parents wishing to offer the necessary support and help to their child with special needs, as well as parents whose children did not feel safe in school or kindergarten as the institution concerned was unable to control children with behavioural problems.

2.2.9. A child in need of support in kindergarten and school

Schools and kindergartens have the duty to ensure the safety and well-being of a child in need of support as well as that of their peers and of the whole staff. Kindergartens and schools must create the necessary conditions for ascertaining the special educational needs of children and young people and on that basis offer them the necessary support. (For more detail, see the Chapter "Children and young people").

2.2.10. Access to higher education at the University of Tartu

The Chancellor was contacted by a student from the University of Tartu claiming that she had been discriminated against during studies due to her disability. Although in the specific case no discrimination on the ground of disability was found, several shortcomings in the education of students with special needs were revealed.

The University of Tartu deserves recognition for many things it has done in order to ensure the opportunity for students with special needs to participate smoothly in their studies, but administrative procedures at the university could nevertheless be clearer. On that basis, the Chancellor made a proposal to the University of Tartu to supplement

the regulation on organisation of studies so that it would be absolutely clear for students with special needs, as well as their fellow students and teaching staff, that adjustments on account of special needs must be made (i.e. they are mandatory) in the study process. For example, a student with special needs may require additional time to sit an examination or they should be given an opportunity to write the exam paper on a computer and not by hand. Responsibility must be distributed clearly, so as to ensure that making adjustments during the whole study period is smoothly arranged.

Information relating to special needs is deemed sensitive. Therefore, it is also necessary to regulate more precisely how much information students themselves must provide to the university so as to enable the school to make the necessary adjustments.

2.2.11. The principle of universal design

Article 2 of the Convention uses the concept of "universal design": products, environments, programmes and services should be designed so as to be usable by all people. Universal design should apply to both products and services, including public services. Legislators should also bear the principle of universal design in mind.

In order to enable people with disabilities to participate in the life of society on an equal basis with others, it may be necessary to make adjustments and changes. Adjustments and changes to the habitual way of dealing with matters should also be made by the state and local authorities.

A creator of a public service, including the legislator, should contemplate who might be using the service or who is compelled to use the service. It should be ensured that the service is created in line with the principle of universal design and functions flawlessly for all potential service users.

When enforcement proceedings are initiated in respect of a person, as a rule, the bank blocks their access to the internet bank. To carry out banking transactions, the debtor has to go to a bank branch and also pay a service fee for transactions made there. For a person with special mobility needs, closing the internet bank may mean a situation where they can no longer use their money as they cannot go to a bank branch. Thus, initiating enforcement proceedings in respect of a person with challenged mobility may mean leaving the person without money.

People with special needs for whom writing or coming for a personal appointment is inconvenient can petition the Chancellor's Office without any hindrance. Instead of written documents, a petition may be submitted by telephone, or also as an audio or video file. The Chancellor's Office has also received the first video file in Estonian sign language.

III. THE RULE OF LAW

Under the rule of law, we understand a system where people are governed by laws (not by other people), where laws are observed and where all the people regardless of their social status and economic situation are equal before the law. A state governed by the rule of law has a judicial system which is independent of the executive. Rights can be circumscribed and freedoms restricted only in cases and under procedures laid down by law.

In a state governed by the rule of law, representatives passing decisions on our behalf come into elected office on equal grounds and fairly. The activities of key actors in a representative democracy, i.e. political parties, as well as their financing, must also be subject to control during the period between elections.

According to the interpretation of the Venice Commission, which advises Council of Europe Member States in the field of constitutional law, the rule of law comprises six core elements:

- legality, including a transparent, accountable and democratic process for enacting law;
- legal certainty;
- prohibition of arbitrariness;
- access to justice before independent and impartial courts, including judicial review of administrative acts;
- respect for human rights;
- non-discrimination and equality before the law.

The Chancellor of Justice checks whether implementers of legislation – government agencies and local government bodies, courts, bailiffs, and others – respect the laws and the principles of good administrative practice in their work.

The principles of good administrative practice mean, inter alia, that state and local government officials communicate with people politely and to the point. The state and local authorities 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 state.

3.1. Political parties and the Political Parties Act

This year, the Chancellor had to assess several shortcomings in the Political Parties Act that the Political Parties Financing Surveillance Committee has had to deal with in its work.

One of the shortcomings in the Act concerns sanctions laid down for political parties for accepting a prohibited donation, which in the Chancellor's assessment are not clear,

implementable or effective. This is contrary to the principle of legal clarity. The Chancellor contacted the Minister of Justice with a request to initiate amendment of the Political Parties Act.

3.1.1. Consequences of accepting a prohibited donation

The Political Parties Financing Surveillance Committee (PPFSC) asked the Chancellor whether default interest applicable (at the daily rate of 0.85% of the overdue amount) for delay in transferring a prohibited donation to the state budget was compatible with the Constitution.

The Chancellor found that this rate of default interest was not unconstitutional. In order to prevent political corruption and ensure fair and democratic competition, it is particularly important that the financing of political parties should be transparent and the rules intended for ensuring this be respected. Consequences of violations should be sufficiently harsh as to make political parties resist the temptation of a prohibited donation. Measures applicable to a violation may only be established and changed by the Riigikogu.

When analysing the issue of default interest, the Chancellor found that the sanctions laid down under the Political Parties Act for making a prohibited donation cannot be unequivocally understood and cannot be effectively implemented. Compliance with the rules has, to a large extent, been left to the conscience of political parties. On that basis, the Chancellor sent a memorandum to the Ministry of Justice recommending that precepts issued by the PPFSC for return – or transfer to the state budget – of a prohibited donation should be compulsorily enforceable. The Chancellor also recommended harmonisation of coercive measures, including considering transfer of a prohibited donation to the state budget instead of returning it; specifying the conditions and procedure for reducing a state budget allocation in the event of violation of the rules, and expanding the rights of the PPFSC to request information from third persons.

The Minister of Justice found that the initiative for resolving these problems should come from the Riigikogu.

3.1.2. Restrictions on office and activities of members of the PPFSC

The Political Parties Financing Surveillance Committee asked for the Chancellor's opinion as to restrictions on office and activities by members of the Committee.

The Chancellor found that the Political Parties Act does not prohibit appointing a person connected with a political party, including a member of the board or of the audit committee of a political party, to be a member of the PPFSC. Persons otherwise

connected with a political party, for example an attorney providing services to a political party, may also serve as members of the PPFSC. In the interests of independence of the Committee, such restrictions should be considered, but the decision can be made by the Riigikogu.

3.2. Elections

Since elections in 2019 took place for the Riigikogu as well as for the European Parliament, many election-related issues were raised.

3.2.1. Compatibility of electronic voting with constitutional principles

The Chancellor was asked to check whether the Estonian electronic voting system meets the requirements for democratic voting.

The Estonian Constitution stipulates that elections must be free, uniform, general, direct, and secret (§ 60). These principles must also be respected in the case of electronic voting. For this, electronic voting must comply with the following conditions: a voter's identity and eligibility to vote is established, each voter has one vote, a voter is able to vote freely, secrecy of the vote is ensured, the vote cast is counted, and the results of voting and elections are correctly established. In brief: the system must ensure an honest result and, in the interests of credibility, monitoring and verifying it must be possible.

The Chancellor explained that the system of electronic voting in Estonia complies with the constitutional principles set for elections. Individual verifiability of a vote is not an end in itself. This is also not possible when voting by paper ballot. In order to reduce the risk of selling votes, Estonia uses a system of combined control in electronic voting.

Certainly, the technical solution (including verifiability) for electronic voting needs continuous critical assessment and development. Also important are maximum transparency and clear explanation of the system for the public.

3.2.2. Secrecy of voting

Several people asked the Chancellor whether secrecy of voting is indeed ensured in Estonia. The Chancellor explained that the procedure for electronic voting (§ 48^4 Riigikogu Election Act) meets the principle of secrecy of elections (§ 60(1) Constitution). Secrecy of voting is intended to ensure freedom of election. On the one hand, secrecy of voting means anonymity of the vote and, on the other hand, privacy of voting. In the case of electronic voting, the anonymity of a vote is ensured through encryption of the e-vote. To ensure privacy of voting, a so-called virtual polling booth has been created, meaning that a voter may also change their vote when voting electronically.

One individual contacted the Chancellor doubting whether it was lawful that during advance voting outside the polling division of the voter's residence a person is given two envelopes, one of which has the voter's personal identification code written on it. The Chancellor affirmed that a voter's identity is not linked to their choice through that envelope. The outer envelopes with the personal identification code and the inner envelopes with the ballot paper are not opened at the same time. Noting a voter's data on the outer envelope is necessary because that way the polling division committee of the voter's residence can verify that the voter has not voted several times.

3.2.3. Entering voters on the list

During the last election, confusion arose from the new Population Register Act. This resulted in a situation where some people could not vote due to absence of their residence data. That is, at the beginning of 2019 earlier residence data changed at the request of the owner of a dwelling and recorded in the register to a level of accuracy stating the city, city district or rural municipality or settlement unit became invalid. As voter lists are drawn up on the basis of the population register data, people who had not renewed their data were excluded from the list of voters.

The Chancellor explained that during an election a person's residence can be registered through a simplified procedure; based on a notice of residence submitted during the election a person's address is entered in the population register immediately, and if necessary also to the level of accuracy of a city, city district or rural municipality. After that the person is also entered on the list of voters.

3.2.4. Prohibition on outdoor advertising and active campaigning

This time, the prohibition on political outdoor advertising during the active campaign stage caused confusion because of the very close temporal proximity of elections for the Riigikogu and for the European Parliament. The Chancellor was asked to assess the opinion of the Police and Border Guard Board according to which outdoor advertising of the European Parliament election was also banned during the Riigikogu election.

The Chancellor found that the opinion was not contrary to the law. Those running in the Riigikogu election cannot circumvent the prohibition on outdoor advertising that way. If an advertisement presents an independent candidate, a political party or a person standing as a candidate on a political party list running in the Riigikogu election, or their logo or distinctive mark and programme, this cannot be substantively distinguished from advertising in the Riigikogu election. Therefore, it should be regarded as advertising for the Riigikogu election even if the advertising has an additional purpose.

Since the restriction on outdoor political advertising does not fulfil aims set beforehand and restricts the rights of candidates to introduce themselves, the Chancellor repeated the proposal to abolish the restriction in her written report to the Riigikogu. The Chancellor also asked the Riigikogu to abolish the prohibition on active campaigning on election day (except in or close to polling divisions), as this no longer corresponds to the current situation. Ever more people use the opportunity to vote before election day and it is also very difficult if not impossible to control dissemination of advertising in social media on election day.

By the time of drawing up the annual report, the Government had approved the proposals prepared by the Ministry of Justice to abolish the restriction on outdoor political advertising and the prohibition on campaigning on election day.

3.2.5. Covering the election campaign on Estonian Public Broadcasting

Prior to the 2019 Riigikogu election, the Richness of Life Party contested a provision in the arrangement established by the Board of the Estonian Public Broadcasting (ERR), on the basis of which the ERR gives preference for participation in election debates on its main channel (i.e. ETV) to political parties submitting a full list, i.e. including 125 candidates.

The Richness of Life Party claimed in its complaint that since the election legislation in force in Estonia does not recognise the concept of a "full list" the ERR has also no right to distinguish between political parties based on such a parameter or discriminate against any of the political parties.

The Chancellor replied to the Richness of Life Party that the ERR has the right and under the Estonian Public Broadcasting Act also the obligation to establish rules for covering election campaigns on its channels. In doing so, all political parties and independent candidates should be ensured an opportunity to present their views on ERR channels before the election. The ERR also has the obligation to ensure the journalistic content and wide audience appeal of campaign programmes (including debates). Thus, in the specific case, the ERR violated neither the Constitution nor the law.

However, the Chancellor conceded that the ERR should be consistent and predictable in its rules on covering campaigns and should not change the rules. By establishing the requirement of a "full list" for participation in some election debates, the ERR indirectly directs political parties to expand their lists. Since a deposit is payable for every candidate, which, in the event of failure to exceed the election threshold is non-refundable to political parties (or to independent candidates), this entails a considerable financial risk for political parties not represented in the Riigikogu (and not receiving support from the state budget) as well as smaller political parties.

3.2.6. Deposit paid by political parties at the Riigikogu election

The Chancellor recommended that the Riigikogu should consider whether the requirement of a deposit imposed on political parties participating in the Riigikogu election is justified.

Establishing the requirement of a deposit was motivated by the wish to avoid fragmenting the political landscape while seeing strong, stable and economically well-off political parties as participants in the political process. It was also considered important that votes are not dispersed between the candidates of too many political parties in elections and that an excessive proportion of votes not remain below the election threshold. The election threshold functions effectively as a measure to avoid fragmentation of the Riigikogu and the consequent risk of internal political instability. However, a uniform amount of deposit is financially more burdensome on new and smaller political parties which, inter alia, do not receive support from the state budget. This results in an unequal situation before elections and may therefore diminish the desire of smaller and new political parties to run in elections.

3.2.7. Reform of electoral districts

The Chancellor also drew attention in her report to the difference in the number of mandates distributed in electoral districts and recommended that the Riigikogu should consider changing electoral districts so as to equalise their size based on the number of voters. The Riigikogu could also consider the possibility to rephrase § 6 of the Riigikogu Election Act and, as of the 2023 Riigikogu election, assign the duty of forming electoral districts to an independent institution, such as the National Electoral Committee. Such a decision would curb the effect of current politics and political party preferences on the organisation of elections and would facilitate implementing changes.

3.2.8. Referendum

The Chancellor explained to a petitioner that the Constitution does not preclude holding a referendum. The Constitution directs putting issues of national importance to a referendum and not extensive draft legislation itself.

The decision of the people is compulsory for all state bodies to comply with. For example, it is reasonable to ask whether dual citizenship should be allowed but not to put to a referendum a Draft Act amending the Citizenship Act.

A Riigikogu that has held a referendum on an issue of national importance need not dissolve either in the case of an affirmative or a negative answer. Thus, without fear of dissolution, the Riigikogu may ascertain the will of the people, a decision that is

binding. That decision can be changed only by a new referendum. If the Riigikogu were to put to a referendum a Draft Act (and not an individual issue or issues), then in the event of a negative answer an extraordinary election of the Riigikogu should be announced.

The Riigikogu may hold a referendum on all issues within its competence, and which are not prohibited from being put to a referendum, and for which no specific constitutional procedure has been laid down.

3.2.9. National Electoral Committee

The National Electoral Committee monitors that elections in Estonia observe the principles of free, general, uniform and direct elections, as well as secrecy of voting. The electoral committee verifies the activities of the national election service organising elections, adopts regulations, procedures and guidelines necessary for organising elections, and resolves election complaints. The National Electoral Committee also confirms national election results and registers candidates for the Riigikogu and European Parliament elections.

According to the law, the Chancellor of Justice appoints her representative to the seven-member committee. Since June 2016, the Chancellor has been represented on the National Electoral Committee by the Deputy Chancellor of Justice-Adviser, Olari Koppel.

In 2019, elections for the Riigikogu and the European Parliament took place in Estonia. The electoral committee held 22 meetings. The committee resolved 30 complaints in connection with the Riigikogu election and 9 complaints in connection with the European Parliament election. Almost all persons and organisations who had filed a complaint used the right of appeal to the Supreme Court. With one exception, the Supreme Court upheld all the decisions of the National Electoral Committee.

Based on complaints submitted to the National Electoral Committee as well as proposals sent directly to the Chancellor of Justice, in spring 2019 the Chancellor drew up a written report to the Riigikogu and an application to the Minister of Justice. The Chancellor proposed amending or clarifying the substance of the laws underlying the elections, as well as the Political Parties Act.

3.2.10. 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 (PPFSC). The Chancellor appointed Kaarel Tarand, who has also acted as deputy committee chairman for several years. The committee and its members are independent and have no obligation to account for

their activities to the institutions or persons who appointed them. The work of the committee is public.

During the reporting year, the committee mostly focused on events related to municipal council elections that took place in October 2017. In cooperation with the National Audit Office, the committee carried out a comprehensive audit, investigating whether election campaigning in the information bulletins of local authorities should be deemed a prohibited donation. Although court cases in this area have already occurred in connection with violation of the Political Parties Act prior to and during the 2013 election, the check carried out in 2017 showed that necessary conclusions had not been drawn from previous mistakes and precepts. During the election campaign in 2017, too, political parties and candidates gained advantages over their competitors by exploiting their office and position of power. Several precepts issued by the PPFSC have by now been contested in court.

In 2019, the PPFSC has again been analysing the political balance in information channels financed from the budget of local authorities. The review period this time covers the time prior to the Riigikogu and European Parliament elections. The results of the check will not be ready before late autumn.

Despite repeated calls and applications, the XIII composition of the Riigikogu until the end of its mandate in March 2019 managed to avoid amending and supplementing the Political Parties Act, on which the work of the PPFSC is based, so as to eliminate obstacles encountered in the work of the committee. The law needs to be changed to maintain transparency of the Estonian political system at least at its current level.

Apart from this, it is necessary to be prepared for new risks arising from the development of technology and the practice of using it in political competition elsewhere in the world. If Estonia fails to deal with new threats and mitigate new risks, then already in the next few years we may find ourselves in the situation where Estonian political parties and the whole political system may be financed and influenced, for example, by foreign countries or multinational technology companies who know more about Estonian political parties and voters than we do ourselves.

The election campaigns in 2018–2019 and the expenditure incurred to organise them pointed to problems in the financing model of the Estonian political system. Income that political parties receive from legal sources (state budget, donations and membership fees) has remained stable over the years while the expenses of political parties have grown. Therefore, after elections political parties are burdened with the highest levels of debt they have ever had. It is questionable whether some political parties will be able to pay their bills at all. Financial problems increase the risk of political corruption and reduce transparency of political party funding. The actual financial situation of political parties, their income and expenditure are no longer

reflected in their public reports, but instead in the accounting of partner companies providing them services, although these are not subject to supervision by society.

In February 2019, the PPFSC had to issue the biggest precept so far in its existence, to the Centre Party to the monetary value of some one million euros. Sums claimed from just one political party on the basis of precepts and court judgments amount to two million euros. This has seriously damaged the credibility of the whole political system in the eyes of citizens. Credibility can be restored by increasing the transparency of the financing system and strengthening the legal basis of supervision.

3.3. Lifting parliamentary immunity

In April 2019, the Chancellor of Justice resolved an application by the Prosecutor General's Office to lift the immunity of Kalev Kallo, a member of the Riigikogu. Under § 76 of the Constitution, members of the Riigikogu are immune from prosecution, and criminal charges against a member may be brought or judicial proceedings against them continued only on a proposal of the Chancellor of Justice and with the consent of a majority of the members of the Riigikogu. That provision of the Constitution protects members of the Riigikogu, for example, from political persecution and court cases brought for political motives.

The Chancellor thoroughly examined the materials of the criminal file and the surveillance file opened within its frame, and decided to make a proposal to the Riigikogu to deprive Kalev Kallo of his parliamentary immunity. The Chancellor ascertained that the whole investigation so far had been lawful and no grounds existed to suspect that charges against Kallo could have been impelled by an inappropriate (e.g. political) motive.

The Riigikogu agreed with the Chancellor's proposal and on 14 May 2019 consented to lift the immunity of Kalev Kallo and for continuation of the judicial proceedings relating to him.

3.4. Good administrative practice

The Chancellor of Justice has the duty to check whether implementers of legislation – government agencies and local government bodies, courts, bailiffs, and others – respect the laws, including the principles of good administrative practice, in their work.

The principles of good administrative practice mean, inter alia, that state and local government officials communicate with people politely and to the point. State and local authorities 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 state.

A state agency must operate smoothly, swiftly and reasonably, and avoid causing any inconvenience for individuals. Among other things, they should help people understand their duties and accurately present their requests to the authorities. The activities of state and local government may not mislead people or raise false expectations in them. If no assistance can be offered to an individual, the authorities must say so. The principles of good administrative practice are set out in the Administrative Procedure Act.

By resolution adopted on 20 February 2019 under the title „Underlying principles of state reform and good administrative practice", the Riigikogu affirmed that the functioning of public administration must be person-centred and effective, involving a minimal administrative burden. That is, people's problems should be resolved as quickly as possible and people should not be burdened with excessive bureaucracy.

3.4.1. Replies to petitions

Often people are dissatisfied with how state and local government bodies resolve their problems. This has meant that the Chancellor had to reprimand the Ministry of Justice and the Ministry of Social Affairs, which had failed to reply to several memorandums and requests for explanation by the deadline.

Põhja-Sakala Rural Municipal Government failed to register a request for an explanation and sought to justify its refusal to reply on the basis that the request lacked a digital signature. However, no legal act stipulates that only documents signed digitally or manually are to be registered. In this case, the rural municipal government was requested to provide information on the draft development plan drawn up by the municipal government, so that no legal basis existed to demand a signature.

Kadrina, Lääne-Harju, Rae and Tori rural municipalities and Tartu City disregarded several memorandums and requests for information submitted by residents. Toila Rural Municipal Government failed to meet the deadline to examine an administrative challenge filed by an individual. 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. An extra-judicial administrative challenge must be resolved within ten days. If it needs a more thorough investigation, the deadline for examining a challenge may be extended by up to 30 days. In line with the principles of good administrative practice, an individual must be informed at the first opportunity about a delay in replying or extension of the deadline for reply and reasons for it.

Again under the principles of good administrative practice, a reply should be comprehensive, informative and reasoned, and should contain all the relevant substantive information. The Chancellor reprimanded the Government of Kohtla-Järve

Town for having failed to justify in its reply why an individual's opinions and proposals had not been taken into account.

One petitioner contacting the Chancellor was dissatisfied with the activities of the Government of Narva-Jõesuu Town about ascertaining the location of their grandfather's grave plot. The town resident discovered years after the burial organised by the town that maybe their grandfather was not buried on the plot known to them.

The Chancellor found that the Government of Narva-Jõesuu Town had failed to fulfil its duties with sufficient care. Even prior to entry into force of the Cemeteries Act on 1 January 2012, local authorities had to document a person's burial spot so as to be clear where it is located. When replying to an emotionally important question, the authorities must demonstrate empathy. Proceeding from the investigative principle, town government must ascertain all the essential facts. Good administrative practice also includes willingness to help and kindness, i.e. citizen-friendliness in its broadest sense. By limiting its response to merely forwarding a letter issued by the foundation managing the cemetery, which moreover did not contain replies to the person's questions, the town government failed to comply with these principles.

3.4.2. Electronic administration

The state increasingly requires exclusively electronic administration. If no alternatives exist, it is particularly important to ensure the operational reliability and user-friendliness of information systems as well as assistance in the case of problems. The Chancellor has received letters about problems with information exchange between information systems (see also the chapter "Protection of privacy") as well as glitches in using information systems.

In the European Union, Estonia stands at the forefront in terms of electronic public procurement in all tender procedures. Approximately 10 000 public tenders a year are organised in Estonia with a total value of 2.3 billion euros. In 2018, an amendment to the Public Procurement Act entered into force establishing the requirement that all information exchange in relation to a public tender between the contracting entity and the economic operator (including submission of tenders) must take place electronically, unless otherwise laid down by law. The amendment was based on a presumption that the electronic public procurement register is sufficiently functional, user-friendly and convenient.

The Chancellor was contacted by an architect's office which had failed to submit a tender because due to a technical glitch they did not manage to send their competition project to the public procurement register. When trying to upload their work to the public procurement register, the architect's office encountered a technical malfunction related to a temporal restriction on performing operations. The restriction resulted in

a situation that if the file could not be uploaded within 60 seconds the operation was discontinued. Unfortunately, this meant that users of a slower internet connection could not submit their tender.

The Chancellor analysed the incident and ascertained that the public procurement register could indeed not accept files forwarded through a slow data communication channel. Regrettably, this information did not reach the tenderer, so that the architect's office did not succeed in submitting a competition project completed as a result of several months of work. Since the automatic error message did not contain a possible reason for the upload failure and the help desk did not explain this as a possible problem, the principles of good administrative practice were violated. The manager of the public procurement register must ensure that a tenderer is informed of all technical requirements, including those related to submission of documents, and in the event of a technical failure would also receive information about the reasons for failure and possibilities to rectify it.

3.4.3. Unjustified requirements

- In proceedings for a permit for use of a building, a local authority may not request documents which have no relevance for the case. In accordance with the regulation so far in force in Tallinn, in order to obtain a permit for use of a building, it was always required to submit a waste certificate to prove proper handling of construction waste. That requirement increased the administrative burden and prolonged the time needed for processing a permit for use. A waste certificate was also required when no waste could have been generated (for example, when changing the designated use) or when construction had been completed a long time ago and it was not possible to prove retroactively how waste had been handled. The Chancellor found that issuing a permit for use necessarily involves assessing that the building complies with requirements, but this does not include compliance of construction or handling of construction waste. The city has to verify the handling of construction waste but other, more suitable, measures should be found for this. Tallinn took the Chancellor's memorandum into account and amended the regulation.

- The procedure for declaring a missing person dead is laid down by the General Part of the Civil Code Act. That decision presumes that no information about a person being alive or dead has been found within five years. An application to declare a person dead must be submitted by an interested person, such as an heir.

  This year, the Chancellor was contacted by a person who had been officially declared dead by a court decision at the beginning of the 2000s. Now the person sought to have the decision reversed. As the relevant proceedings should be arranged by the court, the Chancellor recommended that the person should have

recourse to Harju County Court. The court must ascertain the essential facts, collect evidence if necessary, and on that basis either identify or not identify the person. If the court ascertains that a person once declared dead is actually alive then the declaration of death is reversed. The court is in charge of the whole proceedings.

To the Chancellor's surprise, Harju County Court referred the person to a law office providing legal assistance on favourable terms to Estonian residents in cooperation with the Ministry of Justice, in order to "properly formulate the application". However, on formal grounds the court rejected a defective application drawn up by the law office, without giving instructions for further steps. After continued intervention by the Chancellor, the person eventually managed to reverse the decision on declaration of their death.

This incident is a telling example of how a person inexperienced in dealings with the authorities is forced to run back and forth between several institutions and in the end might still receive no help. The principles of good administrative practice stipulate that government agencies must ascertain a person's real concern and wishes and then resolve the problem.

3.5. Judicial proceedings

By virtue of office, the Chancellor serves on the Council for Administration of Courts, which held five meetings in the second half of 2018 (two meetings were held electronically) and two meetings in the first half of 2019. Under the Courts Act, alongside chairmen 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 considering initiation of disciplinary proceedings, the Chancellor does not assume the role of a judge, i.e. the Chancellor does not assess a court decision on the merits. However, if necessary, the Chancellor can react to a judge's actions when a judge has failed to fulfil their official duties or has behaved disreputably. Despite this, people mostly seek the Chancellor's assistance concerning substantive administration of justice. Usually, people are dissatisfied with a court judgment or contend that the court has failed to ascertain all the facts essential for a case. In such cases, the Chancellor does not initiate proceedings.

During the reporting period, the Chancellor had to deal with a couple of dozen petitions complaining against a judge's activity. No disciplinary proceedings were initiated by the Chancellor. Several petitioners suspected a judge of partiality, finding that the judge had unjustifiably given preference to the arguments of one party during the proceedings. However, when examining the case materials the Chancellor had no

misgivings concerning the impartiality of these judges. Certainly, it is also emotionally difficult for parties to a dispute to bear court proceedings, for example in divorce cases and child custody cases.

The Chancellor also received a complaint concerning a delay in judicial proceedings on the right to custody of a child. Having heard explanations from the judge, the Chancellor saw no reason to initiate disciplinary proceedings. Judicial disputes concerning children must assuredly be resolved swiftly while also observing the provision of the Child Protection Act under which the best interests of the child must be a primary consideration in all child-related matters.

With regard to criminal proceedings, most complaints concerned keeping a person in custody and additional restrictions imposed on people in custody. The Chancellor does not intervene in substantive procedural decisions passed by judges.

In one case, the Chancellor received a complaint about inhuman conditions for holding a court hearing. Initiation of disciplinary proceedings against the judge was sought by an accused for whom, due to their health problems, it was difficult to stay in one position and who had to lie down every now and again. Allegedly, the judge had been condescending about the person's health concerns. However, examination of the case materials did not confirm that opinion. Audio recording of the court hearing disclosed, inter alia, the judge's explanation that if the defendant were to inform the court about their health problems, more suitable conditions for them could be created.

3.5.1. Information collected under the Security Agencies Act as evidence in criminal proceedings

Section 63(1[1]) of the Code of Criminal Procedure lays down that submission of information collected under the Security Agencies Act as evidence in criminal proceedings is decided by the Prosecutor General. The Chancellor verified how this type of evidence had been used in practice during the last four years (i.e. during the term of office of the current Prosecutor General).

The Prosecutor General was found to have submitted information collected under the Security Agencies Act as evidence in a criminal matter only in isolated cases (on five occasions as at January 2019) and only when the Prosecutor General found that the criminal offence in question really undermined the foundations of democracy and/or directly endangered national security. Contrary to suspicions raised in public, the Prosecutor General has always ensured the existence of authorisations for collecting information. The Chancellor ascertained that the practice implemented by the Prosecutor General to date and the relevant procedure ensure that information collected under the Security Agencies Act is indeed submitted as evidence in criminal proceedings only in exceptional cases and based on a well-considered decision.

3.5.2. Supervision of surveillance

The Chancellor supervises state agencies (investigative and security agencies) carrying out covert processing of personal data, so as to ensure that their activities are lawful and respect fundamental rights and freedoms. As a rule, that part of the Chancellor's work involves information classified as a state secret or for internal use only, so that detailed summaries of the inspection visits and recommendations are only accessible to the inspected agencies themselves and those competent to carry out constant and complete supervision. (See also the chapter "Supervision of surveillance".)

The Chancellor also resolves complaints against surveillance measures and, if necessary, verifies, for instance, claims disseminated in the media about unlawful surveillance.

For example, when resolving a petition by an individual, it was found that the prosecutor's office had failed to comply with the requirements of § 126[13] of the Code of Criminal Procedure when notifying the person of surveillance measures. Consequently, the person could not access the materials collected on them in time and could not file a complaint against them. The Chancellor sent a memorandum to the Prosecutor General about this.

Due to incomplete notices sent by the security agencies, people could not exactly understand why and to what extent surveillance measures affecting them had been carried out. The notice did not indicate whether they themselves or another person communicating with them had been under surveillance. One petitioner, after having examined the surveillance information, could not understand whether their activity had also been recorded or filmed in the course of surveillance.

The Chancellor reminded the surveillance agencies that informing people about surveillance measures affecting them always requires clearly distinguishing the target of the measure – whether they are the person under surveillance or a so-called third party whose privacy was interfered with by the surveillance measure. Inter alia, this gives the person an opportunity to decide whether and how to protect their rights.

3.6. Restriction of fundamental rights

- Undoubtedly, the state must create conditions to combat money-laundering, but in doing so we cannot forget the principle of the rule of law and protection of fundamental rights. During the reporting year, a Draft Act was submitted to the Riigikogu for discussion, seeking to introduce so-called administrative confiscation into the Estonian legal order and to impose an obligation on persons to prove the source of their assets. If a person does not wish to do so or is unable to convince the state of the origin of their assets, the state would have had the opportunity to

seize those assets. The Chancellor drew attention to problems of principle arising from the Draft Act. The Draft Act subsequently disappeared from the Riigikogu proceedings.

- The Chancellor made a proposal to the Riigikogu to bring the Code of Misdemeanour Procedure into line with the Constitution as it fails sufficiently to protect the rights of persons having suffered damage as a result of a misdemeanour. The Code of Misdemeanour Procedure lacks rules to enable a person suffering damage as a result of a misdemeanour to access information collected in misdemeanour proceedings. A person suffering damage as a result of a misdemeanour is not a participant in misdemeanour proceedings. Compensation of damage caused through a misdemeanour can be sought in court through civil procedure. However, evidence of damage incurred and the amount of damage must be submitted to the court. Unfortunately, a person suffering damage as a result of a misdemeanour has no access to materials on the misdemeanour file containing the data needed to protect their rights. Where misdemeanour proceedings were initiated to investigate the circumstances in which damage was incurred and, in the course of those proceedings, the state has already collected evidence, then no good reason exists why the person who suffered damage may not access the evidence and use it when filing their claim for damages. The Riigikogu supported the Chancellor's proposal and tasked the Legal Affairs Committee with initiating a Draft Act amending the Code of Misdemeanour Procedure.

- The Chancellor analysed a restriction in the Traffic Act prohibiting issue of a provisional driving licence to someone convicted of a traffic offence laid down in Chapter 23 of the Penal Code. The Chancellor found that even though this restricts the freedom of movement of an individual and, in certain cases, also the right to freely choose one's area of activity, profession and place of work, the regulation is compatible with the Constitution. The established restriction also protects the life, health and property of others. The restriction is not for life; its term depends directly on a person's own law-abiding conduct: payment of a fine, performance of community service, and above all on how the person refrains from further violations.

- The Chancellor analysed the constitutionality of a provision in the Code of Criminal Procedure under which a victim has the right of appeal in cassation only as regards a civil claim. The Chancellor found that the provision is not unconstitutional since a victim has no subjective right to demand from the state that a person having harmed their legal rights be convicted and punished, and the Constitution allows circumscribing the right of appeal by law in justified cases.

- The Chancellor analysed whether, under the Compensation for Damage Caused in Offence Proceedings Act, a victim is entitled to compensation from the state when the statute of limitation for a criminal offence has expired. The Chancellor found that, under the current law, a victim may file an application for compensation of damage if a criminal offence expires because of wrongful conduct by the body conducting the proceedings. Under § 7 of the Compensation for Damage Caused in Offence Proceedings Act, anyone to whom damage was caused in the course of offence proceedings may seek damages from the state.

- The Constitution does not provide an unequivocal answer to the question how far the state should protect a person from themselves. An E-cigarette may indeed be a safer alternative to smoking but this is an area in need of more research. In that case, the Riigikogu may establish restrictive measures. The process of preparing the Draft Tobacco Act was at times faulty but the mistakes and omissions were not so fundamental as to consider the restrictions established to be unconstitutional.

- The Supreme Court asked the Chancellor's opinion on a provision in the Weapons Act under which the weapons permit of someone who violates the requirements for handling a weapon and ammunition is revoked. In the Chancellor's opinion, the provisions are constitutional considering that the restriction is temporary, firearms and ammunition are sources of serious danger and the holder of a weapons permit must comply with all the requirements applicable to a weapon and ammunition. A single bullet is sufficient to kill or cause serious damage to health. The Supreme Court reached the same conclusion in its judgment.

- The Chancellor was asked to analyse whether a confidentiality clause in a compromise agreement was compatible with the Constitution. In a dispute with Tartu University Hospital over a medical treatment error, the parties agreed that the hospital would pay compensation and the patient, in turn, would not disclose information to third parties about the dispute and the agreement. The Chancellor did not see in this any incompatibility with the Constitution as the person had voluntarily waived protection of their fundamental rights (the right of recourse to the court and the right to claim compensation). Also, no coercion could be seen regarding the agreement, as the compromise had been entered into to resolve the dispute more quickly. However, a compromise agreement does not and cannot prevent state supervision over the quality of healthcare. Nor does the duty of confidentiality, whether arising from law or as an element of an agreement, prevent hospitals from sharing with the media information about the number of claims filed and compromises concluded or amounts paid as compensation.

IV. CHILDREN AND YOUNG PEOPLE

The Riigikogu 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 for the implementation of the rights recognised in the Convention.

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

4.1. Parental care

The Chancellor often receives requests for assistance from parents who have been unable to agree with the other parent on matters of child custody, maintenance or access to the child. The Chancellor does not resolve disputes between parents; however, the Chancellor's advisers do help to clarify matters.

The laws presume agreement between parents on matters concerning their child. 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 of the particular circumstances in its judgment and reach a solution that meets the best interests of the child. Recourse to the court should be a measure of last resort.

4.1.1. Claiming legal expenses from a child

The Chancellor made a proposal to the Minister of Justice to amend the Code of Civil Procedure so that procedural expenses in maintenance cases could not be claimed from children. The provisions that enable claiming the defendant's procedural expenses in maintenance cases from children are contrary to the rights and interests of children and the purpose of awarding maintenance. Minors themselves have no right or opportunity either to lodge or not to lodge an action (an action is lodged by a parent); they also cannot use other procedural rights enjoyed by parents. Thus, children themselves do not cause any legal expenses, yet the law enables claiming those expenses from a child.

The Chancellor explained that the same principles could apply here that apply to family matters on action and to filiation cases. In those cases, each of the parties to the dispute bears their own procedural costs. In a situation where one parent lodges a vexatious maintenance action, the court should be given the right to deviate from this rule and decide that the expenses will be claimed from the parent, not from the child.
The Minister of Justice agreed with the Chancellor's position and affirmed that he would ask the Ministry to prepare the relevant legislative amendment.

4.1.2. Enforcement of a parent's right of access to a child

In recent years, the Chancellor has directed attention to problems arising in enforcement of court rulings regulating access arrangements between parents and children. In this connection, the Chancellor made a proposal to the Minister of Social Affairs to prepare legislative amendments protecting the interests of children.

During the reporting period, the Minister of Justice asked for the Chancellor's opinion on amendments planned to the Family Law Act, the Code of Civil Procedure and the Code of Enforcement Procedure concerning enforcement of court rulings laying down access arrangements between a parent and a child. The plan includes the following:

- empowering the court to apply coercive measures and, *ex officio*, regulate access;
- introducing fine and arrest of a parent as new coercive measures;
- abolishing the mandatory statutory conciliation procedure following violation of access arrangements;
- enabling the court to appoint a so-called access caretaker;
- speeding up court proceedings.

The Chancellor drew attention in her opinion to the need to specify coercive measures that the court may apply to influence a parent violating access arrangements. The Draft Act should also set out how court rulings on access arrangements are to be enforced in the evenings, at weekends and during public holidays. Bailiffs and child protection workers are not satisfied that they have to work for free at weekends. This has occasionally led to refusal to exercise their official duties, which, however, fails to take into account the interests of the child.

If the intention is that the access caretaker should be a person with specialised knowledge, that requirement should be laid down by law. The law also needs to be supplemented if the powers and responsibility of the access caretaker are expanded. Counselling of parents and intermediation of agreements concerning a child should take place before having recourse to a court. The Chancellor does not consider it justified to apply arrest as a coercive measure regulating access arrangements since this would harm the interests of the child (leaving the child temporarily without one parent).

4.1.3. The right of children in a family house to communicate with their parents

In response to a question whether a family house may prohibit a child from meeting their biological parents, the Chancellor replied that if a child wishes to have that meeting and it is in the best interests of the child, a family house may not prohibit it. The interests and opinion of the child should be ascertained by the local authority as the child's guardian. The local authority, the parent, and the family house as the child's carer should reach an agreement on the best meeting place for the child. It is not ruled

out that this place is the family house, even where a family house is operating in the personal home of the family parent. In any case, a family house is an institution running on the basis of an operating licence.

Under the Child Protection Act, an institution providing substitute care must support relations between a child and their family. Access rights between a child and a parent arise from the Convention on the Rights of the Child which stipulates that the child has the right to know their parents. The child who is separated from their parents is also entitled to maintain personal relations and direct contact with a parent on a regular basis, unless it is contrary to the child's best interests. However, a family house may refuse to allow a parent into the house if the parent is intoxicated or otherwise dangerous. The local authority should definitely be notified in that situation. A parent also has no right to demand that the meeting should definitely take place in the family house. The choice of meeting place should proceed from the interests of the child.

4.2. Child protection work

Results of studies show that the organisation, practices and methods of child protection work vary between Estonian cities and rural municipalities; however, some problems are similar: above all overload and burnout risk of child protection workers. It is not rare to have a situation where a child protection worker works outside their working time (see the Chancellor's opinion on planned amendment to the Family Law Act, the Code of Civil Procedure and the Code of Enforcement Procedure, para. 6).

Child protection workers are mostly engaged with resolving problems. On the other hand, according to study results, not enough time is left for prevention, which in the long term would help to alleviate the workload. Child protection cases are often emotionally extremely exhausting. In view of the heavy workload and emotional strain, as well as the public's high expectations and negative public attention attracted by more difficult cases, it is no wonder that people do not last long in this job and staff turnover is high.

Child protection workers would be motivated by higher wages, but even more than money they value well-functioning teamwork and recognition. Due to the particular nature of child protection work, officials need constant feedback and support. Therefore, it is important that all child protection workers should have an opportunity to regularly meet with colleagues and discuss cases. The child protection unit of the Social Insurance Board should continue organising case-based discussions and offer support and guidance to child protection workers in resolving more complicated (including international) cases. Better cooperation between local authorities would also be of help, for example in arranging services for children and families or in order to find a replacement for a child protection worker during vacation. Child protection

workers feel that they lack legal expertise, so they would need more support from lawyers in cities and rural municipalities.

Every year, child protection workers deal with thousands of cases, for the majority of which a positive solution is found for the child and the family. Year by year, there has been an increase in the number of children in connection with whom assistance of a child protection worker is sought. In 2018, the number of those children was 9488. Success stories usually do not reach the news threshold, unlike some isolated cases where something went wrong.

Parents, indeed, often contact the Chancellor when dissatisfied with the activities of a child protection worker for their city or rural municipality. Mostly, complaints concern work by child protection bodies in disputes between parents on the right to custody or access rights.

When resolving one such petition, the Chancellor found that Pärnu City had violated the requirements of the Child Protection Act by failing to hear the children and carry out an all-round assessment of the interests of the children before submitting an opinion to the court. In a recommendation sent to Pärnu City Government, the Chancellor explained that a local authority involved as a participant in court proceedings must:

- ascertain the best interests of the child in line with the requirements of § 21 of the Child Protection Act;
- hear the child and document the interview carried out with the child;
- collect information on the situation of the child and the relationship between the child and the parents, including, where necessary, visit the home;
- submit to the court a neutral and detailed overview of the situation of the child and family, including desirably a report or transcript of the interview with the child;
- avoid expressing judgements in opinions submitted to the court.

The head of the social department of Pärnu City Government affirmed through the media that Pärnu City would change the procedure for dealing with child protection cases in line with the Chancellor's recommendations.

4.3. Kindergarten and school

Many of the questions sent to the Chancellor about education concerned the well-being of children and young people in kindergartens or schools. People expressed concern about lack of security but also about inadequate pedagogical skills of teachers. Many petitions also demonstrated the heightened expectations of parents for the activities of kindergartens and schools or financial support provided by local authorities.

Educational institutions must support the development of children and young people, so that everyone has the opportunity for self-realisation. That is, support should also be offered where an unconventional approach in respect of a child is needed in a kindergarten or school. Support may be expressed in a good word said by a teacher, resolving a concern, or adapting the school environment to a pupil's needs.

4.3.1. Access to pre-school education

The issue of access to pre-school education concerns receiving a kindergarten place as well as exclusion of a child from kindergarten.

The Chancellor was asked whether a rural municipality must provide financial support to families whose child under three years old attends a childcare facility in a private kindergarten. A parent wanted their child to receive childcare in a private kindergarten with whom the rural municipality had not entered into a contract for support of a childcare place fee. The Chancellor replied that a local authority must, at the request of a parent, enable a child at the age of one-and-a-half to seven years old to receive a place in a kindergarten within its service district. At the same time, a rural municipality may replace the kindergarten place of a child between one-and-a-half to three years old with a place in childcare, if the parent consents to this. It is for the rural municipality to decide whether it offers a family a place in a municipal or a private kindergarten. A rural municipality may also choose with which private kindergarten it enters into a service contract. If a local authority does not offer a parent a kindergarten place within a reasonable time, the parent may have recourse to an administrative court.

The Chancellor was asked to assess whether the conditions established by Jõgeva Rural Municipal Government for exclusion of a child from a kindergarten were in conformity with the Preschool Childcare Institutions Act. Under the procedure applicable in the municipality, a child could be excluded from a kindergarten if they had been absent from the kindergarten for over a month, the parent had not notified the kindergarten about the child's absence, and the kindergarten had been unable to contact the parent in order to clarify the reason for absence. According to the Chancellor's assessment, the procedure established by the rural municipality can be interpreted and implemented so that the result is lawful. That is, when deciding on exclusion of a child from a kindergarten the municipality must have previously ascertained that the parent does not wish to have a kindergarten place for their child. However, the procedure established by Jõgeva Rural Municipal Government did not support such an interpretation. Above all, the right of the child to pre-school education should be respected. This should also be done when a parent has not notified the kindergarten of the reasons for the child's absence. Jõgeva Rural Municipal Government annulled the respective conditions on exclusion in its regulation.

When establishing a procedure for exclusion from kindergarten, a rural municipal or city government must observe the requirements laid down by law. Under the law, a child may be excluded from a kindergarten when the child goes to school or upon a parent's application. However, several rural municipal and city governments have decided that a child may be excluded from kindergarten if a parent has failed to pay the kindergarten fee for two months. Conditions for exclusion have also included situations where a child has been absent from kindergarten without health reasons for more than two months or where a parent has repeatedly and seriously violated a kindergarten's internal rules. The Chancellor found that the conditions for exclusion from kindergarten should be laid down by law without any ambiguity, so as to ensure protection of the interests of children. The Ministry of Education and Research agreed with the Chancellor's opinion, noting that this would be taken into account when drafting the Pre-school Education Act.

4.3.2. Rest time in a kindergarten

The Chancellor was asked to assess a kindergarten's rest time arrangements. From four years of age on, a child should be enabled to choose between a nap and another quiet activity during the rest time. If a parent wishes that their child should be able to do something else quietly instead of a nap (such as browse a book, draw), a kindergarten must allow this. This opportunity should be given to a child even where it would be difficult to arrange because of shortage of space. The obligation to quietly lie in bed does not offer the child an opportunity to choose another quiet activity. That requirement fails to respect a child's well-being. Naturally, during the time designated for a midday nap a child engaged in any activity should be quiet so as not to disturb others. Other children, too, are entitled to a rest time.

4.3.3. A child in need of support in kindergarten and school

On several occasions, the Chancellor has been asked to assess use of inclusive education in kindergartens and schools.

The Chancellor has explained to the parents the duties of a kindergarten in assisting a child with behavioural problems. Schools and kindergartens implement the principle of inclusive education. This means that, as a rule, children with special needs, including children with behavioural problems, attend the same kindergarten group or the same class with other children. Supporting a child with special needs in a kindergarten requires functioning teamwork, for which the head of the kindergarten is responsible. Educational specialists must assess the nature of a child's behavioural problems and adjust their work accordingly.

Finding solutions may be impeded by the fact that the parents of a problematic child do not acknowledge their child's need for assistance. In that case, educational

specialists should explain to the parents the problems related to the child's behaviour and advise contacting a psychologist, psychiatrist or other specialist, if they believe this to be necessary. If, despite this, the parents do not take any steps, the kindergarten should contact a child protection worker from the city or rural municipality and inform them of the child's need for assistance. If the parents also disregard the precepts issued by a child protection worker and, by doing so, harm the well-being and development of their child, the child protection worker may have recourse to the court for restriction of the parent's right of custody.

Several parents have contacted the Chancellor with a concern that a school has recommended choosing another school for their child on account of the child's special needs even though it would be possible for the child to attend school based on their place of residence. Since schools have also involved officials in making the recommendation, parents feel themselves under pressure. An opportunity to attend another school may be offered to a child only if no suitable conditions for study exist at the school of the child's place of residence. The Chancellor has proposed to schools to change the current practice (see the 2018 and 2019 proposals).

A school must proceed from the principle of inclusive education and offer the necessary support to a pupil while also ensuring the safety of everyone at school. Although some pupils' behaviour may occasionally cause an unsafe situation, it should be understood that those pupils themselves need assistance too. A pupil's inappropriate behaviour definitely needs a response. The school must find a solution which would be good for a child in need of assistance as well as for other children. A solution cannot be that a pupil is not invited to a school event (Christmas party, theatre performances and excursions).

One parent asked the Chancellor whether the school or local authority may require that a child should take medication as a precondition for the child to attend school. No situation may occur where a child at the age of compulsory school attendance is not admitted to school because of their health condition or where a pupil is not enabled to attend school because they do not take medication. However, a parent must take into account that due to a health condition a child must sometimes endure some inconvenience (e.g. medical examination at a hospital in order to ascertain the need for treatment). Experts dealing with a child (e.g. a doctor and school staff) have the duty to assess the child's need for assistance and, if necessary, help the child. If a parent does not allow their child to be assisted and thereby endangers the child's well-being, specialists dealing with the child have the duty to notify the rural municipal or city government of the child's residence or the court. To ensure a child's well-being, the court may issue decisions arising from the right of custody in respect of the child, for example oblige a parent to take the child to a hospital for a medical examination.

4.3.4. Teachers as supporters of a child's development

Kindergartens and schools must prevent situations endangering the child (§ 6 Child Protection Act). Decision-making must keep in mind a child's well-being, meaning also the requirement to support the development of the child (see the definition of child well-being in § 4 of the Child Protection Act).

A child's coping in a kindergarten depends to a large extent on a teacher's attitude to their work. The Chancellor was asked how it is ensured that kindergarten teachers and the staff assisting them take into account children's well-being. Teachers must have higher education and pedagogical knowledge and skills. Their skills also include the ability to monitor, assess and value one's own physical, mental and emotional health and well-being. This is a basis for children to feel well in a kindergarten. No qualification requirements have been set for staff assisting teachers but they, too, must ensure children's well-being by their behaviour.

The Chancellor explained to a parent that preparation and knowledge of kindergarten teachers must be of the kind that enables them to choose appropriate educational methods that also respect and support a child. A kindergarten teacher's compliance with qualification requirements is assessed by the head of a kindergarten. The director needs to assess a teacher's professional skills regularly: when hiring a person, during the probationary period, and also afterwards. To draw any substantive conclusions, a teacher's activity needs to be monitored, and guidance and counselling should be provided where necessary. The Preschool Childcare Institutions Act stipulates that kindergartens must prepare an internal evaluation report analysing the competence of teachers and problems arising in the course of work.

A teacher is a person whom both the child and the child's family must be able to trust. The Chancellor was asked about the possibilities for supporting children and families in a situation where a child has become a target of harassment by a teacher. Trust means a feeling of security that the school must create by preventing situations endangering the child. Under § 20 of the Child Protection Act, the director of a school or other childcare institution may not hire as a teacher a person who is banned from working with children.

The school must also support a child's mental, physical, moral, social and emotional development through various educational activities, thereby helping to improve pupils' knowledge about their rights. Being aware of misbehaviour contributes to creating a safe school environment. It is important that children should be able and have the courage to seek assistance in the event of ill-treatment, for example by talking about it to the school psychologist or calling the child helpline.

A pupil who becomes a victim of ill-treatment is entitled to protection and support by the school. The school can, for example, offer the assistance of the school psychologist or ask a psychologist from the Rajaleidja counselling network to help the child. A parent may notify harassing behaviour to the police, who are able to offer a legal assessment of the specific case.

Teachers and school management must consider whether all steps have been taken in the interests of the child and in compliance with the law. If necessary, the director must terminate the employment of a person whose mental health or pedagogical skills are not suitable for work with children and who may therefore endanger the well-being of children. The activities of a school or kindergarten can be assessed by the board of trustees, local authority as manager of the kindergarten or school, and the Ministry of Education and Research.

4.3.5. Parents as supporters of a child's development

A parent contacted the Chancellor as their letter to the school director had not received a reply. A parent is entitled to receive information and explanations from the school about organisation of school life and the rights and duties of pupils. On the other hand, parents, too, must cooperate with the school to ensure the well-being of the child. The precondition for cooperation is an understanding attitude towards each other. A class teacher had given explanations to a parent and offered opportunities for discussing the situation that had developed, but no agreement on this was reached. The parent did not find the class teacher's written reply to be sufficient either, so that they still expected a letter from the director. The Chancellor found that, in order to resolve the situation, the parties should meet so that the parent could receive relevant answers to outstanding questions.

One parent asked the Chancellor to assess organisation of home schooling for their child. The child was being home schooled at the request of the parent. Home schooling at a parent's request presumes the parent's greater responsibility and ability to draw up an individual curriculum for the child in cooperation with the school. By agreement with the parent, the school itself may also draw up an individual curriculum for a pupil. The parent was of the opinion that the school had failed to honour the agreements. Understandably, a combination of different circumstances may annoy a parent, but in the specific case the school had resolved the disagreements and apologised to the parent for the misunderstandings. According to the Chancellor's assessment, it is in the child's interest that a parent and the school cooperate, which implies the parent contributing to this.

4.3.6. The right of pupils to feedback

Over the years, the Chancellor has often been asked about the procedure for planning tests at school, which is laid down by a Minister of Social Affairs regulation. Pupils in their petitions have pointed out that schools do not respect the rules on planning tests laid down by the regulation. The Chancellor's attention has also been drawn to the fact that the definition of a test used in the regulation causes confusion and the norms applicable to this are outdated.

Motivated by these problems, on 9 May 2017 the Chancellor sent a letter to the Minister of Health and Labour with justifications as to why the regulation needs to be revised. However, to date the regulation has not been amended.

As updating the procedure for carrying out tests has been delayed without any substantive reason, the Chancellor asked the Minister of Social Affairs to initiate amendment of the regulation at least insofar as concerns organisation of tests.

Assessment supports pupils' development and gives them feedback on progress in a particular subject. A pupil asked whether a teacher is entitled to give them an unsatisfactory mark because of having been absent from class without a good reason. A teacher may lower a pupil's conduct and diligence mark for absence without reason. A mark "1" means that a pupil has not made progress in the subject. Absence may result in lagging behind in studies but skipping a class without reason cannot lead to the conclusion that a pupil's knowledge and skills are inadequate.

A pupil who has been absent or received a negative mark for a test is entitled to re-take the test as prescribed by the school curriculum. The Chancellor was asked to assess the legality of the procedure for retaking tests in Tallinn Art Gymnasium (*Tallinna Kunstigümnaasium*). Tallinn Art Gymnasium has given pupils a ten-day period for retaking tests. According to the Chancellor's assessment, when laying down the time limit the school should also take into account that it is not always possible for a pupil to retake a test within ten days (e.g. when absent for an extended period). The aim is that a pupil should acquire the material as well as possible and that their knowledge and skills would not lag behind their peers.

If a pupil does not go and retake the test, the teacher may give them a negative mark since the pupil has not given an opportunity to assess their knowledge and skills. The right to retake a test also exists if a pupil has been absent from class without reason, has used dishonest means while taking the test, or has received an unsatisfactory mark for work in class or for homework.

The Chancellor was asked to assess the lawfulness of a reprimand issued to a pupil with the school director's decree. When returning to school after being absent, the pupil

presented a medical certificate. According to the director's explanations, the reprimand was issued to the pupil for being absent without reason since at the time of preparing the decree no reason for the absence had been given. The parent had not complied with their duty to notify the school about the child's absence and the reasons for it on the first school day when the child was absent. This does not mean that the pupil was absent without reason.

The school's social pedagogue tried to contact the parent only after the reprimand had already been issued to the pupil. However, the school should promptly begin to find out reasons for a pupil's absence. If it is unknown whether a pupil was absent with or without a reason, no basis exists to issue a reprimand either. A parent's conduct cannot be transferred to their child who was absent from school due to illness.

When giving marks to pupils, it should be borne in mind that these are personal data. The Chancellor explained to the school director that the school report and the mark sheet appended to the school-leaving certificate provide a summary feedback on the pupil's academic progress. Thus, they constitute the pupil's personal data, access to which would seriously harm the inviolability of the pupil's private life. Persons entitled to know a pupil's marks are the parent and guardian. However, on the basis of a written application, a legally competent pupil may prohibit the school from notifying their parent or guardian about their marks. In justified cases, information about a pupil's marks may also be given to other persons, such as the school's support specialist.

4.3.7. Meals in childcare institutions

The Chancellor was asked to assess the procedure for provision of meals in Alasniidu Kindergarten in Harku rural municipality, under which all obligations relating to children's special diets had been imposed on parents.

A kindergarten must cooperate with a parent when providing meals to a child having a different diet for health reasons. According to the Chancellor's assessment, no cooperation can be said to exist in a situation where parents themselves must ensure that a child has food suitable for their diet with them. Although parents have been made responsible for a child's special diet, the parents do not have full control over food selection in a kindergarten. Heavy staff workload or lack of skills in preparing a special menu cannot be given as justification for a solution that fails to take into account a child's well-being. Alasniidu Kindergarten promised to change their internal rules and expressed hope that Harku rural municipality would find an opportunity in autumn 2019 to provide meals to children needing a special diet for health reasons.

The Chancellor was asked whether Maarjamaa Education College may prohibit children from eating food that they have brought with them from home. The main concern of the person writing to the Chancellor was that four regular meals at school were

insufficient for active young people at their growing age. In the evenings, young people also wanted to eat food they had brought from home.

The Chancellor recommended that the institution provide additional food to children. The Chancellor recommended that the rules on eating food brought from home should be laid down in the internal rules of the boarding school facility. The school is entitled to regulate pupils' living arrangements in the internal rules of the boarding school facility and pupils are obliged to comply with the rules.

4.3.8. Safe way to school

Several parents have written to the Chancellor that many school buses and local public buses on which children travel to school are not sufficiently safe. Buses have no seat belts and in some places children have to stand in buses on roads outside built-up areas due to shortage of seats. Buses taking children on excursions have also been criticised for lack of seat belts.

The law does not regulate whether buses driving on highways must have seat belts. The Traffic Act only lays down the requirement that a passenger must wear a seat belt in a vehicle equipped with seat belts. That condition applies equally for regular bus services (e.g. school buses, rural municipality bus lines, county bus lines, long-distance lines) as well as non-regular transport (e.g. excursion buses). However, the prohibition on children standing on a bus applies only for non-regular transport (§ 36(3) Traffic Act). Thus, the law does not prohibit transporting children standing on a school bus or a local regular public bus.

Since the law has left it for local authorities to specify safety requirements for school buses driving on roads outside built-up areas as well as local regular buses, the Chancellor asked local authorities to provide an overview of the transport conditions for children.

By the time of drawing up the report, the Chancellor had received replies from 59 local authorities. In general, local authorities considered it important to establish requirements ensuring safety of passengers. Some of them found that the requirement for seat belts and prohibiting standing in a bus are important issues that should be regulated by law.

Several rural municipalities have already ensured that their children always have a seat and can fasten the seat belt on regular and school buses.

Several rural municipalities affirmed that, in the future, public tenders for bus transport would include the condition of buses being equipped with seat belts and would take into account the expected number of passengers. In addition, several rural

municipalities noted that bus drivers have to monitor and remind children of the obligation to fasten seat belts.

Although buses operating on local regular and school lines in Harju County are mostly equipped with seat belts, it is a major problem that during peak hours people have to stand on buses as there are not enough seats for all passengers. Almost all Harju County rural municipalities (except Kiili rural municipality where passengers can sit on a bus) have noted that no buses with more seats can be sent to operate the routes as there is not enough space for larger buses to manoeuvre or turn around. Kohila rural municipality in Rapla County faces the same problem. Those rural municipalities asserted that additional money needs to be found for additional buses.

The Chancellor will continue dealing with the topic. It is necessary to analyse what else could be done to make children's way to school safer. The Ministry of Economic Affairs and Communications replied to the Chancellor that it was not planning a legislative amendment to make seat belts on buses transporting children on roads outside built-up areas mandatory or to prohibit transporting children standing on the same buses. The Ministry is of the opinion that public transport in Estonia is sufficiently safe as traffic accidents with buses are relatively rare. The Ministry also considers implementation of such requirements impossible.

Nevertheless, many local authorities have been able to do what the Ministry considers impossible to implement. Where a rural municipality has established a requirement of seat belts on a school or local bus, the bus drivers also monitor that seat belts are fastened. The main issue is where to find additional money to make school and regular local buses safer.

4.3.9. Benefits provided by local authorities

Benefits offered by local authorities to families are very important. The Chancellor was asked whether, after merger of local authorities, the new local authority must still compensate a pupil's public transport and school lunch expenses if the child attends a school in another local authority.

A local authority is entitled to decide whether and to what extent it compensates a pupil's public transport expenses. The school must organise meals for pupils and the state budget contains earmarked support to cover school lunch expenses of pupils acquiring basic and secondary education and enrolled in full-time study in a municipal or private school. A local authority is not required to cover the balance not funded from state support. A local authority may also pay school meal support, for example, based on need depending on a family's income.

The Chancellor was asked whether a parent must pay a hobby group participation fee even when the child is temporarily not participating in the work of the group. If participation in the hobby group was ensured to the child even when the child was not attending the group, the duty to pay the fee for the time the child was absent is not contrary to the child's interests. It should be kept in mind that, in covering the expenses of a hobby group, the local authority takes into account the monthly participation fee paid by parents.

4.3.10. Restricting the rights of students in vocational educational institutions

On several occasions, the Chancellor has been asked whether a vocational educational institution may impose different requirements for better organisation of school life. To ensure the safety and health of everyone at school, the school must establish guidelines on conduct and possible sanctions where guidelines are not complied with.

Everyone has the right to free self-realisation, while respecting and taking into account the rights and freedoms of others and abiding by the law. For example, students must comply with safety and hygiene requirements laid down by the school for practical classes with a view to ensuring the safety of themselves and others. Vocational educational institutions have laid down rules in their regulations on organisation of study for situations where a student's behaviour endangers the safety of everyone at school to the extent that they have to be expelled. However, the provisions regulating the conditions on expulsion of students from school in the Vocational Educational Institutions Act are inadequate. On that basis, the Chancellor made a proposal to the Minister of Education and Research to supplement the law. The Minister of Education and Research agreed with the proposal and promised to find a suitable solution at the first opportunity.

A teacher's instruction to students to deposit their telephones for the duration of a test interferes with the rights of students. The Chancellor assessed the legality of that requirement. The teacher decided that only those students can take the test who comply with the instruction to deposit their phones for the duration of the test. With that requirement, the teacher wanted to prevent cheating. Under the school's internal rules, students may not use their mobile phones at school without a teacher's permission. However, a ban on using a phone and a requirement to deposit it are not the same instructions in substance. The Chancellor emphasised that an instruction to deposit a phone must have a legal basis. If necessary, the school is entitled to lay down in internal rules the requirement to deposit a phone which students and teachers must observe. Laying down the requirement must be justified.

4.4. Children and health

During meetings with the Chancellor's advisers, healthcare professionals have often asked at what age a child may independently make decisions concerning their health. That question may arise, for instance, when a child's consent is needed for vaccination or psychiatric treatment. Therefore, the Chancellor's Office analysed the current legislation and prepared information materials on legal aspects relating to provision of healthcare services to children. The guidance materials („Informed consent of the child patient", „Child-friendly healthcare. Information leaflet for the child", „Child-friendly healthcare. Information leaflet for the adult") are accessible on the Chancellor's website.

4.4.1. Consent by a patient who is a minor

The Riigikogu has left it for the doctor to assess whether a particular child or young person is mature enough to be able to decide independently on their medical treatment. That is, the Law of Obligations Act lays down the principle that a child patient enjoys patient's rights in so far as the child is unable to consider the pros and cons responsibly. This is similarly regulated in several other European countries, such as Austria, Germany, Belgium and Sweden.

If a healthcare professional deems a child capable of deliberating the matter, the child themselves gives consent to treatment or a medical procedure. In that case, a parent cannot make the decision on the child's health and treatment instead of the child. That rule applies with regard to most health matters – be they vaccination, dental care or consultation with a general practitioner. An exception is psychiatric treatment of children for which the law requires that, besides the child's own consent, the parent's consent is also always necessary.

4.4.2. Psychiatric treatment of minors

Currently, in no case does the law enable providing psychiatric care to a minor without the parent's consent. It is natural that, as a rule, parents should be involved, but there may be cases where this is not in the interests of a minor (e.g. where a child is a victim of domestic violence) or is not possible (e.g. the parent is abroad). In those cases, timely assistance cannot be provided, for instance, to a 17-year-old young person suffering from depression, eating disorder or addiction who has themselves contacted a psychiatrist, whose need for care is medically justified and whom the psychiatrist deems to be sufficiently mature to give consent.

The Chancellor asked the Minister of Social Affairs to consider amending § 3 of the Mental Health Act so that a young person under 18 years of age who is sufficiently mature and capable of deliberation would themselves be entitled to give informed consent to receiving psychiatric care. The Chancellor also asked to specify the provision

so that it would be unequivocally clear and understandable to psychiatrists, children and their parents how to act when a child is not yet sufficiently mature to give informed consent for arranging psychiatric care.

The Minister of Social Affairs agreed with the Chancellor's reasoning and promised to take the Chancellor's proposal into account when amending the Mental Health Act.

4.4.3. Dentist at school

A parent asked the Chancellor how the school should organise dental check-ups for children. It was found that the school had failed to inform the parent in time about a dental check-up for children, so that the parent could not notify the school about dispensing with the check-up.

The Chancellor explained to the school that parents and children should be informed in time about the opportunity for a dental check-up, so that a parent could notify their consent or refusal to the school. A dental check-up is not part of school healthcare services and a parent is entitled to choose a dentist for their child.

The director explained that the school had learned a lesson from the incident and, in the future, parents would be notified about the opportunity for a dental check-up well in advance.

4.5. Protection of children's data

4.5.1. Protection of children's data in schools and kindergartens

The Chancellor received information that the information system for the management of Estonian schools had made documents containing personal data of children freely accessible to the public.

In order to prevent similar situations the Chancellor addressed all kindergartens and schools with a request to take particular care when processing children's data. The Chancellor emphasised that the law prohibits third persons from gaining access to data describing children's health, disability, special needs, academic achievement, behaviour, development, the family's coping and conditions at home, and data describing other personal aspects. The same principles also apply to processing the data of school and kindergarten staff and parents.

The Chancellor drew attention to the preparation of documents and pointed out the grounds for restricting access to documents. She also emphasised that publicly accessible information in a document register should not disclose a person's name or

other data in the title of a document enabling an understanding of whom the document deals with.

4.5.2. Protection of children's health data

The Chancellor was contacted by a parent who was concerned that they had not been informed about the results of a dental check-up carried out at school.

After the check-up, the dentist's nurse informs the school secretary about pupils who need dental treatment. The school secretary passes on the information to the class teacher, who informs the parent. That is, at least two people have access to a child's health data before the information reaches the parent.

The Chancellor explained to the school that dental check-ups for children are a healthcare service. Healthcare providers and persons participating in provision of healthcare services must maintain confidentiality of data about a patient and their condition which they learned in the process of exercising their work-related duties. Therefore, a dentist has to give information about the results of a child's dental check-up directly to the parent. The school is entitled neither to receive nor intermediate that information. A Chancellor's adviser explained the same to the dentist carrying out the dental check-up at school.

4.5.3. Discussing a pupil's family life in parents' mailing list

The Chancellor was asked whether a school had violated personal data protection rules when the class teacher and director of studies sent letters to the mailing list of the class parents concerning the problems of a child and their family. Although the teachers did not mention the pupil's name in their e-mails, the recipients of the letters could understand whom the matter concerned. The Chancellor found that the teachers should have been able to resolve the situation differently without involving the other parents. The school removed the conversation from the mailing list and the class teacher apologised to the parents.

4.5.4. Children as beneficial owners

Rules on combating money laundering require obliged entities (e.g. banks) to know their clients and so-called beneficial owners. To this end, clients must disclose as beneficial owner a natural person who, taking advantage of their influence, performs a transaction, act, action, operation or step or otherwise exercises control over a transaction, act, action, operation or step or over another person and in whose interests or favour or on whose account a transaction or act, action, operation or step is made.

The Chancellor was contacted by the board of a company which is part of a group, since under the law minors who are beneficiaries of a foundation which is part of a group should be identified as beneficial owners of the foundation.

The Chancellor found that minors cannot take advantage of their influence to perform a transaction, act, action, operation or step or otherwise exercise control. Under § 8(2) of the General Part of the Civil Code Act, minors have restricted active legal capacity, so that, as a rule, they have a legal representative. Since a minor cannot perform a transaction, act, action, operation or step or otherwise exercise control without their legal representative, this means that only their legal representative can be a beneficial owner, i.e. the person exercising actual control. Thus, treating minors as beneficial owners is not, as a rule, purposeful or justified, so that it is also not justified to disclose their data. Consent for disclosure of the data of minors should be given by their legal representative where necessary.

4.6. Employment of children and young people

On several occasions, the Chancellor has been asked about employment opportunities for children and young people. The Chancellor has explained that work corresponding to a young person's age and capabilities, and which they can do in safe conditions, is permissible and fully commendable.

Children's employment is mostly regulated by the Employment Contracts Act and the regulations adopted on that basis. The rules laid down in this legislation are to a large extent based on values agreed by society. The Employment Contracts Act enables children to work on conditions proceeding from the child's age, obligation to attend school, and whether it is currently school time or holiday.

Work by children is not prohibited but tighter restrictions have been imposed on work by younger children. The purpose of the restrictions is to protect children's health and enable them to have enough time for studying, rest and hobbies.

The law does not prohibit giving children home assignments which they are able to manage, such as doing the dishes or cleaning. Quite the opposite, the Family Law Act lays down the obligation to assist one's parents. The law stipulates that, as long as a child resides together with their parents and the parents raise or maintain that child, the child is required to assist the parents in the household in accordance with the child's abilities and possibilities.

4.6.1. Restrictions on working as a coach

The Chancellor was contacted by an individual who could not participate in a training course for football coaches on account of their prior criminal record, since the training

was intended for coaches dealing with children and practical training sessions with children took place during the training course.

The Chancellor found that refusal to admit the individual to the training course had been justified as children are under the special protection of the state, and the Constitution allows restricting a person's choice of an area of activity, profession and place of work. For example, qualification requirements may be imposed for certain areas of activity (e.g. doctors, judges, lawyers), as well as requirements for prior experience or language proficiency (e.g. a requirement of sufficient proficiency in Estonian). A ban on activities in specific areas may also be imposed on people punished for particular offences. For that reason, under the Child Protection Act the state has laid down restrictions in dealing with children on persons punished for certain criminal offences. The aim of the restrictions is to protect the security of the person of children, to ensure their security and to prevent possible ill-treatment of children.

4.7. 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. As Ombudsman for Children, the Chancellor prepares analytical studies and surveys on the rights of the child and, on the basis of these, makes recommendations for improving the situation of children. The Ombudsman for Children represents the rights of children in the law-making process and organises a variety of training events and seminars on the rights of the child.

In order to encourage and support children to understand the substance of their rights and duties, an advisory body to the Ombudsman for Children has been established at the Chancellor's Office, comprising representatives of children's and youth organisations. During the reporting period, the advisory body to the Ombudsman for Children discussed the rights of children and young people in the digital world and in healthcare.

During the reporting period, the Chancellor's Office joined the "Let's Talk Young!" project of the European Network of Ombudspersons for Children (ENOC). The project aims to give children and young people an opportunity to have a say in issues concerning them. Each year the project focuses on a different topic. This year's discussions focused on the rights of children and young people in the digital environment. Eleven young people from Estonia aged 12-17 years participated in the project. The Estonian Union for Child Welfare also contributed to the success of the project. Young people visited Telia House; the Estonian Film Museum; the Baltic Film, Media, Arts and Communication School of Tallinn University; and attended a thematic discussion „Libastudes libauudistele" on fake news at the National Library. University of Tartu Professor of Media Studies, Andra Siibak, talked about what research tells us

about young people and the internet. Police officer Maarja Punak introduced the work of web-constables.

Based on the meetings, the young people prepared their recommendations on how to ensure the rights of children and young people in the digital world. It was emphasised that young people should not stay alone with problems they have experienced in the digital world but should mention it to their parents, another adult or a friend, contact the web-constable or call the children's helpline. Young people need skills to cope in the digital environment, which should be taught to them at school already early on and in a playful context. With the help of instructors, a video clip was prepared summing up project activities, as well as a piece of social advertising expressing the thoughts of young people themselves. Two young people attended a meeting of ENOC youth counsellors in Brussels in order to present the recommendations by young people in Estonia. Based on opinions from young people from several countries, the European Ombudspersons for Children prepared proposals for international organisations and decision-makers in their own countries.

The Chancellor's advisers carried out several training events on the rights of the child and delivered lectures in kindergartens and schools. The advisers explained to child protection and social welfare workers the rights of custody and access, as well as rules and international recommendations regulating separation of children from their family.

Presentations on informed consent of by child patients were made to paediatricians and general practitioners. The Chancellor's advisers also attended several meetings of the ethics committee of Tallinn Children's Hospital. Meetings were held with paediatricians, general practitioners, gynaecologists and representatives of patients in order to get feedback on the guidance materials prepared by the Chancellor's Office.

Also this year the children's and youth film festival 'Just Film', held as part of the PÖFF Film Festival, included a special programme on the rights of children, prepared in cooperation between Just Film, the Chancellor of Justice, the Ministry of Justice, the Ministry of Social Affairs, the Police and Border Guard Board, and the Estonian Union for Child Welfare. A special programme on the rights of children has become a tradition and this year featured for the eighth time. Screening of selected films was followed by debates with experts and well-known personalities discussing the films together with viewers. A total of 3373 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 sixth time in 2019. On the International Day for the Protection of Children, the President of the Republic and the Chancellor of Justice recognised those who have significantly contributed to the well-being of children through their new initiatives or long-term activities.

(For inspection visits carried out to childcare institutions, see the chapter „Inspection visits“.)

V. SOCIAL SECURITY

The main pillar of the Constitution is the principle of human dignity. Inter alia, this is expressed in the duty of the state to ensure a decent life for all members of society. Particular attention should be paid to those who cannot cope without outside assistance. Sufficient and necessary assistance to an individual should be provided by their family members, but also by the state and local authority.

Due to poverty, exclusion and often inconsiderateness, or a combination of all these, the everyday life of many of our fellow beings is less dignified than it should in a developed European country. Therefore, problems of social security are under the Chancellor's scrupulous attention. The field of action in this area is very wide – beginning from an allowance granted to an elderly person living alone to distribution of functions (and resources) of the state and local authorities in ensuring social welfare services.

5.1. Ability to cope financially

Since 2017, the state pays an allowance of 115 euros once a year to single pensioners. This is paid automatically to everyone who has reached retirement age and receives a pension not exceeding 1.2 times the average old-age pension and who, according to population register data, lives alone. The state does not verify the existence of other income or the fact of a person living alone.

During this reporting year, the Chancellor also had to resolve the concerns of pensioners deprived of the allowance because of incomplete or incorrect address data. Under the Spatial Data Act, location addresses must be established for parts of buildings (apartments) that are dwellings or if it is necessary to distinguish the parts on the basis of an address for other reasons

For example, Tallinn has refused to assign an address to a separate dwelling if the number of apartments/dwellings prescribed by a detailed plan does not coincide with the actual number of dwellings. Tallinn has also left an address unspecified for the reason that otherwise the person would lose the land tax exemption. At the Chancellor's request, Tallinn city has nevertheless changed its previous practice.

To alleviate poverty, food aid is distributed to those most deprived from the Fund for European Aid. The Chancellor was asked whether the conditions for providing food aid were compatible with the requirement of equal treatment. The question derived from the fact that only those receiving or applying for subsistence benefit or receiving benefit paid from a local authority budget in January, February, August or September qualified for food aid. However, all those having received or applied for the same benefits in all the other calendar months were denied the aid.

In a letter sent to the Minister, the Chancellor found that the procedure for distributing food aid did not indicate objective reasons why food aid may be distributed to people who have received or applied for benefits specifically in January, February, August or September. Unequal treatment cannot be justified by administrative or technical difficulties or lack of money. Therefore, the current procedure is unconstitutional. The Chancellor asked the Minister of Social Affairs to prepare a procedure for distribution of food aid that complies with the rules on equal treatment and the Constitution. The Minister of Social Affairs replied to the Chancellor that, since food aid would be distributed on three more occasions under the current procedure, introducing changes to the procedure within this time frame would not be reasonably attainable and changing the conditions for providing aid is not practicable.

Once again, rules for paying parental benefit were on the agenda. In the frame of a court case, the Supreme Court asked the Chancellor's opinion on § 37(3) (second sentence) of the Family Benefits Act. The current rule determines how social tax paid on benefit from the Estonian Unemployment Insurance Fund affects the underlying amount for calculation of parental benefit. In the specific case, the statutory rule reduced the parental benefit granted to an individual by a total of 672 euros because social tax paid on Unemployment Insurance Fund benefit was not accounted for in calculating the amount of parental benefit.

In her opinion to the Supreme Court, the Chancellor found, similarly to the Tallinn Court of Appeal, that § 37(3) of the Family Benefits Act contravened § 12 of the Constitution, since no reasonable and relevant justification existed for different treatment of people in a similar situation.

5.2. Social services

During this reporting year, too, the Chancellor dealt with local authority regulations contravening the requirements for provision of compulsory social services laid down under the Social Welfare Act. According to the Chancellor's assessment, provisions in several regulations in force in Narva City are unconstitutional, so that in case of need residents of Narva cannot receive assistance or support from the city to the extent prescribed. Despite the Chancellor's proposal, Narva City Council has not amended the unlawful regulations. On that basis, the Chancellor lodged an application with the Supreme Court to repeal several provisions in Narva City Council regulations on mandatory social services.

The Supreme Court had not yet delivered its judgment by 31 August. The judgment may have a significant impact on distribution of state and local government functions.

The Chancellor also assessed the lawfulness of a Tartu City Council regulation on the procedure for provision of social services to children with disabilities. In a letter to the City Council, the Chancellor found that a rural municipality or city should not limit provision of a mandatory social service only to within its own boundaries. Such a limitation does not enable a local authority to take into account a person's specific situation: for example, the need to travel outside the boundaries of the municipality to receive rehabilitation or to go on a class excursion with their support person. The Chancellor found that the regulation was unlawful and proposed to Tartu City Council that it should be brought into line with the Constitution.

Tartu City Council complied with the Chancellor's opinion and annulled the relevant provision in the regulation.

Several persons contacting the Chancellor were dissatisfied with how local authorities implement laws and provide social services.

Several petitions concerned the process of applying for housing from a local authority. Some fundamental mistakes were also found when resolving the petitions: Tallinn City had failed to carry out an all-round assessment of a person's need for assistance, Tapa rural municipality had failed to provide a person with housing compatible with their needs within a reasonable time. The Chancellor reminded the local authorities that a reasoned decision on grant or refusal of assistance must be issued by the deadline laid down by law and by complying with the formal requirements for the administrative act. The Chancellor also emphasised that ensuring housing does not mean that an individual is put in a queue of housing applicants. If a local authority has no vacant housing that it can provide, a city, or rural municipality must itself procure it or lease it from the owner.

In a recommendation sent to a local authority, the Chancellor noted that the rural municipality had failed to sufficiently explain to a person in need the substance of the social services in question or its intention to provide assistance. Therefore, the person had accepted solutions which in reality did not help them. The Chancellor drew attention to the fact that decisions concerning social assistance must be made within the time period laid down by law. Further, the Chancellor explained that even though a local authority is not required to help someone renovate a home, it nevertheless has the duty to ensure habitable housing to persons in need where necessary.

The Chancellor was also contacted with issues concerning confidentiality of social protection. A legally competent adult person expressed dissatisfaction that a local authority official had contacted their mother and not themselves to discuss the need for social assistance. According to the petitioner, they had not applied to the rural municipality for assistance. The Chancellor explained to the municipality that it had not acted lawfully when first contacting the petitioner's mother and not the petitioner in

person to establish the need for assistance. There is no information that the municipality had the petitioner's consent for this. A person's family members can be involved in provision of social assistance only if the person in need consents to this. The Chancellor recommended that the rural municipality avoid such mistakes in the future.

5.3. Dignified ageing

A decent life also includes the opportunity to receive competent care and assistance when an individual is no longer able to cope on their own at home, due either to poor health or an unsuitable living environment. Such assistance must be provided to people in general care homes. Most residents in general care homes are elderly people, but also younger or middle-aged people may end up in a care home as a result of illness or injury.

Supervision over decent treatment of care home residents falls among the Chancellor's direct tasks. The Chancellor's advisers from the Inspection Visits Department inspected the activities of five general care homes during the reporting year. A general practitioner or geriatrician was always involved in these inspection visits. The inspections involved interviews with residents and staff, as well as examining the rooms and documentation.

In comparison to previous years, it may be argued that, even though sometimes still far from the ideal, the situation in care homes in Estonia is nevertheless slowly improving. First and foremost, it is staffing problems, shortage of money and outdated infrastructure that pose an obstacle to providing services complying with requirements set out in legislation. Sometimes supervisory officials also encounter inconsiderateness and unprofessionalism.

During this reporting year, too, the Chancellor's advisers found on several occasions that residents in a general care home were locked in their rooms or departments, and in the worst case were secured to a chair or bed. The usual justification given is shortage of staff, as a care home does not have enough people to deal with the residents. One care home also used a seclusion room for placement of residents with problematic behaviour. (For more detail about care homes, see the chapter „Inspection visits".)

In October 2017, the Chancellor made a proposal to the Riigikogu to bring the Social Welfare Act into line with the Constitution. According to the Chancellor's assessment, § 47(3) of the Social Welfare Act was incompatible with the Constitution to the extent that it did not enable persons in a social welfare institution to obtain the necessary assistive devices with state support. This placed them in a less favourable situation compared to persons in need of assistance living at home. The Riigikogu agreed with the Chancellor's proposal and on 14 November 2018 adopted an amendment to the

Social Welfare Act. Since 1 January 2019, persons living in social welfare institutions can obtain assistive devices on favourable conditions under the same principle as persons living at home.

Year by year, Estonian society is increasingly willing to discuss the issue of dignity at the end of life. This also includes patient's consent concerning medical treatment and the wish to legalise euthanasia in some form. In 2019, considerable attention was attracted by the story of a patient with an incurable muscular disease who eventually opted for assisted suicide in a private clinic in Switzerland.

All such changes need to be discussed in society thoroughly and without haste. The right and duty of decision-making and creating opportunities lies with the Riigikogu.

5.4. Healthcare

Based on several surveys and analyses carried out at different times, it has been concluded that the Estonian general practitioner system lacks qualified doctors in order to ensure its sustainability. The main obstacles causing a shortage of doctors in smaller settlements, mentioned in the 2011 National Audit Office report „Organisation of general practitioner care", have not disappeared. Access to general practitioner care may significantly deteriorate in the nearest years unless the state starts systematically looking for solutions to remedy the situation.

The Family Physicians Association of Estonia asked for the Chancellor's assessment whether the Health Board had acted lawfully by assigning people who had lost their general practitioner in Valga and Jõgeva counties and Setomaa region to practice lists of other general practitioners. It was also asked whether decisions on assigning persons to a practice list of a general practitioner may be published in the official online publication *Ametlikud Teadaanded* and whether the Health Board had acted in line with the meaning and purpose of the law when assigning people to practice lists.

According to the Chancellor's assessment, the activities of the Health Board had some shortcomings. For instance, no need or legal basis existed to publish decisions on assigning people to practice lists in the official online publication *Ametlikud Teadaanded*. Also, when assigning people to a new general practitioner's list the Health Board has not always followed the requirements laid down in legislation. However, the problem is wider and, to ensure uniform access to primary healthcare, the situation needs to be thoroughy analysed and a national action plan drawn up.

The Ministry of Social Affairs has said that opportunities are being sought to improve the general practitioner system. The Ministry has noted that in this process it is important to raise the quality of communication with general practitioners. The Ministry of Social Affairs, the Family Physicians Association of Estonia, and the Estonian

Health Insurance Fund concluded a goodwill cooperation agreement on "Ensuring sustainability of general practitioner care" on 19 March 2019. Amendments to the Health Services Organisation Act are being prepared to increase flexibility of the regulatory framework for general medical care. The coming years will show whether measures described by the Ministry of Social Affairs will prove appropriate and sufficient. Thus, the Chancellor has reason to carefully monitor developments in this field.

The issue of shortage of healthcare professionals indirectly arose also in connection with another petition received by the Chancellor concerning the Estonian language proficiency of medical staff.

Language proficiency requirements laid down for medical staff under the Language Act are justified. Midwives and medical nurses must have Estonian language proficiency on level B2 and doctors on level C1. The state exercises supervision over proficiency in the official language. The Chancellor found that the current system cannot be considered unconstitutional, but in terms of practice it would be reasonable to make the system more effective.

The situation where problems of compliance with the language proficiency requirements exist in some regions is probably due to shortage of healthcare professionals. When maintaining the language proficiency requirements, a reasonable balance has to be found between two constitutional rights: people are entitled to professional medical care and are entitled to receive it in Estonian. Both are equally important.

Under the current scheme, the language proficiency of doctors and nurses is verified in the course of supervision, but the state does not require proof of language proficiency before a specialist has begun working. Legislative amendments entering into force on 1 September 2019 specify the requirements for healthcare professionals coming from third countries.

The majority of doctors and nurses with insufficient Estonian language proficiency working in Estonia have acquired their general education in Estonia. Thus, insufficient language proficiency is a result of an inadequate educational reform and language training. The language proficiency requirement also applies to them, and can be verified by the Language Inspectorate.

5.4.1. Health insurance for resident doctors

Under the Health Insurance Act, resident doctors receive health insurance as employees and not as students because under the University of Tartu Act doctors in residency are no longer students. However, under § 5(2) of the Health Insurance Act, in

the case of a fixed-term employment contract health insurance protection only applies if the employment contract was concluded for a term exceeding one month. If the duration of an employment contract is less than one month (as is often the case in a residency programme), a resident doctor is left without health insurance.

The Chancellor drew the attention of the Minister of Health and Labour to the problem and the Ministry promised to find a solution. The Health Insurance Act was supplemented with a provision under which a resident doctor also receives health insurance in the case of entering into an employment contract lasting up to one month. The amendment entered into force on 1 January 2019.

5.4.2. Information about vaccination

The Chancellor was asked to verify whether information about possible risks concerning vaccination of children was sufficient and accessible. The Chancellor found that no legal norm in force restricts people's right to receive necessary information, and healthcare professionals are obliged to provide all-round information to a patient before vaccination. Nevertheless, the relevant website of the Health Board could be more precise and more informative on issues of vaccination. (See also the Chapter "Children and young people".)

5.4.3. Access to medication

The Chancellor was contacted by a parent of children suffering from rare diseases who was concerned that, due to the absence of valid marketing authorisation in Estonia, they had failed to receive the necessary medication for one and a half years. Medicines without marketing authorisation may be brought to Estonia and marketed here only if a competent doctor has made a reasoned request for this and if the State Agency of Medicines has issued a single import and marketing permit to that effect. In the case of the petition in question, both conditions were fulfilled and the Estonian Health Insurance Fund had also given consent for compensation of the medication. Also two wholesale distributors of medicinal products were found who, in principle, agreed to supply the medication to Estonia. However, one of the wholesalers was not satisfied with the price of the medication, while the other was unable to satisfy the transport conditions.

Unfortunately, the relevant information and guidelines for subsequent steps did not reach the parent of the sick children. According to the Chancellor's assessment, in an exceptional or otherwise rare situation it cannot be presumed that persons in need are themselves aware of and familiar with the particularities of the whole system regulating import of medicines. Therefore, the duty to deal with the formalities and notify a person in need should lie with professionals. After the Chancellor's intervention, with the help

of the State Agency of Medicines a supplier could be found in a few weeks and the medicine was brought to Estonia.

5.5. 21st century work

There may be situations in life to which laws provide no perfectly understandable and satisfactory answers. For example, the Chancellor was asked about a situation where an employer must also pay an unemployment insurance premium on remuneration of a worker who came to Estonia for a short term (for up to one year). At the same time, the law says that unemployment insurance benefit may be paid to a person whose insurance period has been at least 12 months within three years. Thus, the law has created a situation where payments have to be made but receiving the benefit is precluded.

However, according to the Chancellor's assessment, the matter is not unequivocally clear. In her letter, she found that for the premium paid the worker may receive benefit either in Estonia or their country of residence if a relevant contract has been concluded between the person's country of residence and Estonia. Moreover, it cannot be ruled out that the specific person would come to work in Estonia again during the three-year 'qualification period'.

The Chancellor added that in June last year she contacted the Riigikogu Social Affairs Committee and the Minister of Health and Labour with proposals on what to consider in updating the unemployment insurance system. The Ministry of Social Affairs, in cooperation with the Praxis Centre for Policy Studies, did begin renewal of the unemployment insurance system. In a study published on 5 June 2019, the shortcomings of the current unemployment insurance system were analysed. The Ministry of Social Affairs is currently preparing an intention to draft a new law which would be sent to organisations of employers and employees and interest groups for expression of opinion at the end of 2019. The new law would be adopted by the Riigikogu.

With regard to the issue of labour relationships, the Chancellor was contacted by the Estonian Taxpayers Association, which asked for an assessment whether the Social Insurance Board correctly interpreted the provisions of the Employment Contracts Act regulating compensation of holiday pay to persons with partial or no capacity for work upon termination of an employment contract with them, According to the practice of the Social Insurance Board, holiday pay is compensated to an employer under § 66(1) of the Employment Contracts Act, but the Social Insurance Board does not compensate the employer for benefit paid to an employee for unused holiday (§ 71 Employment Contracts Act) upon expiry of the employment contract.

In a recommendation sent to the Social Insurance Board, the Chancellor found that such an interpretation was not justified. The Chancellor asked the Social Insurance Board, in the future, to interpret the law so that employers are also compensated for benefit paid for unused annual holiday to a person with partial or no capacity for work upon expiry of their employment contract.

The Social Insurance Board agreed with the Chancellor's proposals and explanations and, as of 1 July 2019, employers are compensated for payment made to an employee for unused holiday upon expiry of the employment contract. Since the Social Insurance Board compensated holiday of employees who are minors on the same basis then the Board also changed the administrative practice of holiday compensation for employees who are minors.

The Chancellor was asked why the qualification requirements for trainers of occupational health first-aid providers were tightened and why, as of 2019, trainers of first-aid providers have to be entered in the register of healthcare professionals even though first-aid trainers provide none of the healthcare services listed in the law. The Chancellor found that the requirement – imposed with the aim of ensuring that first-aid training is provided by persons whose medical knowledge and skills comply with the professional qualification requirements – may be necessary.

According to explanations by the Ministry of Social Affairs, the amendments were necessary because applying erroneous and outdated knowledge in healthcare may cause damage to health or death, so that stricter requirements are justified. The requirement of registration in the national register of healthcare professionals provides an opportunity to be convinced, on the basis of a public reliable source, whether a first-aid trainer is competent, and it also helps to ensure quality of training.

5.6. Equal treatment

Under the Estonian Constitution, everyone is equal before the law. No one may be discriminated against on the basis of ethnicity, race, colour, sex, language, origin, religion, political or other views, property or social status, or on other grounds.

Under the Chancellor of Justice Act, the Chancellor carries out checks over conformity of legislative acts with the Constitution and laws as well as over the activities of representatives of public authority. The Chancellor also arranges conciliation proceedings for resolving discrimination disputes and promotes the principle of equality and equal treatment.

During the reporting period, the Chancellor received 20 petitions with complaints about discrimination. Of these, seven concerned different treatment based on disability, three on age, two on sexual orientation, two on language, ethnicity and

citizenship, and one on origin. This year, the Chancellor did not initiate any conciliation proceedings.

5.6.1. Discrimination on the ground of age

The Chancellor was asked whether release of police officers from service on the ground of age is lawful. Under the Police and Border Guard Act, a police officer may serve in the police service as a specialist until attaining the age of 55 years and as an executive officer until attaining the age of 60 years. The Director General of the Police and Border Guard Board may extend the period of service of a police officer for one year at a time until the officer attains the pensionable age laid down in § 7 of the State Pension Insurance Act.

In the Chancellor's opinion, a police officer should not be released from service merely because of exceeding the age threshold. The principle of equal treatment must be observed when applying the law. If a police officer wishes to continue in service despite their age, the decision should above all be based on considering whether they meet the requirements for physical and mental capability prescribed for police officers by law. Section 96 of the Police and Border Guard Act will lose effect on 1 January 2020.

The Chancellor was asked to verify whether an amendment to the Police and Border Guard Act under which, as of 1 May 2019, police officers are paid a full superannuated pension even when an officer continues work in the police service is compatible with the principle of equal treatment. The amendment only concerns police officers. No wages and pension are simultaneously paid to representatives of other professions listed in the Superannuated Pensions Act. According to the Chancellor's assessment, the idea of the amendment is to ensure that positions directly related to ensuring internal peace in the country are filled. On that basis, the respective regulatory framework cannot be considered unconstitutional.

5.6.2. Language and ethnicity

The Chancellor was contacted by the head of a catering establishment who had a susbition that if the Language Inspectorate asks specific questions about the education of an employee with a foreign name, this could mean discrimination on the ground of ethnicity.

The Chancellor did not agree with that interpretation, but recommended that, in the future, the Language Inspectorate should only ask additional information about those workers whose data are not in the Estonian Education Information System. The same principle is provided in the Law Enforcement Act applied in the event of state supervision.

5.6.3. Sexual orientation

By judgment of 21 June 2019, (5-18-5) the Supreme Court declared unconstitutional and repealed the provisions of the Aliens Act that precluded issuing a temporary residence permit to an alien for settling in Estonia with their registered same-sex partner who is an Estonian citizen. The Chancellor made a similar proposal to the Riigikogu in 2015.

5.6.4. Children in youth camps

Some youth camps do not wish to admit children from substitute homes or family houses, or allow them to the camp only together with an attendant.

The Chancellor asked the Ministry of Education and Research and the Estonian Youth Work Centre to resolve the issue, and they organised roundtables with the participation of youth camps, substitute homes and the Ministry of Social Affairs. Organisers of youth camps were explained that children from substitute homes or family houses should be admitted to a camp on the same conditions as all the other children. If parents of so-called ordinary families do not have to accompany their children in a camp, this cannot be required of a family parent or attendant in a substitute home or a family house either.

At the same time, it was agreed that if a substitute home or a local authority as the child's guardian does not give the organiser of a camp sufficient information about a child (e.g. who is the child's contact person who can be contacted round the clock, or what are the child's special needs), this would be notified to the Social Insurance Board or the representative organisation of substitute homes and family houses which will have to resolve the situation.

5.6.5. Different treatment on the ground of disability

The Chancellor submitted an opinion within constitutional review court proceedings concerning the constitutionality of hearing requirements laid down for prison officers (case 5-19-29).

The Chancellor found that § 4 of the Government Regulation No 12 („Health requirements for prison service officers and the procedure for health checks, and the substantive and formal requirements for a health certificate"), as well as Appendix 1 to the Regulation, are incompatible with § 29 of the Constitution laying down the right to freely choose one's profession, and § 12(1) laying down the general fundamental right to equality and prohibition of discrimination. The provisions are unconstitutional since they do not enable an assessment of whether some impairment of the hearing is an impediment to a prison officer's work and whether it can be compensated, for example,

by a hearing aid – similarly to how people with poor eyesight use glasses or contact lenses.

The Supreme Court has not yet delivered judgment in this matter. (See also the Chapter „New tasks“.)

VI. INSPECTION VISITS

The Chancellor must monitor respect for the fundamental rights of individuals held in general care homes and places of detention. This task arises from the Chancellor of Justice Act under which the Chancellor has been assigned the role of the national preventive mechanism set out in Article 3 of the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). To fulfil this task, the Chancellor's advisers carry out mostly unannounced visits to places of detention.

A place of detention means a place where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence. In Estonia, different places of detention exist: prisons, police detention facilities, psychiatric hospitals providing involuntary treatment, closed childcare institutions, care homes providing 24-hour special care services, etc. During the reporting year, the Chancellor paid more attention to protection of the rights of children in places of detention.

6.1. General care homes

A decent life includes the opportunity to receive competent care and assistance when an individual is no longer able to cope on their own at home, due either to poor health or to an unsuitable living environment. Such assistance must be provided to people in general care homes. Most residents in general care homes are elderly people, but younger or middle-aged people may also end up in a care home as a result of illness or injury.

According to data from the Ministry of Social Affairs, 12 368 people received the general care service in 2019. Estonia has over 160 general care homes with slightly fewer than 8400 places.

One of the Chancellor's tasks is to check the living conditions in care homes and how the rights of people living there are ensured. During the reporting year, the Chancellor's advisers from the Inspection Visits Department inspected the activities of five care homes providing the general care service. A general practitioner or geriatrician always accompanied the advisers on these inspection visits. The advisers talked to care home residents and staff, inspected the rooms and examined documents.
In comparison to previous years, it may be said that the situation in care homes is slowly improving. The Chancellor is particularly pleased to see people working in care homes who genuinely care about those in their care, are warm-hearted and show empathy.

However, some of the same shortcomings which the Chancellor has pointed out in her previous annual reports can still be found in general care homes. During this reporting year, too, the Chancellor's advisers found on several occasions that residents in a general care home were locked in their rooms or departments, and in the worst case were secured to a chair or bed. One care home also used a seclusion room for placement of residents with problematic behaviour.

The law prohibits using a seclusion room in general care homes, nor does it allow any other restriction on people's freedom of movement. If a person's body posture needs to be fixed in order to avoid falling, devices prescribed for this should be used, such as safety vests or special support belts. A belt of a dress or of a bathrobe or another item happening to be at hand is not suitable to support a person, as even if used for a short period it may cause health problems or death.

The main problem in general care homes is shortage of staff, in particular shortage of staff with the necessary qualifications. This, in turn, causes or exacerbates several other problems: people are not washed with sufficient frequency, no meaningful free-time activities are offered, etc. Under the Social Welfare Act, the operator of a care home must ensure sufficient staff numbers, so that in view of staff preparation and workload it is possible to offer people the necessary care and assistance. However, the law does not determine how many carers should be on duty at any one time round the clock. When determining the necessary staff numbers, the management of a care home must take into account how much assistance and attention the residents of the particular care home require, while also taking into account the specific nature of buildings: whether the service is provided in several separate buildings or in one building, and whether the buildings have a system for summoning help.

Staff who are overburdened do not have sufficient attention for everyone. During inspection visits, the Chancellor's advisers found that bedpans had not been emptied for a long time, diapers were not changed often enough, etc.

At the beginning of 2020, preparation requirements established for carers in general care homes enter into force (§ 22(3) and (4) of the Social Welfare Act). By the new year, carers must undergo training for care staff or acquire the profession of care worker. According to assessment by the Ministry of Social Affairs, as at May 2019 about 70 per cent of a total of 1780 care workers have the appropriate education and training.

The non-profit associations Baltic Association for the Quality of Social Services and the Advisory Council of the Heads of Social Institutions in Estonia, which unite 54 care homes, expressed concerns in their letter to the Chancellor as to implementation of the preparation requirements for care workers. The petitioners found the new requirements to be excessive, since several establishments (the Social Insurance Board, the Health Board, and others) already supervise provision of the general care home

service. In the petitioners' opinion, the preparation requirements would inevitably lead to an increase in the price of the general care home service, which may impel clients to abandon using the service.

The Chancellor found that the situation in care homes is not as good as the petitioners think. Degrading treatment of residents and violations still occasionally occur regardless of supervision and the awareness-raising that has been carried out. It is in the interests of people and staff in care homes that carers should have the necessary training. Staff with proper qualifications can prevent the occurrence of many problems. Carers with specialist knowledge (including ergonomics of care) are able to avoid work-related injuries and occupational diseases. The general care service cannot become less accessible due to establishing preparation requirements since local authorities are obliged to ensure the general care service to those in need, so that those needing the service do not have to give up their place in a care home.

Living conditions in many care homes need improvement: high doorsills hinder the movement of people with challenged mobility, or rooms are overcrowded. In any case, it would be worthwhile for care homes to consider installing an assistance call system, or if one already exists, then ensuring that the devices are in working order and that everyone can use them. Such a system makes it easier to call for assistance and helps care staff to reach those in need more quickly.

It is important for care homes to pay more attention to free-time activities available for residents. Gradually, some progress has been achieved. Concerts are organised for residents and different performers and speakers are invited to care homes. Despite this, a large number of care home residents spend their days lying in bed, watching television or listening to the radio. Opportunities for hobby groups or dynamic activities are scarce. In this regard, particular attention should be given to people whose ability to move around on their own is limited or who are bedridden. They, too, should be involved in activities provided, physical exercises should be done with them and they should be taken outdoors to get some fresh air.

6.2. Special care homes

During the reporting year, the Chancellor inspected six care homes providing 24-hour special care services. The twenty-four-hour special care service is financed from the state budget and is intended for people with mental disorders or severe or profound disability who are incapacitated for work and are in need of daily guidance, counselling, assistance, and supervision due to their mental health condition.

As at the end of 2018, there were 2374 people in 51 locations receiving the special care service. The Chancellor's advisers carried out an inspection visit to Sillamäe Home of Hoolekandeteenused Ltd (AS HKT) and Valkla Home, to which people are also referred

under court orders. These people may pose a danger to themselves or others due to their mental disorder. Narva-Jõesuu Care Home and Lihula Südamekodu also provide the general care home service in addition to the special care service. The Chancellor also inspected Tapa Home and Uuemõisa Home.

Increasingly more care homes are moving from old Soviet-era large buildings to smaller family house-type homes. Among the care institutions inspected in 2019, Tapa Home and Uuemõisa Home are family house-type homes. New buildings are more suitable as care homes, as they have been adapted for the needs of people with challenged mobility and also have a cosier atmosphere.

Unfortunately, the main problems in special care homes are largely the same as in the previous year. The number of activity supervisors hired by care homes may conform to the minimum statutory requirement but is still insufficient. Among care home staff, activity supervisors are those who most often deal directly with people. Particular care and supervision is needed by people with profound multiple disability. Often, in addition to caring for people, activity supervisors also have to cook and clean the rooms. Depending on the health and needs of care home residents and the duties of activity supervisors, the statutory minimum staff number might not be sufficient.

Special training requirements have been established in view of the specific nature of the care and assistance needed by residents of special care homes. Untrained staff might not know how to properly assess situations and cope with agitated people. Trained staff are also able to systematically develop and support people with profound multiple disability who have complicated behaviour, and are able to choose appropriate methods for this. Unfortunately, many activity supervisors dealing with people with profound multiple disability have so far not undergone the relevant training. According to the requirements entering into force at the beginning of 2020, to work as an activity supervisor providing special care it is no longer merely sufficient that the person has registered for training, but the necessary training should also have been completed. Care homes should arrange the necessary further training for their staff as soon as possible.

Under § 107 of the Social Welfare Act, restricting the freedom of movement of a care home resident (i.e. a person who has not been placed to receive the 24-hour special care service by a court ruling) may only be restricted by placing them in a seclusion room complying with the relevant requirements. A person may be placed in such a room for up to three hours and until arrival of an ambulance or the police. However, not all care homes comply with these rules and inadmissibly restrict the residents' freedom of movement – inter alia, by using a lock on the door of the department operated with a fingerprint reader of a chip card. Some care homes lacked a proper seclusion room, so that agitated persons were taken to calm down in a shower room, their own room or some other room not furnished for this purpose. A seclusion room

in Valkla Home providing 24-hour special care service under a court ruling is used frequently due to the particular nature of its residents even though the room is not safe. The Chancellor reminded the care homes that the freedom of movement of a person receiving a 24-hour special care service under a court ruling may only be restricted for a brief period by placement in a seclusion room compatible with requirements.

Living conditions in the family homes seen during inspection visits left a very good impression. These houses have been built keeping in mind the needs of people with challenged mobility. In special care homes operating in older buildings there are also shower rooms in need of repair and overcrowded, bleak or walk-through rooms. In older buildings, it is difficult to move around in a wheelchair or other assistive device.

Care homes still have problems with handling medication. On several occasions it was not clear for whom medication had been prescribed. The Chancellor's advisers also found medication of patients who had already left the care home, as well as expired medication, even though this must be destroyed properly. The Chancellor explained to the care homes that the strict rules for handling medication have to be complied with. Care homes must also ensure nursing care to the extent required by law.

6.3. Healthcare services

During the reporting period, the Chancellor inspected three healthcare institutions: Ahtme Hospital acute care department, department for children and adolescents of the psychiatric clinic of the North Estonia Medical Centre and the tuberculosis department of the psychiatric clinic of Viljandi Hospital.

Ahtme Hospital provides in-patient psychiatric care; some patients also stay at the hospital for involuntary treatment (Mental Health Act § 11). Patients at the tuberculosis department of the psychiatric clinic of Viljandi Hospital are also referred mandatorily under court rulings (Communicable Diseases Prevention and Control Act § 5). Up to five such cases a year occur. The department for children and adolescents of the psychiatric clinic of the North Estonia Medical Centre provides psychiatric care to children.

A good impression was left by the activity room of Ahtme Hospital's acute care department where patients are instructed by a sports therapist and art therapist. In comparison to the Chancellor's previous inspection visit in (2015), the hospital is now better ensuring the privacy of patients. However, patients still cannot lock the toilet door. The hospital's observation rooms (mechanical restraint rooms) do not comply with requirements: in view of their size there may be only one place for a bed, yet each observation room had three beds. A member of the medical staff should always be present beside a mechanically restrained patient.

In the summary of the inspection visit sent to Ahtme Hospital, the Chancellor emphasised that if a doctor does not allow a patient to leave the hospital at will, a decision on involuntary treatment must always be drawn up on this. A patient in voluntary treatment must be able to leave a hospital at will.

The tuberculosis department of Viljandi Hospital has modern equipment to prevent the risk of infection: all wards and common rooms have quartz lamps and a ventilation system. Staff use protective devices to prevent infection and can vaccinate themselves at the expense of the employer. To ensure patient privacy, the Chancellor asked that curtains be placed on the windows of all wards in the department. The department must also put the assistance call system equipment into order.

Doctors at the psychiatric clinic of the North Estonia Medical Centre mentioned the shortage of child psychiatrists and long treatment queues as persistent problems in their field.

It deserves recognition that the staff at the department of the psychiatric clinic of the North Estonia Medical Centre cooperate closely with patients' parents and guardians. In the Chancellor's opinion, young people should be included more in making decisions concerning their treatment. If necessary, they need to be explained repeatedly the nature of their disease and given a possibility (if their health condition so allows) to sign their treatment contract themselves. If a child wishes to leave the hospital but, according to the doctor's assessment, they still need hospital treatment, the hospital must have recourse to the court to apply involuntary treatment.

Patients in the department of children and adolescents at the North Estonia Medical Centre must be able to lock the door of the toilet but, in case of emergency, the medical staff must be able to enter the room. Children must be given an opportunity to communicate in private with parents and guardians. Telephone conversations should not take place in the presence of staff. In addition, chemical restraint should always be properly recorded.

The Chancellor asked hospital staff to pay more attention to opportunities for children to spend free time. For example, better sporting opportunities for them could be created or use of the internet within a limited period could be allowed (e.g. in a study class with computers) Where necessary, access to inappropriate websites and those that might disturb children could be blocked, or access allowed only to designated pages.

6.4. Police and Border Guard Board detention facilities

The Chancellor inspected two of the Police and Border Guard Board (PBGB) detention centres: the detention centre of Jõhvi police station in the East Prefecture and the detention centre of Tartu police station in the South Prefecture. An inspection visit was also carried out to the cellblocks of East-Harju, Kesklinna and West-Harju police stations and the sobering-up facility of the law enforcement bureau of the North Prefecture, all used for short-term detention (up to 48 hours).

In all these places of detention (except the sobering-up facility), the hygiene corners were not sufficiently partitioned. Activities in the hygiene corner could be seen by cell-mates as well as police officers. The Chancellor has emphasised in summaries of inspection visits sent to the PBGB that activities in the hygiene corner should not be open to view by other detainees, and while carrying out supervision police officers should not observe a detainee in the hygiene corner without a compelling need (e.g. risk of suicide).

In both police detention centres as well as short-term detention facilities, it is complicated for detained persons to attend to personal hygiene – opportunities to wash oneself, clean one's cell and dry the laundry are not sufficiently good.

Communication with the next of kin of detained persons is poorly organised. In the detention centre of Tartu police station, detained persons could not always notify their next of kin about their detention. In Jõhvi police detention centre, it was complicated for detainees to communicate with their next of kin by telephone in private.

In the detention centre of Tartu police station, a minor who had no spare clothes or prescription medication had been detained for several weeks. Finding oneself for the first time in a place of detention is a harrowing experience for a child: children are inevitably more vulnerable than adults, and this should be taken into account. Therefore, it is of utmost importance that police detention centre staff enquire from a child about their needs and concerns and will not merely expect the child themselves to seek assistance if necessary. Among other things, a child should be asked whether they have sufficient clothes and an opportunity to call their next of kin.

People detained for more than 24 hours must be given an opportunity to spend time outdoors. Cells must have sufficient natural light and a detainee must have clean bedclothes, access to drinking water and an opportunity to attend to their hygiene.

In line with the Chancellor's earlier recommendation, the sobering-up facility of the law enforcement bureau of the North Prefecture had installed video surveillance in each cell, which is certainly necessary in view of the health condition of people placed for sobering up. It is positive that, where necessary, the sobering up facility provides a

detainee with the necessary clothes. The problem is that sometimes the freedom of movement of an intoxicated person needs to be restricted (to provide healthcare services), so that they need to be temporarily strapped to a bed. Currently, no sufficiently clear and precise regulatory provisions for such restraint exist. The Chancellor asked the Ministry of Social Affairs to find a constitutionally-compliant solution for the situation. The Chancellor also drew attention to the fact that medical staff working in the sobering-up facility should have access to the health information system, so as to have a better overview of a person's health.

6.5. Detention centre

In the spring of 2019, the Chancellor inspected the detention centre, which had moved to a new building at the end of 2018. The centre accommodates aliens subject to expulsion as well as applicants for international protection.

The staff of the detention centre have done a lot to ensure that moving to the new building goes as smoothly as possible. There are also plans to bring computers to the centre, so that persons detained there can access legislation and websites of government agencies. Partition walls will be installed in washrooms and a separate lockable washroom for mothers and children will be created in the department for families. By agreement with the activity supervisor, aliens can also use the exercise yard containing a basketball field.

Some of the so-called ordinary rooms in the detention centre use video surveillance. The Chancellor stressed that it should always be considered whether 24-hour video surveillance is absolutely necessary to monitor a specific person. Hygiene corners in rooms have small windows opening on to the corridor and have a cover with a padlock. The internal rules of the centre must ensure that a hygiene corner is monitored only in very exceptional cases: for example, if a need exists to protect a person's life and health. If the police develop a reasonable suspicion that a detainee may harm themselves, the detainee should be accommodated in a specially adjusted room or transferred to another establishment.

It would be good if, in the future, the centre finds opportunities to improve the available selection of literature as well as newspapers in foreign languages. Consideration should be given to the possibility to create alternative ways for people to communicate with their next of kin by means of modern technology (e.g. Skype). The Chancellor drew attention to this already during an inspection visit carried out to the previous detention centre. Currently, the centre also lacks a child-friendly room where an alien could meet with their family.

The Chancellor also found shortcomings with regard to catering hygiene and drew attention to the fact that the composition of food must comply with the

requirements laid down by legislation. The Chancellor also asked to avoid situations where the staff of the centre or other aliens participate as interpreters in a conversation between patient and doctor, and emphasised that psychological counselling must be available for everyone in the centre. Examination for infectious diseases for a foreigner admitted to the centre should be carried out at the first opportunity.

6.6. Prisons

Estonia has three prisons, the oldest of which is Tartu Prison, opened in 2002. At the end of 2018, Tallinn Prison moved to a newly erected building. In Tartu, Tallinn and Viru Prisons, a total of approximately 2400 people are detained, of whom more than 400 people are remand detainees waiting for a court judgment, while the remainder are convicted prisoners serving a sentence. The prison population includes about a hundred women and approximately ten minors. Convicted prisoners also include 41 persons serving a life sentence.

During the reporting year, the Chancellor's advisers inspected Viru Prison. Particular attention was paid to the department for young people (those under 21 years old).

Several problems pointed out during previous visits to Viru Prison had unfortunately not been resolved by the time of this inspection: for example, many short-term visits with next of kin still take place so that a prisoner is separated from the visitor by a glass partition.

A major problem that is still unresolved is shortage of prison officers (guards, senior guards, inspector-contact persons). In some departments, almost 25% of guard positions were vacant. Due to overtime, the work of officers is burdensome and this also affects internal security in prison. The Chancellor asked the prison and the Ministry of Justice to continue efforts to fulfil the vacant staff positions.

Based on documents examined in Viru Prison, an impression developed that several prisoners had been introduced to their rights and duties only weeks after they had been admitted to the prison. The Chancellor stressed that prisoners should be given information about legislation from which their rights and duties arise at the latest on the day following their admission to the prison.

In the youth department (third unit), the situation has significantly improved in comparison to the time three years ago. There are fewer violations of rules and prisoners are given more time to move around outside their cell within the accommodation section. Common rooms in the accommodation sections of the R-building of the prison (where minors and young people are staying) should be refurbished and more furnishings procured. Young people themselves could be involved in refurbishing the rooms.

The number of female prisoners who are minors is small in the prison, often no more than one. Therefore, a young person might not have sufficient opportunities for communication and may find herself in isolation, which is not in the best interests of a child. Under § 12 of the Imprisonment Act, minors should be segregated from adults. This is necessary to avoid adults having a bad influence on children. However, the result of segregation should not be total separation from other people, which is not in the best interests of the child. The Chancellor emphasised that restriction of communication of convicted girls with adult prisoners should take into account both aspects and allow a prisoner, under supervision of prison staff, to communicate with those prisoners who do not have a negative influence on the child (e.g. peers who are a year or two older than the child). The prison should also promote a child's communication with the family and encourage them to establish relationships of trust with staff: if necessary, a child should be referred to an appointment with a specialist.

The Chancellor also dealt with the issue of searching next of kin arriving for a long-term visit with a prisoner. The Chancellor explained to Tallinn Prison that long-term visits are extremely important as they help to maintain a prisoner's relationship with their close ones. At the same time, in the course of a long-term visit, substances and items endangering prison security may be brought to the prison. Therefore, the prison is entitled to search a person arriving for a visit, as well as their belongings. The manner and extent of a search depends on the situation. If a strip search is absolutely necessary, it should be carried out so that the person searched is at least half clothed. Exceptionally, it may be justified to search a visitor while fully naked. This may be necessary, for example, when a reason exists to suspect that a visitor is trying to bring prohibited items or substances to the prison, and these could not otherwise be detected. Nevertheless, less intense measures (such as scanners) should be preferred to a full strip search.

6.7. Defence Forces

The Chancellor inspected the Headquarters Support and Signal Battalion. According to the conscripts in the battalion, the superiors have a friendly attitude towards them and the training is interesting. Some conscripts said that sometimes active servicemen have not allowed them to go to a doctor as they found their health concern to be a minor one. It has also happened that a conscript relieved of training requiring physical effort for health reasons is nevertheless ordered to participate in such training. However, such cases are exceptional. As a rule, superiors do not prevent conscripts from going to a doctor, and the rules on relief from training are also complied with.

The Chancellor asked the commanding officer of the military unit to remind active service personnel involved in training conscripts that conscripts are entitled to medical

care and that the regime for relief from training must be observed. This is necessary for protecting the health of conscripts.

VII. SUPERVISION OF SURVEILLANCE ACTIVITIES

The Chancellor supervises state (investigative and security) agencies carrying out covert processing of personal data, so as to ensure that their activities are lawful and respect fundamental rights and freedoms. That part of the Chancellor's work usually involves information classified as state secrets or for internal use only. Therefore, detailed summaries of those inspection visits and recommendations are only accessible to the inspected agencies themselves and those competent to carry out constant and complete supervision.

The Chancellor also resolves complaints against surveillance measures and, if necessary, verifies, for example, claims disseminated in the media about unlawful surveillance.

7.1. Covert processing of personal data

Lack of knowledge arising from the covert nature of surveillance often gives rise to unjustified speculations in society, for example about alleged massive and illegal surveillance. The Chancellor's task is to carry out regular checks as to whether covert measures are taken in conformity with applicable rules and in a manner respecting individuals' fundamental rights. It is extremely important that, based on the results of the checks, a sense of confidence is given to society that the activities of all agencies competent to carry out covert processing of personal data are lawful and conform to the aim sought. This helps to alleviate people's uncertainty and fear of unjustified surveillance.

As a rule (though exceptions might be immunity proceedings or specific suspicion of a violation of fundamental rights that cannot be verified in court proceedings), the Chancellor does not deem it possible to assess surveillance in progress. That is and should remain primarily within the competence of the executive (a surveillance agency, the prosecutor's office) and the court. For this reason, during inspection visits the Chancellor examines surveillance files where 'active processing' has finished by the time of the check: i.e. the procedural file is closed or a judgment issued.

The Chancellor's competence also includes supervision of supervisors, if necessary, in order to influence them to comply with their duties. Even when the actions of the relevant agencies are formally lawful, the Chancellor tries to ensure that people's fundamental rights are reckoned with to the maximum possible extent. Problems in complying with fundamental rights may be due, for example, to insufficient legal regulation or faulty practice.

During the reporting year, the Chancellor's advisers checked how the Estonian Internal Security Service, the internal audit bureau of the Police and Border Guard Board and

Tallinn, Tartu and Viru Prisons respected the fundamental rights of individuals when carrying out surveillance. A separate inspection visit was carried out to assess cases where information collected by a decision of the Prosecutor General under the Security Agencies Act was produced as evidence in criminal proceedings.

7.2. Control of surveillance measures

During inspection visits, the Chancellor's advisers examined a total of 28 surveillance files (selected from among the files opened in 2016–2018) where active proceedings had ended by the time of the inspection. Information contained in paper files as well as in the surveillance information system was examined and compared, and interviews with surveillance officials were also carried out.

The assessment focused primarily on whether, in each specific case, the surveillance measure used to collect information about a criminal offence had been lawful, as well as unavoidable and necessary, and how the surveillance agencies complied with requirements to notify people about a surveillance measure. A separate goal was to assess how the surveillance agencies had observed proposals for better protection of fundamental rights made after inspection visits carried out in 2015–2016.

It is commendable that, in their work, all the surveillance agencies (including the Internal Security Service, the internal audit bureau of the Police and Border Guard Board and the prisons inspected during this reporting year) follow the Chancellor's recommendations made in previous years. Substantive control by heads of surveillance of the establishments and by prosecutors leading proceedings over keeping surveillance files has increased. This results in additional assessment of surveillance, which in turn, helps to avoid major mistakes.

In order to ensure better protection of fundamental rights, during this reporting year the Chancellor also sent her recommendations and proposals to the establishments inspected.

7.2.1. Surveillance authorisations

A surveillance measure is lawful only if the prosecutor's office or the court has issued an authorisation complying with the requirements as to form and supporting reasoning. No errors or violations to that effect were found in the files inspected. Nevertheless, in the case of some surveillance files of the internal audit bureau of the Police and Border Guard Board, misgivings arose as to whether information available at the time of applying for authorisation had been sufficient to start surveillance measures and restrict individuals' fundamental rights.

Reasoning contained in surveillance authorisations has improved from year to year, better indicating the need for a surveillance measure as well as the impact of measures on the person subject to surveillance and on third persons connected with them.

Preliminary investigation judges generally observe the opinion – repeatedly expressed in case-law in recent years – that reasoning contained in a court order authorising surveillance must include clear and understandable arguments by the court as regards, inter alia, the need for surveillance as a measure of last resort (the principle of *ultima ratio*). Only in some isolated cases had no reasoning been given in terms of the *ultima ratio* consideration. Those authorisations had been issued by a preliminary investigation judge whose surveillance authorisations had also previously (during inspection visits carried out in the previous reporting year) attracted attention in the surveillance files of several surveillance agencies for their unspecific and essentially identical reasoning. Largely thanks to intervention by the Chancellor of Justice, that judge no longer issues surveillance authorisations.

7.2.2. Control of legality of surveillance measures

No randomness was detected in the frame of the files inspected – all files had a clearly defined purpose. The Chancellor's advisers also found no surveillance measures carried out without authorisation by a preliminary investigation judge or prosecutor. No problems existed concerning compliance with the conditions for a surveillance authorisation.

Where a surveillance measure had been discontinued or cancelled, an explanatory note to that effect had been added to the file. This fulfilled the requirement under § 126^2(9) of the Code of Criminal Procedure according to which a measure must immediately be ended when grounds for the surveillance measure cease to exist.

In terms of protection of people's fundamental rights, it is extremely important that a summary of the measures be added to surveillance files. With the help of that information, those carrying out supervision can retroactively, and without having to re-examine the materials in the criminal case, assess the effectiveness of the surveillance measure, the intensity of interference with privacy, and other essential facts. Largely thanks to recommendations made after the Chancellor's earlier inspections, that good practice has now also taken root in those surveillance establishments (e.g. prisons) where previously problems existed in this regard.

7.2.3. Notifying a surveillance measure

The Code of Criminal Procedure requires that a surveillance measure be notified to those in respect of whom the surveillance measure was carried out, as well as those identified during the proceedings whose private or family life was significantly

interfered with by the measure. Notification may be postponed or foregone only with authorisation from the prosecutor or the court under circumstances laid down by law. Notification helps to protect individuals' fundamental rights, including creating an opportunity to contest surveillance measures.

In previous years, the Chancellor's advisers found many cases where people had not been notified at all about surveillance measures affecting them or where notification had been impermissibly late. Now the situation in this regard has also improved. However, one major shortcoming was found in a surveillance file in Tallinn Prison (notification had been impermissibly delayed by over seven months); in the remaining cases the delay was limited to three to five months.

For example, when resolving a petition by an individual, it was found that the prosecutor's office had failed to comply with the requirements of § 126[13] of the Code of Criminal Procedure when notifying the individual of surveillance measures. Consequently, they could not access the materials collected on them in time and could not file a complaint against them. The Chancellor sent a memorandum to the Prosecutor General about this.

Due to incomplete notices sent by the security agencies people could not exactly understand why and to what extent surveillance measures had been carried out in respect of them. The notice did not indicate whether the person themselves or someone else communicating with them had been under surveillance. One petitioner, after having examined the surveillance information, could not understand whether their activity had also been recorded or filmed during surveillance.

The Chancellor reminded the surveillance agencies that, when informing people about surveillance measures that concern them, it is always required to clearly distinguish the target of the measure – whether they are the person subject to surveillance or a so-called third party whose privacy was interfered with by the surveillance measure. Inter alia, this gives the person an opportunity to decide whether and how to protect their rights.

VIII. PROTECTION OF PRIVACY

Section 26 of the Constitution protects the inviolability of private and family life. In addition to the Constitution, processing of personal data is regulated by the European Union General Data Protection Regulation, which on the national level is further specified by the Personal Data Protection Act entering into force on 15 January 2019.

The state may interfere with a person's private life (e.g. process their personal data) only in cases laid down by legislation. Any interference must be justified; it must be limited to what is strictly necessary. To ensure a balance, control mechanisms should be provided that help to detect and, where possible, redress possible violations.

Interest in processing and protecting personal data is constantly on the increase. Proof of this is the increasing number of petitions submitted to the Chancellor on this very topic. The Chancellor helps to resolve problems if possible and, where necessary, provides explanations and guidance on better protection of rights.

8.1. Protection of personal data

On 12 November 2018, the Draft Implementing Act of the Personal Data Protection Act failed at the final vote in the Riigikogu. The Chancellor had previously drawn the attention of the Riigikogu Constitutional Committee to the fact that between parliamentary readings amendments concerning the Imprisonment Act had been added to the draft without substantive debate and approval (see pages 74–82 of the Draft Act) that would have granted the prison service an unlimited right to collect and retain personal data. Opposition to that intention was also expressed by the Minister of Education and Research in her letter to the Minister of Justice.

According to the Draft Act, the prison service would have obtained an unlimited and unsupervised right to collect and retain data on all people (and, in turn, on people connected with them) who either directly or indirectly provide services to prisons or have to apply for authorisation to enter a prison zone. This would have entailed unjustified and uncontrolled interference with the privacy of an unidentified number of people. Persons concerned would have included, for example, teachers, medical staff, ministers of religion, lawyers and consular workers visiting a prison for work-related duties, as well as their next of kin.

In the Chancellor's opinion, the intended legislative amendments contravened several constitutional principles, including the duty to ensure protection of people's private and family life (§ 26). Certainly, those fulfilling the functions of a public authority in prison should be reliable. This ensures attainment of the aims of imprisonment and security in prison. However, this does not mean that the prison could begin to arbitrarily collect and retain personal data in cases and to an extent not clearly defined,

under the mere pretext of ensuring prison security. The prison service can employ other and even more effective measures (e.g. a search) to ensure security in prison.

The Chancellor also criticised the manner whereby an extensive package of amendments is submitted to the responsible Riigikogu committee immediately before the second reading of the Draft Act. That way, members of the committee and factions are deprived of the opportunity to thoroughly consider the legality and necessity of the added rules. Government representatives who brought the amendments to the Riigikogu committee thus also circumvented all the rules of procedure agreed by the Government for dealing with draft legislation (e.g. approvals, constitutionality check, impact analysis). Such aberrant law-making is not compatible with the nature of a democratic state governed by the rule of law.

The Draft Implementing Act of the Personal Data Protection Act was passed by the Riigikogu on 20 February 2019 without amendments to the Imprisonment Act.

8.1.1. Data concerning punishment and the "right to be forgotten"

Article 17 of the European Union General Data Protection Regulation sets out the conditions where a person may request erasure of their personal data without delay. On that basis, the Chancellor has received several requests with the wish to "be forgotten". The Chancellor has also been asked when that right arises and where its limits lie. Specifically, people wish to use that right in the case of information concerning the punishments of a person where public availability (e.g. via a search engine) may, for example, affect getting or losing a job.

In the Chancellor's opinion, judicial conviction is, by nature, a temporary legal status which ends with the expiry or annulment of the punishment. During the term of a punishment, a person's offence is condemned by society and, where justified, their rights may be restricted somewhat more extensively by law on account of their punishment.

If a person's punishment has expired, the right to inviolability of private life outweighs condemnation by society and stigmatisation. Thus, expiry of a punishment entails the aim of resocialisation (the opportunity to start with a clean slate), so that, as a rule, an individual's rights and freedoms may not be restricted on account of their previous punishment.

The Chancellor was contacted by an individual who had served a sentence imposed for a crime committed in the past and whose punishment data in the criminal records database had been expunged. Despite this, the person's criminal past was displayed on the homepage of the Internal Security Service, thus also making it available through search engines. The Chancellor asked the Internal Security Service to assess whether

publication of personalised court judgments on its website was compatible with the general principles arising from Article 5 of the General Data Protection Regulation (including lawfulness, intended purpose) and to decide whether and to what extent disclosure of someone's punishment data is justified after punishment has expired. The Internal Security Service removed the person's full name from its homepage.

8.1.2. Release of data in the event of a legitimate interest

Due to legal ambiguity that has lasted for years, obtaining the contact data of persons who have failed to pay for parking in private car parks has been unreasonably complicated if not impossible. The Chancellor has recommended that, under § 184(4) of the Traffic Act, the Road Administration should release to private car parks the contact data of the owner or authorised user of a vehicle in the event of failure to pay for parking. Violators of a parking agreement cannot enjoy a legitimate expectation of a free service or confidentiality of their name and contact data.

On 20 September 2018, Tallinn Court of Appeal decided that a private car park has a legitimate interest to know the data of their contract partner, i.e. the person parking a vehicle. The provisions of the General Data Protection Regulation or the Traffic Act do not prevent release of the contact data of a vehicle owner or its authorised user. Proceeding from the judgment, the Road Administration promised to release to private car parks the data of violators of parking conditions in future. Hopefully, this will reduce the desire of violators to consciously avoid payment for parking and will resolve a problem that has persisted for years.

8.1.3. Processing personal data to comply with a duty arising from law

A company providing roadworthiness tests for vehicles asked the Chancellor to assess whether the Road Administration may process personal data when exercising supervision over testing centres.

When processing data in the traffic register, the Road Administration found a violation – a worker at a testing centre had carried out a test on a vehicle that they owned or were the authorised user of, thus breaching the principle of impartiality. Such processing of personal data is admissible: personal data may be processed for fulfilling duties arising from law if all the relevant principles of processing personal data are observed.

8.1.4. Personal data when buying a lottery ticket

The Chancellor was asked once again whether it was compatible with the Constitution for the seller of a lottery ticket to use a personal identity document to verify whether the buyer is on the list of persons with restrictions on gambling.

Regarding this issue, the Chancellor maintained her position expressed in 2016: this rule is not unconstitutional as such processing of personal data legitimately combats gambling addiction.

8.1.5. Personal data in supervision by the Language Inspectorate

The Chancellor was contacted by the head of a catering establishment asking to assess the activity of the Language Inspectorate in checking the language proficiency of workers.

The Chancellor did not find the unequal treatment for which the Language Inspectorate had been blamed. However, it was found that, in the opinion of the Inspectorate, all employers whose workers are subject to the Estonian language proficiency requirement should collect all the documents proving a worker's required level of language proficiency when hiring them.

In the Chancellor's opinion, the Language Act does not require such processing of personal data. It is sufficient for an employer to be satisfied, for example in the course of a job interview, that the worker has the required level of proficiency of the official language. In the event of doubt, they may check documents proving language proficiency. The Chancellor also drew the attention of the Language Inspectorate to the fact that questioning and request for documents should be based on the Law Enforcement Act and not the institution's internal rules.

8.1.6. 24-hour filming of a child

The Chancellor was asked whether a parent violates the rights of a child when filming all the child's activities at home round the clock.

The Chancellor explained that under the Constitution everyone is entitled to inviolability of private and family life. That is, the privacy of every family member – including a child – must also be ensured within the family. Constant video monitoring that exceeds the customary recording of family memories fails to respect a child's right to privacy.

8.1.7. Public accessibility of the land register

In Estonia, the principle of extensive public access to the land register applies, meaning that everyone is entitled to obtain any data entered in the land register, including data on immovable property and its owners. Based on this principle, it is possible to make an unlimited number of person-related queries of interest through the electronic land

register. Based on the queries, it is possible to find out whether, where and how many immovables a particular person owns.

The Chancellor has been asked whether such intense interference with a person's privacy is in balance with the benefit arising from public accessibility of the land register. By autumn 2019, the Centre of Registers and Information Systems plans to complete a development that enables only authenticated users to carry out a search based on a person's name and personal identification code. Those searches are recorded and if the owner of an immovable wishes they can find out from the Centre of Registers and Information Systems who has accessed their data. The Chancellor monitors that the development of the land register also constantly keeps in mind the balance between the principles of privacy and public accessibility of the land register.

8.2. Information systems and electronic services

The Chancellor was contacted by an individual to whom the e-environment of the Estonian Unemployment Insurance Fund displayed the data on their dead child in the list of persons they represent. The error originated in the data exchange system of the population register and the Estonian Unemployment Insurance Fund which lacked data about the time of death of the persons represented. To resolve the problem, the Chancellor contacted the Estonian Unemployment Insurance Fund and the Ministry of the Interior.

The information technology and development centre of the Ministry of the Interior prepared an update to the information exchange service which helped to swiftly resolve the problem. It is regrettable and unacceptable that the state reminded someone about the loss of their child in such a way, but thanks to a petition by the individual and an appropriate response by the Estonian Unemployment Insurance Fund the problem found a solution.

Another petitioner also drew the Chancellor's attention to an error in an information system. The Chancellor was contacted by an individual who was interested why the contact address of their trustee in bankruptcy had been recorded in the population register rather than their own contact details.

Change of contact details had been caused by an error originating in the internal taxpayer management system of the Tax and Customs Board. After declaration of bankruptcy of a natural person, the Tax and Customs Board changed the person's contact details (until 10 August 2018) in the register of taxable persons and replaced them with the contact details of the trustee in bankruptcy until the end of the bankruptcy proceedings. When the Tax and Customs Board replaced the person's contact details in the register of taxable persons with the contact details of the trustee

in bankruptcy, the contact details of the trustee in bankruptcy were also forwarded to the population register through online processing. No legal basis for that entry existed. The Tax and Customs Board resolved the problem. Since 10 September 2018, a person's contact details are no longer changed in the register of taxable persons after a natural person is declared bankrupt. The contact details that had been changed erroneously were corrected.

8.2.1. Access restrictions in a document register

The Chancellor addressed all kindergartens and schools with a request to take particular care when processing children's data. The Chancellor's address was prompted by a situation where the information system for the management of Estonian schools had allowed documents containing personal data of children to be freely accessible to the public. The Chancellor emphasised that the law prohibits third persons from gaining access to documents describing children's health, special needs, academic achievements, and other personal data. This information may cause bullying and result in subsequent poorer treatment as to choice of a school or profession.

The same principles also apply to processing the data of school and kindergarten staff and parents. The Chancellor drew attention to the preparation of documents and pointed out the grounds for restricting access to documents. She also emphasised that publicly accessible information in a document register should not disclose in the title of a document a person's name or other data enabling an understanding of whom the document deals with.

8.2.2. Public accessibility to information on wages of staff in public universities

Under § 36(1) clause 9 of the Public Information Act, a legal person in public law may not classify documents as information intended for internal use if those documents concern use of their budgetary funds and wages paid to persons employed under employment contracts and other remuneration and compensation paid from the budget. The Chancellor was contacted by an individual asking to verify whether interpretation of that provision according to which information on wages of staff in public universities must be disclosed in personalised form when responding to a request for information (so-called passive disclosure) was compatible with the Constitution.

The Supreme Court has previously said that personalised disclosure of wages ensures control over whether the choice of an employee, the size of their remuneration and additional remuneration received may have been affected by inadmissible considerations. In the end, the issue boils down to using public money and exercising public control to prevent possible violations. The Supreme Court emphasised that the

judgment at issue only dealt with wages of local authority staff. Consequently, the conclusions of the judgment do not directly extend to university staff.

Different provisions of the Public Information Act require simultaneously a guarantee of privacy and compliance with the conditions of public access to information on budgets (including wages paid). The Chancellor found that under current law a public university may decide whether disclosure of personalised wage information of staff in a specific case is proportional to restriction of privacy involved in disclosure. Where possible, a solution less interfering with privacy should be found.

8.2.3. Personal data in the media

Under § 4 of the Personal Data Protection Act, personal data may also be disclosed in the media without the person's consent. In doing so, the media channel must be convinced that three main conditions are simultaneously fulfilled: public interest must exist in disclosure of the person's data, the principles of journalism ethics must be observed, and excessive damage to the rights of the person may not be caused. Public interest does not mean only a matter arousing interest among the public, or in other words curiosity. Disclosure of personal data must contribute to debate on an important public issue.

The Chancellor does not control the activity of media publications nor does she exercise supervision over how media channels comply with the requirements of the Personal Data Protection Act (that duty rests with the Data Protection Inspectorate). However, the Chancellor can advise people on how best to protect their rights.

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

In a situation where someone feels that a search engine (e.g. Google) displays links to websites that include outdated information about them (e.g. an outdated newspaper article containing information about punishments), the Chancellor has recommended contacting the search engine with an application to remove the link containing personal data from the list. However, the Chancellor cannot intervene in substantive resolution of the application.

8.3. Processing communications data

During the reporting year, the Chancellor also assessed whether submission of the data set out in § 111^1(2) and (3) of the Electronic Communications Act (ECA) has been requested from communications undertakings (Telia, Elisa, Tele2) and whether the data

have been used lawfully. The review covered enquiries in 2017–2018 in misdemeanour and civil court procedure and under the laws listed in § 111[1] clause 6 of the ECA (the Police and Border Guard Act, the Taxation Act, the Customs Act, the Witness Protection Act, the Weapons Act, and others).

Analysis revealed that communications data set out in § 111[1](2) and (3) of the ECA are mostly used in criminal proceedings and in collecting information under the Security Agencies Act (this time the Chancellor did not analyse the enquiries made for those purposes more closely). The proportion of enquiries with communications undertakings in the frame of other proceedings is relatively small.

Closer analysis was carried out regarding use of communications data in civil proceedings. Misgivings about the need to collect communications data have been repeatedly expressed (including references to an unjustifiably large number of such enquiries) in particular in the case of civil disputes which pose no threat to national security and public policy. Therefore, all the enquiries made by courts in the course of civil proceedings from the beginning of 2017 to November 2018 were assessed as to substance. It was found that the number of cases where communications data had been used was not high (during the review period communications data had been requested in the frame of 26 court cases) and mostly they related to the need to ascertain the author of anonymous comment in order to lodge a claim for damages for defamation of honour and good name against them.

Mostly, in those cases, it may be agreed that apart from use of communications data no better or less restrictive measure in terms of privacy exists to attain the legal aim (establishing the essential facts in a specific civil case). Nevertheless, two cases were found where a request for communications data had been questionable since the requests could not yield the evidence desired in civil proceedings or the request for communications data was superfluous. In one case, a request for communications data in civil proceedings actually sought to prove a criminal offence.

Communications data in misdemeanour cases are also requested relatively seldom: a total of 47 occasions in 2017–2018 (to November). Requests were made exceptionally with court authorisation. Analysis of misdemeanour proceedings revealed a different practice by the courts in authorising requests for communications data. Some court authorisations enabled requesting data to a larger extent than laid down by law for a single request.

Surveillance agencies may also request communications data set out in § 111[1](2) and (3) of the Electronic Communications Act for purposes outside criminal proceedings in cases laid down under the Organisation of the Defence Forces Act, the Taxation Act, the Police and Border Guard Act, the Weapons Act, the Strategic Goods Act, the

Customs Act, the Witness Protection Act, the Security Act, the Imprisonment Act and the Aliens Act.

From the beginning of 2017 to November 2018, communications data under those Acts were requested on 352 occasions. The Tax and Customs Board requested data under the Taxation Act and the Customs Act on 157 occasions, and the remaining 196 requests were made by structural units of the Police and Border Guard Board under the Police and Border Guard Act, the Weapons Act and the Witness Protection Act.

Based on a random sample, the Chancellor's advisers verified the legality of the requests by the Tax and Customs Board and the Police and Border Guard Board. In all the cases verified, the request had been justified, had been made with the person's prior consent and with authorisation from the head of the institution or the prosecutor's office.

IX. CITIZENSHIP

During the reporting year, several important debates in Estonia took place on topics concerning Estonian citizenship, the rights of aliens, but also international declarations on immigration policy. The Chancellor had to assess and consider the lawfulness of the decisions made and the manner and speed of administration by Estonian government agencies.

9.1. Citizens of the Republic of Estonia

When resolving petitions submitted to the Chancellor, it was found that the Police and Border Guard Board (PBGB) had made several mistakes in proceedings concerning citizenship. On several occasions, the PBGB violated individuals' rights by failing to issue new personal identity documents on time or declaring documents invalid before the underlying decision had taken effect.

9.1.1. Optants and their descendants

Considerable public attention was devoted to the issue of citizenship of the so-called optants and their descendants: what is the legal status of people who acquired Estonian citizenship on the basis of the Tartu Peace Treaty but did not return to Estonia in the 1920s? The PBGB had previously recognised the descendants of these people as citizens by birth but later changed its position.

Optation means opting for citizenship (in particular in the event of transfer of territory from one country to another) and settling in the country considered as one's new homeland. In the context of Estonia, optants are primarily Estonians migrating from Estonia mostly to Russia at the end of the 19th and the beginning of the 20th century who, after Estonia's independence, obtained the opportunity to accept Estonian citizenship and come to live here. In 1920–1923, some 80 000 Estonians opted for Estonian citizenship but only 37 500 of them actually came to Estonia. For various reasons, more than half of them stayed in Russia and Georgia (Abkhazia). In many cases, the reason was that they could not return or were prevented from returning to Estonia.

The Chancellor made a proposal to the PBGB to continue issuing optants and their descendants with identity documents for Estonian citizens. A legally unclear situation should not be turned against those who have already once been deemed citizens of the Republic of Estonia by birth. When the term of validity of the documents expires, the PBGB need not re-assess the issue. Based on the Constitution and the law, a new document must be issued to these people on expiry the term of validity of the current document. Where people themselves have not tried to mislead the state when applying

for citizenship, it is not fair to place them in a worse situation than before only because the PBGB has changed its administrative practice.

Possible political and legal disputes over citizenship and the conditions for having it should take place separately. The Chancellor also indicated that the PBGB must once again assess the issue of citizenship of the descendants of optants as new historical information about this has emerged in the meanwhile.

9.1.2. Erroneously acquired citizenship by birth

The Chancellor had to assess a situation occurring in 2019 where an individual had been declared an Estonian citizen by birth in 1994 and an Estonian citizen's documents had been issued to them, but verification of the facts revealed that the decision had been made in error. The PBGB explained to the individual that they had never been an Estonian citizen and did not issue them with new documents. By a subsequent decision resolving an extra-judicial administrative challenge, the PBGB did issue the individual with a passport for two years but still maintained the position that the past decision had been in error.

According to the Chancellor's assessment, a decision to recognise a person as a citizen by birth should be considered a legally binding administrative act. The principle of legal certainty should be observed when changing or annulling it. A mistake or an error discovered years later may mean that the original decision had been an unlawful administrative act but, nevertheless, this does not automatically invalidate the decision. If the state recognised an individual as a citizen, then that person has been an Estonian citizen. This decision is valid until a new administrative act is issued. The PBGB, if it goes on to re-examine the decision on citizenship, should thoroughly consider all the facts, the principle of legal certainty, and the interests of the person concerned.

Thus, PBGB practice whereby an individual is simply notified (without issuing an administrative act) that they are no longer and never have been an Estonian citizen is unlawful. It is also worth pointing out that children of a person once recognised as an Estonian citizen are Estonian citizens by birth.

9.1.3. Loss of citizenship

Where a person, having acquired Estonian citizenship through naturalisation, is simultaneously a citizen of another country, the PBGB may initiate proceedings to deem a person to have ceased to be an Estonian citizen. In doing so, the principles of administrative procedure and good administrative practice have to be observed. A citizen by birth may not be deprived of their citizenship.

- With regard to one case, it may be said that the PBGB's data did not coincide with the individual's own data. According to the PBGB data, the person had acquired Estonian citizenship by naturalisation on marriage. The individual, on the other hand, knew that they were an Estonian citizen by birth. The PBGB, in turn, did not know whether the manner of acquiring citizenship had been recorded in the database at the time of making the decision or during a subsequent check of documents. The PBGB itself did not notify its decision to the person, who was therefore unable to raise objections or seek evidence to prove their citizenship by birth. Moreover, the PBGB was of the opinion that investigation of data that could prove possible citizenship by birth would require too many resources.

The Chancellor found that the PBGB should have investigated more thoroughly whether the person was a citizen by birth. The situation should also have been better explained to the person. Although the law allows a person to be deprived of citizenship when they have acquired citizenship by naturalisation but have also accepted the citizenship of another country, all the essential facts should nevertheless be ascertained. The individual should be given sufficient time to decide whether to give up the second citizenship. They should also be given time to make life arrangements resulting from that decision. Based on the Chancellor's recommendation, the PBGB gave the person additional time to collect evidence.

- The Chancellor received a letter from an individual who contended that the PBGB had disregarded their objections and issued a decision but failed to inform them of it. As a result, the individual heard from the Russian authorities that their Estonian passport had been revoked. The Chancellor established that the PBGB had not demonstrated sufficient diligence in proceedings concerning citizenship as a very significant legal right. The PBGB had notified the individual about initiation of proceedings and given them an opportunity to submit objections, but upon expiry of the deadline for reply the PBGB failed to establish the facts and, after this, deemed the person to have lost their citizenship and revoked their documents. According to the Chancellor's assessment, the PBGB acted in an excessively formalistic and legalistic fashion and showed no interest in whether the individual received the decision issued affecting them. The PBGB must verify when a person has received a decision by which they are deemed to have lost their citizenship, as the decision does not take effect before it is personally served. Although the PBGB had sent the decision on loss of citizenship to the person by registered mail with notice of delivery, it subsequently showed no interest in why no confirmation had arrived as to whether the letter had been delivered.

- According to the Chancellor's assessment, the Citizenship Act is not in conflict with the Constitution although it does not enable restoring citizenship by birth

once a person has renounced their Estonian citizenship as an adult. For minors, the Constitution provides an additional safeguard in this respect: it must be possible for them to restore their citizenship since giving up citizenship may have been, for instance, a decision by their parents. The state presumes that adults make decisions related to citizenship consciously and after careful consideration.

- The Chancellor was asked to assess whether applying the prohibition on multiple citizenship to persons acquiring Estonian citizenship prior to Estonia's regaining independence was compatible with the principle of legitimate expectations. The Chancellor was contacted by an individual who had acquired Estonian citizenship after marrying an Estonian citizen in 1982. Additionally, they acquired U.S. citizenship in 2005. According to the Chancellor's assessment, the decision on loss of citizenship in this case did not disproportionately interfere with the principle of legitimate expectations. A resolution of 26 February 1992 of the Supreme Council of the Republic of Estonia stipulated that the prohibition on dual citizenship arising from the 1938 Citizenship Act would only apply to persons acquiring Estonian citizenship after adoption of that resolution. However, this was a piece of legislation adopted during the transition period and the petitioner had the opportunity to take the prohibition on dual citizenship into account when accepting the second citizenship.

9.1.4. Issuing of personal identity documents

Several people complained to the Chancellor about issue or annulment of personal identity documents. The PBGB had consistently violated individuals' rights by delaying issue of identity documents even though no legal basis to do so exists. On several occasions, the Chancellor has drawn attention to the fact that issue of identity documents should be distinguished from procedures concerning citizenship. People have waited for months for issue of new documents and have therefore been unable to travel to Estonia, to receive a pension, etc.

For example, the PBGB has extended the deadline for processing an application for issue of new identity documents in order to look into the circumstances of an individual's acquisition of citizenship or the matter of dual citizenship. However, this is not allowed under legislation. A person needs identity documents for different acts on a daily basis. Therefore, short deadlines have been set for issue of these documents. The deadline may only be extended if verifying the existence of a legal basis for issue of an identity document or checking the identity of the applicant takes longer than the period set for processing the application.

New documents for an Estonian citizen must be issued promptly. Even when a suspicion has arisen with regard to the legal basis for acquisition of citizenship, those

circumstances should be verified in the frame of separate administrative proceedings, but this gives no grounds for delay in issuing documents. (See the Chancellor's opinion on delay in issue of identity documents, citizenship of descendants of optants and decision on loss of citizenship.)

The PBGB violates the law when revoking a person's identity documents before having delivered a decision to them on loss of citizenship. The Chancellor explained that a decision on loss of citizenship does not take effect before it is personally served, so that no legal basis exists to revoke someone's documents beforehand. A person may also find themselves in difficulty when their documents are revoked before they have even learned that the PBGB has made a decision on their citizenship.

9.2. Aliens

9.2.1. Examination of applications for a residence permit

The Chancellor found several shortcomings in resolving applications for a residence permit lodged with the PBGB, and found unjustified delays in the work of the PBGB.

- The problem is that the procedure laid down by the PBGB according to which people should book a time slot to submit their application for a residence permit impedes the process. The Chancellor was contacted by an individual who had been forced to wait for more than a month for an opportunity to submit an application for a residence permit because not a single vacant slot for an appointment was available in the PBGB Tallinn service bureaus. The PBGB refused to accept an application sent by e-mail. This meant that the person's application could not be included in the 2019 immigration quota.

The Chancellor explained that under the Aliens Act an application for a residence permit should, indeed, be submitted in person, so the PBGB did not violate the law by refusing to examine an application for a residence permit sent by e-mail. However, the requirement for booking a time slot for an appointment is not in line either with the law or the principles of good administrative practice, in particular in a situation where waiting time for an appointment is more than a month. This amounts to administrative incapacity violating the right of access to public services. The Chancellor drew attention to the same shortcomings in her 2018 overview.

In the specific case, the main problem derived rather from the quick fulfilment of the immigration quota; however, the Chancellor cannot assist in resolving that problem. The immigration quota is set by the Government and the parliament.

Since the PBGB has justified creating the system of appointment booking by examples set abroad (primarily Sweden), the Chancellor also looked into this aspect. It was found

that in the Swedish Migration Agency applications could be submitted in the online environment as well as on the spot in a service bureau by waiting in a general queue. The booking system is needed primarily for certain operations (fingerprinting and photographing) but this stage is reached after the agency has already started dealing with a person's application. Moreover, the Swedish system allows for exceptions for those who need to apply urgently. Thus, the system created by the PBGB is not particularly similar to the system used by the Swedish Migration Agency. Rather, the PBGB uses the booking system because of its limited resources. However, in the event of an increased workload or a crisis situation (e.g. when urgent replacement and renewal of faulty ID cards is needed), such a system impedes people's access to a public service essential for them.

The Chancellor also found other delays in the work of the PBGB; these concerned a decision on expulsion and its enforcement. Resolving an application for the right of residence of a family member of a European Union citizen also took longer than permissible.

A person who had been staying in the detention centre for seven months and had received a decision for expulsion complained to the Chancellor that they wished the decision to be enforced more quickly. Investigation of the matter revealed, inter alia, contradictions in the information submitted by the petitioner, which at least partially prolonged the process. However, the PBGB had also been inactive for four months, so that no new enquiries were made with the embassy of the expellee's country of origin nor were travel documents requested from the embassy. The PBGB made new enquiries only when the deadline for court-issued authorisation for detention was about to expire.

There was also a case where the PBGB first contacted an applicant for the right of residence of a family member of an EU citizen only four months after submission of the application. Yet, already during the first month it was clear that the specific application might not comply with the conditions for granting a right of residence to a family member of an EU citizen. Following the Chancellor's intervention, the PBGB explained to the applicant all the circumstances and problems concerning the proceedings.

9.2.2. Identifying foreign citizens

The Money Laundering Prevention Act lays down that, in order to identify the person of an e-resident, a foreign national must present to a credit institution a document bearing their photograph (unlike the ID card, an e-resident's card does not bear a photograph).

The requirement was established with a view to preventing a situation where, in actuality, an e-resident's card and PIN codes are used by someone else. The wording

of the provision in the Money Laundering Prevention Act may cause confusion in identifying foreign nationals living in Estonia on the basis of a long-term residence permit and Estonian nationals with dual citizenship. Once Estonia has already granted to an alien a residence permit and an identification document based thereon, it is no longer necessary to ask them to present a foreign identity card.

The Chancellor was asked to explain why the PBGB requests data on an applicant's social media accounts when applying for an e-resident's digital identity card. The person had also asked for information from the PBGB about this, but the PBGB had failed to reply. The Chancellor explained that under the General Data Protection Regulation people should be notified about the purpose and the legal basis for collecting their personal data. (See also the Chapter „Protection of privacy".)

9.3. Population records

9.3.1. Registration of residence

Considerable confusion was caused by the new Population Register Act when, as a spill-over effect of rearrangement of the register data, some people were initially not entered on voter lists due to absence of residence data. At the beginning of 2019, data in the population register based on which a person's residence had been recorded to a level of accuracy stating the city, city district or rural municipality or settlement unit became invalid. As voter lists are drawn up on the basis of the population register data, people who had not renewed their data were excluded from the list of voters. The Chancellor explained that prior to an election a person's residence can be registered through a simplified procedure; if necessary also to the level of accuracy of a city, city district or rural municipality. After that the person is also entered on the list of voters.

The Chancellor was contacted by a European Union citizen wishing to record a hostel as their residence in the population register, and submitting to the vital statistics office confirmation from the hostel on booking a room. However, an official at Tallinn Vital Statistics Office requested the person to submit a lease contract or permission from the owner of the hostel. The Chancellor found that no such additional requirements may be imposed and the vital statistics office had been in error. The law also allows registration of a non-dwelling as one's residence but the person must prove the right to use those premises as a residence. That right is also provided by written confirmation from a hostel on booking a room. In that case, no permission from the owner of the building is needed.

9.3.2. The right of a refugee to change their name

During preparation of the Draft Names Act, the Chancellor repeated her earlier opinion presented in the Chancellor's 2017–2018 overview that a refugee is also entitled to

change their name. However, the Draft Act stipulated that an applicant for international protection may only change their name after a residence permit of a long-term resident has been issued to them.

A refugee is in a situation equivalent to a stateless person as they are no longer under the protection of their state. That situation arises immediately after receiving refugee status. A refugee may have compelling reasons for changing their name.

9.3.3. Legal analysis of the United Nations Global Compact for Migration

In autumn 2018, the Chancellor analysed the legal nature of the UN Global Compact for Migration at the request of the Government, the Minister of Foreign Affairs, and the Riigikogu. The issue was whether the Compact constitutes an international agreement that may involve binding obligations: for example, the obligation to change nationally established immigration policy.

The Chancellor reached the conclusion that the Global Compact for Migration is not an international agreement and does not impose additional obligations on Estonia. International agreements are considered to be agreements that express the intent of the parties to incur legally binding rights and duties. The UN Global Compact for Migration, however, clearly states that it does not impose legal obligations but creates a platform for international dialogue and cooperation.

Approval of the Global Compact for Migration does not impose legal obligations on the state since the text of the document precludes such a development. Nor can the Global Compact develop into a norm of customary law without additional agreements to be concluded with Estonia's participation and without long-standing practice.

About inspection visits to the detention centre, airport detention facilities and the transit zone, see the chapter "Inspection visits".)

X. CITIES AND RURAL MUNICIPALITIES

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 and cities must observe the Constitution and other laws in their activities. The duty to respect fundamental rights and liberties of individuals, to save the taxpayer's money, and handle all matters fairly also extends to local authorities.

Local authorities are not a local extension of the arm of the Government of the Republic 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 or rural municipality. What should be built and where, how to organise cleaning of roads and streets, waste transport, provision of public services and amenities, what to do in order to enjoy good living conditions in a rural municipality or city – those matters can best be arranged by local inhabitants themselves. The state should provide support in this process: matters should be arranged so that local authorities have money to promote local life. The state may also impose functions of the state on local authorities, but in that case sufficient funds should be provided from the state budget. Local and state budgets are separate.

The Chancellor receives a lot of questions concerning the work and problems of local authorities. As a rule, problems are resolved in the course of information exchange with a local authority, so that in the process a local authority revises its legislation in line with the Chancellor's proposals, and there has been no need for recourse to the court. An exception is Narva City Council, which did not change their unconstitutional regulations on mandatory social services. Therefore, in order to have the unconstitutional provisions of those regulations repealed, the Chancellor had to apply to the Supreme Court.

10.1. Lawfulness of legislation

During the reporting year, the Chancellor made numerous proposals to bring local authority regulations into line with the laws and the Constitution.

10.1.1. Regulations on keeping dogs and cats

Viimsi rural municipality's regulation on keeping pets imposed obligations and responsibility on persons feeding a stray pet. The Chancellor made a proposal to the rural municipal council to bring the regulation into line with the laws (the Animal Protection Act, the Infectious Animal Disease Control Act, the Local Government Organisation Act), the Government of the Republic regulation („The procedure for catching and keeping stray animals and identifying their owner, and killing of stray animals"), and the Constitution. Imposing the obligations and liability of an animal keeper on a person feeding a stray animal unlawfully restricts their fundamental right

to property (§ 32(1)–(3) Constitution) and the general fundamental right to liberty (§ 19(1) Constitution). The rural municipal council annulled the unlawful provision.

Kadrina rural municipality regulation on keeping cats and dogs provided that its violation constitutes a misdemeanour which the law no longer stipulates. Misdemeanour offences should be established by a law and not a rural municipal council regulation. Also, the municipal council should only refer in its regulation to the statutory elements of a misdemeanour offence and not rewrite them in its regulation. The Chancellor made a proposal to the rural municipal council to bring the regulation into line with the Local Government Organisation Act, the Penal Code and the Rules for good law-making and legislative drafting. The municipal council complied with the Chancellor's proposal.

10.1.2. Property maintenance rules

Lääne-Harju rural municipality rules on property maintenance prohibited, inter alia, the following activities within the rural municipality boundaries:

- damaging road surface, lawn surface, flowers, bushes, hedges or trees, and any unauthorised cutting;
- placing any items and food inappropriate for that place on the outside of a window;
- drying laundry above the barrier of a balcony or loggia.

These bans are not lawful since they fail to take into account different forms of ownership or particularities of local conditions (high- or low-density population area). Establishing property maintenance rules is actually the task of a city or rural municipality precisely because of the need to take into account local conditions, including the population density of each area. After the administrative reform, many rural municipalities include urban areas and many city boundaries include low-density areas where a rural way of life is predominant. Different restrictions should apply in secluded rural areas and high-density areas. Establishing local rules should take into account that they should not enable someone to be punished several times for the same act.

The Chancellor made a proposal to Lääne-Harju Rural Municipal Council to bring the property maintenance rules into line with the Penal Code and the Constitution. The municipal council introduced the necessary changes to the rules.

10.1.3. Local statutes for electing a village elder

Under the borough and village elder and local community body statute of Haljala rural municipality, the rural municipal government issues a list of residents to a borough or village elder for registration of participants in a general meeting. However, the rural

municipal government cannot do this since the activities of a general meeting of a borough or village, or election of a borough or village elder, are currently not regulated as the exercise of a public function. This would then constitute unlawful processing of personal data. However, a municipal council may regulate organisation of the election of a borough or village elder and the procedure for supervision over its regulations as the exercise of a public function.

The Chancellor proposed that Haljala Rural Municipal Council should bring the statutes into line with the Population Register Act and the Constitution (§ 26 – inviolability of private life). The municipal council took the Chancellor's proposal into account and established new statute.

10.1.4. Waste management regulations

A resident of Türi rural municipality drew the Chancellor's attention to provisions in the municipality's waste regulations regulating the frequency of organised waste transport in the municipality. The regulations stipulated that transport of waste may occur less frequently (once a quarter) than normal if up to two people are living at the place of generation of waste, not much waste is generated and keeping it in a container does not pollute the surrounding area.

The Chancellor found that the Waste Act does not enable the frequency of waste transport to be linked with the number of people living at the property. On that basis, the respective condition in the regulations is arbitrary and precludes the local authority from exercising discretion.

The Chancellor made a proposal to Türi Rural Municipal Council to bring the municipality's waste regulations into line with the Waste Act and the Constitution (§ 3(1) and § 154(1) – legality). The municipal council established new waste management regulations complying with the Chancellor's proposal.

10.1.5. Building regulations

Entry into force of the Building Code and the Planning Act on 1 July 2015 deprived local authorities of the right to establish land use and building conditions under their regulations. Thus, at the latest by 1 July 2017, local authorities had to revise their building regulations and bring them into line with the law (Implementing Act of the Buiding Code and of the Planning Act). Tallinn City Council and the Council of Haapsalu Town had failed to amend some building regulations by the deadline. The Chancellor made a proposal to Tallinn City Council to annul the building regulations of Astangu, Pelgulinn and Nõmme city districts, and sent a memorandum asking the Council of Haapsalu Town to bring the city's building regulations into line with the law. In both

cases, the Chancellor's proposal was complied with and the relevant regulations have been annulled.

10.1.6. Procedure for trading

The "Procedure for trading at fairs, public events and in the streets" established by a regulation of the Council of Loksa Town changed the substance of a concept defined by law. This is not lawful since a regulation cannot expand or narrow the scope of concepts defined by law.

The Chancellor made a proposal to the Council of Loksa Town (29 November 2018; 22 April 2019) to bring the regulation into line with the Trading Act, the General Part of the Economic Activities Code Act, and the Constitution (§ 13(2) – legal clarity; § 3(1) and § 154 (1) – legality). The town council annulled the relevant regulation.

10.1.7. Financial management procedure

The financial management procedure of Lüganuse rural municipality did not indicate whether, in a situation where a supplementary budget is adopted in two or more readings, its processing in the municipal council is the same as for the draft budget.

The Chancellor made a proposal to Lüganuse Rural Municipal Council to revise the municipality's financial management procedures as regards proceedings for a supplementary budget. The municipal council complied with the proposal.

10.1.8. Price for water services

Loksa town regulation on the procedure for connecting to, and using, the public water supply and sewerage system, and charging a connection fee regulates the price of water services, stipulating that those connected to the public water supply and sewerage system pay a basic fee to the water undertaking in an amount approved by the government of town on a proposal by the water undertaking. These provisions contravene the law as laws do not entitle municipal councils to regulate price formation of water services by a legislative act of general application. The Chancellor made a proposal to the Council of town to bring the regulation into line with the Constitution. The Council of Loksa Town complied with the Chancellor's proposal and changed the regulation.

10.1.9. Procurement procedure

„Põhja-Sakala rural municipality procurement procedure", established by a rural municipal government regulation, contains a provision under which an invitation to tender may be made to one person when purchasing goods and commissioning

services with an estimated value under 10 000 euros, and when commissioning building works with an estimated value under 20 000 euros. Thus, the rural municipality enables purchase of goods and commissioning of services and building works within a specific and relatively high amount from one tenderer only.

Such a provision in procurement procedure is incompatible with the general principles for public procurement and unlawfully restricts freedom of competition and, consequently, also freedom of enterprise (§ 31 Constitution). However, the general principles for public procurement (§ 3 Public Procurement Act) stipulate, inter alia, that the contracting authority or entity must act transparently, verifiably and proportionately when carrying out public procurement, and must ensure effective use of competition. These principles have been laid down in order to prevent so-called targeted tenders to give preference to a specific producer, product or tenderer, and open up public procurement to competition. Effective use of competition presumes that an opportunity to participate in a tender is given to everyone who is able to offer solutions suitable for a local authority.

The Chancellor sent a memorandum to Põhja-Sakala Rural Municipal Government to bring the procurement procedure into line with the law.

10.2. Guarantee of fundamental rights and freedoms

Rural municipalities and cities must respect the fundamental rights and freedoms and the principles of good administrative practice in their activities. The Chancellor is tasked with supervising this. The proceedings end with the Chancellor's opinion assessing whether the activities of the supervised institution were lawful and compatible with the requirements of good administrative practice.

Under the Constitution (§ 154(1)), local authorities manage all local matters independently, on the basis of laws. Local matters arise from a local community. On the basis of laws or by agreement with a local authority, the state may also impose state-level obligations on rural municipalities or cities (§ 154(2) Constitution).

10.2.1. Child protection

Parents often contact the Chancellor complaining that they are dissatisfied with the activities of a child protection worker for their city or rural municipality. Mostly, the complaints concern the work of child protection bodies in a dispute between parents on the right to custody or access. In judicial proceedings concerning a minor, the court must ask the opinion of a rural municipal or city government. Parents have different expectations as to the steps a child protection worker should take before submitting an opinion to the court. The practice of child protection workers also varies. (See in more detail the Chapter "Children and young people").

10.2.2. Access to education

State and local authorities must ensure access to education in Estonian (§ 37(2) and (4) Constitution) to everyone regardless of the pupils' mother tongue.

The state and the Government of Kohtla-Järve Town have agreed that, in future, upper secondary education in Estonian in Kohtla-Järve town will be provided by the state. A solution that enables young people with different mother tongues to attend the same school promotes mutual understanding in society and also, by this means, respect for constitutional values. At the same time, it requires stronger efforts from state and local authorities in order to ensure the sustainability of Estonian in places where Estonian mother tongue speakers are in the minority (see the Chancellor's opinion „Reorganisation of the school network in Kohtla-Järve").

Under the Basic Schools and Upper Secondary Schools Act, a local authority must, as a rule, enable children to receive basic education at a school based on a child's residence and managed by the local authority itself. A rural municipality or city organises transport of pupils to school and back. In so doing, the local authority is not required to compensate costs that a family incurs when driving a child to school and back in their private vehicle. Where a local authority has enabled a child to receive basic education at a school within the same municipality, it is not required to organise transport of pupils to school in a neighbouring local authority and back. A local authority is required by law to organise school transport if, by agreement with another rural municipality or city, it has assigned a school located there to be a child's school based on residence. At the same time, even in that case a local authority need not compensate the costs of using a private vehicle. The local authority of a pupil's residence is obliged to compensate a pupil's transport costs only where the local authority cannot organise a pupil's studies in accordance with a recommendation of the external advisory team and where the local authority itself has not organised transport or where transport costs have not been compensated from the state budget under the procedure established on the basis of the provisions of the Public Transport Act (see „Compensation of pupil's transport costs").

10.2.3. Access to kindergarten service

It is lawful for a local authority to give a kindergarten place as a priority to a child whose sister or brother already attends the same kindergarten. Under the Preschool Childcare Institutions Act, a rural municipality or city must ensure a place in a preschool childcare institution within a reasonable time to all applicants meeting the conditions laid down by law. Thus, a child having no siblings in a kindergarten must also receive a place in a kindergarten. However, the law does not entitle anyone to a place in a specific childcare institution (see „The principles of giving a place in a kindergarten").

A municipal council by its regulation may (see „Establishment of participation fee in Lääne-Harju rural municipality preschool childcare institutions“) establish the maximum limit of a participation fee paid by parents in kindergartens of the municipality (formed in the course of administrative reform), while also laying down distinctions and their abolition after a transition period. The Chancellor was contacted by residents of Lääne-Harju rural municipality who were dissatisfied with distinctions in the kindergarten fee laid down by the municipality. The law enables rural municipal or city councils to establish the rate of a parents' participation fee which may be differentiated depending on each child's age, the management costs of the childcare institution, or other circumstances. Thus, the law also allows differentiation to be based on circumstances not clearly defined by law. Prior to merger, the rural municipalities had applied a different fee rate for a kindergarten place so that the newly established rural municipality wanted to establish a fair procedure for transition to a uniform fee.

The Chancellor found that the need for a smooth increase in the fee for the municipality's kindergartens may be deemed a reasonable and relevant justification for different treatment, which is compatible with the law.

10.2.4. Single pensioner allowance

During this reporting year, the Chancellor also had to resolve the concerns of pensioners deprived of allowance because of incomplete or incorrect address data. Under the Spatial Data Act, location addresses must be established for parts of buildings (apartments) if the parts of buildings are dwellings or if it is necessary to distinguish them on the basis of an address for other reasons

For example, Tallinn has refused to assign an address to a separate dwelling if the number of apartments/dwellings prescribed by a detailed plan does not coincide with the actual number of dwellings. Tallinn has also left an address unspecified for the reason that otherwise the person would lose the land tax exemption. At the Chancellor's request, Tallinn city has nevertheless changed its previous practice.

10.2.5. Access to public buildings

Local authorities have the duty to ensure that people with disabilities can independently and fully participate in all walks of life. Thus, access to buildings, public transport, information and communication should be ensured to them on an equal basis with others. This is also important in connection with elections (see „Access to public buildings“).

10.2.6. Public transport

The Chancellor sent a memorandum to local authorities in connection with problems of organising public transport. She drew attention to possibilities for rural municipalities and cities to organise school transport (measures to ensure safety of passengers, access of people with disabilities to public transport vehicles). In order to obtain a precise overview of local situations, the Chancellor asked local authorities to send her relevant information. By the time of drawing up the report, the Chancellor had received replies from 59 local authorities. (See in more detail the Chapter "Children and young people").

10.2.7. Noise

A local authority must take into consideration a detailed spatial plan established by itself when issuing building permits or permits for use as well as authorisations for public events, or when carrying out supervision over compliance with a detailed spatial plan under the Building Code. In a situation where the noise level in the vicinity of a motor racing circuit exceeds the established thresholds but a detailed spatial plan lays down requirements for reducing noise, residents in the vicinity of the racing circuit are entitled to presume that the local authority will ensure compliance with the requirements set out in the plan.

Assessing whether measures taken to reduce noise are sufficient requires measuring the noise. Based on the results of measurements, a decision can be made as to whether additional measures for noise reduction are needed apart from compliance with the requirements set out in the detailed plan. Requirements prescribed in a detailed plan must be observed regardless of the level of noise (see „Noise at Audru motor racing circuit").

10.2.8. Release from obligation to join organised waste transport scheme

Decisions by a rural municipal or city government on release from the obligation to join an organised waste transport scheme must be made on a case-by-case basis. First of all, responsibility for transport of waste lies with the person whose activity generated waste and who is in possession of waste. However, a waste holder may also organise waste transport through an apartment association. Rules based on which a rural municipal or city government can decide on release from the obligation of waste transport are set out in the Waste Act (see „Release from the obligation of waste transport").

10.2.9. Establishing compulsory possession

Under § 39(1) of the Acquisition of Immovables in the Public Interest Act, establishing compulsory possession is decided by a person who has the power to grant a building permit or decide the designation of a private road for public use under the Building Code. Although that provision does not exhaustively define the power to establish compulsory possession, this alone cannot be the reason to deem the provision unconstitutional. In this case, a constitutionally-compliant interpretation would enable compulsory possession of an immovable instead of its acquisition in the public interest. Although no building permit is needed for an overhead power line below 35 kV, nevertheless the competence of compulsory possession lies with a rural municipality or city (see „Competence to establish compulsory possession").

Public access to a road can be ensured primarily in two ways. First, reaching an agreement with the owner of an immovable on establishing a servitude (or other limited right) on the immovable should be tried. If no agreement can be reached with the owner of an immovable, compulsory possession on it may be established under the Acquisition of Immovables in the Public Interest Act (see „Activities of a rural municipality in establishing compulsory possession").

10.2.10. Maintenance of a private road

The Chancellor was asked to clarify the rules on snow control on private roads. Under the Building Code, a local authority is required to clean a private road of snow only if the road is designated for public use. However, a local authority may decide to be more generous. Winter maintenance on a road not designated for public use cannot be arranged by a local authority against the owner's will or without another legal basis laid down by law. By doing so, the local authority would violate the fundamental right to property (§ 32 Constitution; see „Winter maintenance of a private road not designated for public use").

10.2.11. Public information

The Chancellor's Office analysed information provided by cities and rural municipalities on their websites about social services which local authorities are required by law to organise for their residents. Information must be sufficient, accessible and understandable, and diverse modes of providing information should be used. An individual who is not aware of their rights cannot exercise them (memorandums to Tartu City Government, Maardu Town Government, Tartu Rural Municipality Government).

10.2.12. Public access to municipal council sessions

Public access to municipal council sessions means that everyone may, on the spot, observe voting on agenda items of interest to them. A decision by a municipal council chair to remove from a council session people observing a debate on a public agenda item is not compatible with the principle of public access to local government activities and municipal council sessions. That decision also fails to respect the requirements for exercise of the margin of appreciation and contravenes the Constitution (§ 34 – freedom of movement, including the right of stay; § 44(1) – right to free access to information disseminated for public use).

The Chancellor drew the attention of the chair of Saarde Rural Municipality Council and municipal councillors to the need to duly respect the rights of visitors at a municipal council session.

10.3. Work of municipal councils

A municipal council is the representative body of a local authority (§ 156(1) Constitution) that is elected in democratic elections and whose competence includes deciding on the most important local matters.

10.3.1. Incompatibility of offices and positions of a municipal council member

The grounds for premature termination of a municipal council member's mandate are laid down by the Local Government Organisation Act. Under the Act, the authority of a municipal council member also terminates prematurely "in connection with employment in an administrative agency of the same rural municipality or city" (§ 18(1) clause 6).

According to the Chancellor's assessment, such premature termination of a municipal council member's mandate is contrary to the Constitution (§ 10, § 11 second sentence, § 29(1), § 156(1)), the European Charter of Local Self-Government (Art 3 para. 2, first sentence) and the Additional Protocol (Art 1 para. 5.1) to the Charter, on the right to participate in the affairs of a local authority. It also contravenes the Municipal Council Election Act (§ 5(5)). The provision excessively restricts passive suffrage, a municipal council member's free mandate, freedom to choose one's area of activity and place of work, and is incompatible with the principle of democracy and uniformity of election. The risks of incompatibility of a municipal council member's mandate and assuming work on the basis of an employment contract in a rural municipality or city administrative agency can be mitigated in the event of a conflict of interest by having a municipal council member withdraw from debate and decision-making.

The Chancellor contacted the Riigikogu with a request that the parliament should bring that provision into line with the laws, the European Charter of Local Self-Government and its Additional Protocol, and the Constitution.

10.3.2. Preparation for a municipal council session

A municipal council as a constitutional institution (§ 156 Constitution) enjoys the right of self-organisation. Inter alia, this provides the opportunity to decide what materials need to be prepared for debate and to decide on each issue in different stages of the proceedings. No written materials are necessarily required to debate agenda items for information only. Municipal council members must be able to examine session materials prior to the session and prepare for debate on agenda issues. Organisation of municipal council work complies with the principles of good administrative practice (§ 14 Constitution) if it enables all council members in each stage of proceedings to form their opinion on the basis of timely, objective and sufficient information. If under an 'information item' on a council session agenda municipal council members are given written materials only after the session, they are entitled to know why they did not receive the material before the session.

10.3.3. Municipal council's exclusive competence

The Chancellor was asked whether a municipal council may lay down delegating norms for issues within the council's exclusive competence (e.g. granting benefits). The Chancellor found that the council is entitled to do so (see § 22(1) of the Local Government Organisation Act) but the most important aspects of an issue within the council's exclusive competence must be regulated by the municipal council itself and deciding on them may not be delegated to someone else (e.g. the municipal government). Otherwise, exclusive competence may become void of substance. What exactly are the most important aspects of an issue should be decided on a case-by-case basis taking into account the significance of the problem.

Under the Local Government Organisation Act, a municipal council enjoys exclusive competence only with regard to establishing a detailed spatial plan amending a comprehensive plan, but not initiating that spatial plan. The Planning Act stipulates that preparation of a detailed spatial plan amending a comprehensive plan must observe the procedural requirements for a comprehensive plan, but that wording does not include initiating the spatial plan. Thus, if a need arises to amend the comprehensive plan in the course of proceedings of a detailed spatial plan initiated by a rural municipal or city government, the ongoing proceedings need not be terminated and reinitiated by the municipal council.

However, the council could reveal its position on a detailed spatial plan as early as possible, because it would be unreasonable for the city or rural municipal government

to process a detailed spatial plan amending the comprehensive plan which the municipal council would not support anyway (see „Competence to initiate a detailed spatial plan amending a comprehensive plan").

10.3.4. Protection of municipal council members' rights

Legal disputes within a municipal council fall within the competence of an administrative court, but municipal council members may not have recourse to the court for protection of rights arising from their status. For Riigikogu members, that right arises from the Constitutional Review Court Procedure Act (§§ 16 and 17).

In order to improve protection of municipal council members' rights and the functioning of representative democracy, the Chancellor contacted the Riigikogu Constitutional Committee with a proposal to entitle municipal council members, in cases specified by law, to have direct recourse to an administrative court for protection of their rights arising from their status.

10.3.5. Election of municipal council deputy chairs

Election of municipal council deputy chairs is regulated by the Local Government Organisation Act and the rural municipality or city statutes. The law does not require or prohibit election of municipal council deputy chairs at the same session (on election of deputy chairs on the agenda of a new municipal council's first session, see § 44(3) of the Local Government Organisation Act). The requirements for preparing a municipal council session agenda laid down in rural municipality or city statutes should also be taken into account.

10.3.6. Public access to municipal council activities

According to the Chancellor's assessment, it is lawful to include a provision in a rural municipality or city statutes under which meetings of municipal council committees are held in camera, except where a committee chair decides otherwise. Public access is one of the underlying principles of local government. Municipal councils lay down the organisation of work and procedural rules for their committees. Under the law, meetings of municipal council committees need not be public (on public access to municipal council sessions, see § 44(4) of the Local Government Organisation Act). Certainly, a municipal council may also decide to make the meetings of their committees (more) public.

10.3.7. Activities of an audit committee

Written enquiries by a municipal council audit committee made internally within a local authority do not constitute requests for information within the meaning of the Public Information Act.

The Local Government Organisation Act (§ 48(5) does not oblige a municipal council to adopt a draft legal act submitted by its audit committee. Legal acts are established by the municipal council and not its committee.

Control of activities of a foundation under the dominant influence of a rural municipality or city cannot proceed only from the Foundations Act, but the competence of the municipal council's audit committee should also be taken into account. In its work the audit committee proceeds from the Local Government Organisation Act, rural municipality or city statutes, the committee's work plan, as well as tasks assigned by the municipal council. Under the law, the audit committee must present its activity report at a municipal council session at least once a year. The committee must definitely also provide a written overview of the annual report and submit it to the municipal council. The committee is entitled to verify the legality, expedience and effectiveness of activities of a company, foundation and non-profit association under the dominant influence of the rural municipality or city, and purposeful use of rural municipality or city assets. An audit committee is entitled to obtain information and all documents needed for its work. Specifically what documents an audit committee will check depends on the substance of the particular audit.

10.4. Conflict of interest

During the reporting year, the Chancellor received several questions concerning conflict of interest in local authorities. Mostly, the questions concerned procedural restrictions and restrictions on activities.

The Chancellor explained that the director of a municipal school who is a municipal council member may vote in adoption of a rural municipality or city budget or supplementary budget (containing the part on funding schools). Under the Local Government Organisation Act (§ 17(5), a municipal council member may not participate in debate and resolution of legislation of specific application in the municipal council with regard to which a procedural restriction extends to the member as stipulated by the Anti-corruption Act. Procedural restrictions do not apply to adoption of legislation of general application and to participation in its adoption or preparation. Within the meaning of the Anti-corruption Act, a local authority budget is deemed legislation of general application (§ 11(3) clause 1).

A municipal council may 'decouple' the remuneration of its members from remuneration of a rural municipality or city mayor, i.e. establish a specific amount as remuneration for municipal council members, and not a specified percentage of the mayor's remuneration.

Laws do not prohibit municipal council members from entering into a contract of mandate with the rural municipal or city government. However, the requirements of the Anti-corruption Act and the Local Government Organisation Act (procedural restrictions, withdrawal) should be taken into account. A municipal council member's authority terminates prematurely, inter alia, in connection with work on the basis of an employment contract in a rural municipality or city administrative agency. Whether a contract that was formally concluded as a contract of mandate is in substance an employment contract, and a municipal council member's authority terminates prematurely on that basis, is assessed by the rural municipality or city electoral committee.

In the event of a procedural restriction (e.g. making a service-related decision in respect of a subordinate who is a person's close relative – see § 11 subs. (1) and subs. (3) clause 5 of the Anti-corruption Act), a public official (e.g. the director of a municipal kindergarten) may not task their subordinate with performing an act or making a decision instead of the official themselves. An official must immediately inform their immediate superior – or the person or body with the right to appoint the official – of the occurrence of a case of procedural restriction. The immediate superior or the above person or body will perform the act or make the decision themselves or assign this task to another official.

XI. ENTREPRENEURSHIP AND THE ENVIRONMENT

According to the preamble to the Constitution, one of the founding principles of the Estonian state and society is liberty. At the same time, our daily life is regulated by a number of restrictions and rules.

When assessing freedom of entrepreneurship, the viewpoint – either too little or too much freedom – depends on whether someone is an entrepreneur themselves or has to put up with the effects of entrepreneurship. More taxes should also be collected primarily from someone else: our own tax burden often seems to us too heavy or even unlawful.

In a smart and progressive country that makes use of its advantages, freedoms and restrictions imposed for the benefit of all are in balance with each other. When taxes are justified and at a reasonable rate, they will be paid.

11.1. Taxes, fees and charges

Petitions on the issue of taxes received by the Chancellor during the reporting year are characterised by the keyword 'social security'. Several people expressed dissatisfaction with the system for calculating the basic exemption entering into force on 1 January 2018. It appeared that the rigidity of the new system may in some cases worsen the situation of economically vulnerable people. The Chancellor was also asked to assess the legality of fees and charges established by local authorities and by the state (the road toll).

A dispute in the Supreme Court over the legality of service fees for waste transport imposed by Tallinn was completed. The Supreme Court dismissed the Chancellor's application. The dispute came to an end but several issues need further debate.

11.1.1. The basic exemption

The Chancellor was contacted by a petitioner who was dissatisfied that a redundancy payment received by them at the end of the year significantly reduced the amount of their basic exemption. A redundancy payment increases a person's annual income and may consequently increase the amount of income tax payable. At the same time, the regular income of someone made redundant may be disrupted for a long time and, in that situation, increased tax liability due to a redundancy payment certainly feels unfair.

A pregnant woman receiving maternity benefit at the end of the year may find herself in a similar situation. She would simultaneously receive several months' income while

after that her regular income discontinues for a while since the state can begin paying parental benefit to her only after the end of the pregnancy leave and maternity leave.

The current procedure for payment of sickness benefit does not enable payment of maternity benefit by instalments. Since income tax accounting is cash-based (i.e. taxation is based on when the money was received and not the period for which the money was paid) then retroactive as well as advance payments affect the amount of taxable income during the taxation period when the income was received. A solution might be not to pay all maternity benefit in advance. The situation could also be resolved if certain benefits were to be excluded from income affecting the amount of the basic exemption.

The Chancellor replied to the petitioners that changing the tax system is within the competence of the Riigikogu.

The amount of basic exemption may also be significantly affected by support received from the Kredex foundation. Kredex pays various types of support related to purchase and reconstruction of housing both to apartment associations as well as private individuals. Private individuals may, for example, apply for home support for families with many children, for private home renovation support, for support to upgrade the heating systems in private homes, and so forth. Support is paid from state budget allocations, i.e. this is all state support.

Income tax is withheld from support paid to private individuals and payment of support may, in turn, affect the amount of someone's taxable income. However, apartment owners receiving support for improving living conditions through apartment associations do not find themselves in the same situation. Differences in taxation of legal persons may be offered as justification for different treatment. However, as a rule, justification applicable to taxation of income of legal persons – i.e. taxation is deferred until the moment of withdrawal of profits – cannot be applied to an apartment association.

An apartment association is an association incurring expenses in the joint interests of apartment owners (an expense association) and, essentially, there is no difference whether support intended for renovation of housing, or the like, is paid to an apartment association or directly to a private individual. Several very similar types of support are tax-exempt, e.g. support paid from European Union structural funds for construction of water and sewage piping or storage tanks. Support for similar purposes is taxed differently depending on the source of financing.

Tax policy should be based on justified and understandable choices. In a memorandum sent to the Riigikogu Finance Committee, the Chancellor drew attention to contradictions in taxing Kredex support. The Chancellor noted that if, as a rule, support

laid down by law is tax-exempt, and the underlying idea for this is tax exemption of a social type of benefits, then support paid by Kredex is also often of a social type. The different types of support are aimed, inter alia, at improving people's living conditions and increasing the energy efficiency of housing.

For example, Kredex support for families with many children is paid to low-income families who also lack housing in line with their needs or whose existing housing fails to meet the basic conditions: there is no water and sewage system or no washing facilities, the roof is leaking or the heating stoves are working poorly. If, for example, the maximum amount of that support is paid to someone whose annual income is up to 14 000 euros and whose annual basic exemption would be 6000 euros without the support, then their annual income increases so much that based on their tax return they would have to pay 1200 euros extra income tax. At the same time, despite having received the support, a person's ability to pay need not have improved as Kredex support is for compensating expenses. As a result, Kredex support and the resulting increased tax liability might even worsen the everyday ability to cope of a low-income family with many children. A possible solution would be to exempt Kredex support from income tax or exclude it from income against which the basic exemption is calculated.

The Chancellor also drew the attention of the Riigikogu Finance Committee and the Social Affairs Committee to the fact that if a survivor's pension is paid to child, the increased basic exemption to which parent or guardian is entitled for children is accordingly reduced.

A parent or guardian maintaining at least two minor children may, as of the second child, deduct from their taxable income an additional 1848 euros a year for each child up to 17 years old. In that case, a rule applies that receipt of taxable income by a child reduces the sum that the parent may deduct from their income for that child.

The idea of reducing the tax exemption is that a child who works or has other income declares the income themselves (or a representative does so on their behalf) and they may use the general basic exemption. Children who have lost their parents receive a survivor's pension which is a child's income. In connection with the entry into force of the new tax system, a separate basic exemption for pensions no longer exists and survivor's pension is deemed to be income included in the calculation for the general basic exemption.

Receipt of a survivor's pension by a child reduces the amount of additional basic exemption for children which a parent may deduct from their own income. This places children who have lost their parents in a worse situation than other families as in no other cases does money intended for maintaining a child (e.g. child maintenance paid

to the other parent by a divorced parent living separately) reduce the amount of additional basic exemption for a child.

The situation could not be foreseen when introducing the system of graded basic exemption. The Ministry of Finance immediately offered a solution as to how to amend the law. The Social Affairs Committee discussed the memorandum and supported the amendment under which survivor's pension would no longer affect the right to deduct additional basic exemption. The Finance Committee also supported preparing an amendment to the basic exemption. At the time of drawing up the report, the relevant Draft Act was at the approval stage.

The Chancellor was asked for an explanation by pensioners dissatisfied with abolition of additional basic exemption for pensions. Mostly, the Chancellor was contacted by people receiving a pension from abroad whose basic exemption is calculated on the basis of income obtained by adding together the Estonian and foreign pension. Even if a foreign pension is not taxed in Estonia, this is considered double taxation. Which country may tax a pension depends on tax agreements concluded between countries, and often also depends on the type of pension.

11.1.2. Use of data in appendix to value added tax return

The Chancellor received a complaint that information on invoices in the value of a thousand or more euros declared in an appendix to a value added tax return had been used for a different purpose than had originally been promised.

When establishing the obligation to declare invoices in the value of a thousand or more euros, undertakings were promised that data would only be collected for the purpose of verifying payment of taxes. In actuality, the invoice data was also used to carry out a study commissioned by the Foresight Centre. Researchers carrying out the study gained access to the data through Statistics Estonia.

Statistics Estonia is entitled to receive information containing tax secrets to perform tasks laid down under the Official Statistics Act. However, it was found that Statistics Estonia may also request information containing tax secrets for the purpose of statistical work carried out on commission by a private individual or organisation, not just for purposes of national statistics.

Although the data were processed so that identifying a specific undertaking and revealing business secrets was ruled out, this broke the promises given to undertakings when debating the Draft Act as to the purposes for collecting and using the data for commissioned work.

In a memorandum sent to the Tax and Customs Board and Statistics Estonia, the Chancellor noted that going back on promises undermines trust in the state and is incompatible with the principles of good administrative practice. This also applies to promises not written into the law.

11.1.3. Road toll

Under the Traffic Act, road toll is payable for a truck and its trailer with a maximum mass of over 3500 kilograms for using a public road. Confusion has been caused by the definition of the object of road toll, i.e. a truck. Under the Act, a truck is defined as a motor vehicle designated for carrying cargo; that definition also exists in European Union legislation on road charging.

However, payment of road toll has also been demanded in respect of vehicles not designated for carrying cargo, such as cranes and tow trucks. Such erroneous practice arises from explanations by the Ministry of Economic Affairs and Communications – which drafted the road toll rules – i.e. explanations that were incompatible with the law and the principle of legal clarity. The regulatory provisions on road toll are themselves not problematic. However, interpretations of the law must comply with the Act and European Union law and explanations should not be misleading.

European Union rules also do not allow member states to expand the definition of a road charge. A member state may lay down reduced rates or exempt some trucks from the duty to pay a road charge but the state may not treat as trucks vehicles not designated and not used for carriage of goods.

11.1.4. Reduction of renewable energy support

Under the Electricity Market Act, renewable energy producers are entitled to receive support. The aim is to motivate use of new and environmentally sustainable generation capacities.

For a long time, a fixed rate had been laid down by law for renewable energy support. This meant that all renewable energy generated had to be paid for, regardless of whether Estonia has already attained the aim of the support scheme. The support scheme was changed and support at a fixed rate was abolished. In future, the rate of support will be determined at a reverse auction which is probably more favourable for consumers.

The Chancellor found that the changes were lawful and also took into account the legitimate expectations of producers. Producers having qualified for support under the previous support scheme will continue to receive support until the end of the 12-year

support period. Producers of renewable energy should have been aware of European Union state aid rules and could not expect that renewable energy support would continue to be paid under the same conditions.

11.1.5. Waste transport fee in Tallinn

On 10 May 2018, the Chancellor lodged an application with the Supreme Court to annul sentences 1 and 2 of § 35^1 in Tallinn's waste management regulations, under which the competence to lay down the procedure for setting the fee was conferred on Tallinn City Government, and a public service fee was also imposed on waste holders to cover expenses related to maintaining the register of waste holders and settling accounts with waste holders.

§ $66(1^1)$ of the Waste Act, enabling transport of municipal waste to be organised through the intermediation of a local authority, was in force to 6 January 2015. Under that scheme, the waste holder's only client was the city or rural municipality that kept records of waste holders and also settled accounts with them. Under the effect of transition provisions (Waste Act § 136^6 and 136^8), waste transport is still organised in the same way in some local authorities, including several waste transport areas in Tallinn (e.g. Haabersti, North-Tallinn, Mustamäe, Lasnamäe).

Tallinn City added to the fee charged for waste transport and waste management an additional fee receivable by the city budget for keeping the register of waste holders and settling accounts with waste holders.

Such a fee is a public financial obligation that may be laid down only on the basis of a sufficiently clear delegating norm arising from law. The implementing provisions of the Waste Act regulate only completion of ongoing public tenders and the validity of existing contracts until their expiry. Thus, these provisions do not give rise to the right to charge a fee for keeping a register and settling accounts with waste transporters. Nor, in the Chancellor's assessment, can that basis be deduced from the provisions regulating development of a waste transport fee upon implementation of the so-called classic waste transport model (§ 66(4)–(6) Waste Act) when it is not necessary to lay down the maximum fee rate or more detailed grounds for developing the fee rate. In that case, development of the price for the service is regulated by competition.

A public financial obligation may be imposed on the basis of objective criteria laid down by law if the extent of the obligation is predictable and equal treatment of persons is ensured. Neither the Waste Act nor any other Act regulates charging the fee, the minimum or maximum rate of the fee, nor do they define a basis for setting the amount of the fee. Waste transport fees had been laid down by a decree of the head of the Tallinn Environmental Board, even though the law provides no basis for such delegation. Tallinn City Council has also not determined how the Environmental Board

should calculate the amount of the fee. The grounds for development of the fee were vague and intransparent, so that waste holders cannot sufficiently predict the amount of the fee for waste transport.

The Supreme Court dismissed the Chancellor's application, finding that the legal basis for charging the fee derives from § 136[6] and 136[8] of the Waste Act (transition provisions) in combination with § 66(4)–(6) of the Waste Act. Since a local authority may provide a waste transport service, until the expiry of the contracts mentioned in the transition provision, in the manner described in § 66(1[1]) of the Waste Act, it may also charge a waste transport fee for that service. The law requires a waste transport fee to cover the costs related to transport of waste and preparation for transport. Costs of settling accounts with waste holders and keeping records of waste holders can be considered as costs related to transport and preparation of transport – i.e. costs that should be compensated by the waste holder, regardless of who provides them with the specific service.

Surprisingly, the court noted that in this case the Chancellor had not contested the constitutionality of the legal basis for laying down the waste transport fee. Indeed, the Chancellor contested the provisions of the Tallinn waste management regulations as she found that the city had no legal basis to charge a waste transport fee for keeping records of waste holders and settling accounts with them. The Chancellor considered it possible to charge a fee for transport and subsequent handling of waste, following the polluter pays principle. Moreover, the price of transport and handling of waste develops in conditions of public competition, i.e. it cannot be set by a decision.

The Chancellor could not lodge an application seeking a declaration of the unconstitutionality of the legal basis for costs of settling accounts and keeping the register as no relevant provision exists in the legal order. However, the Chancellor's application noted that even if a legal basis exists for imposing the fee, it might not be constitutional as the law does not establish a maximum or minimum rate threshold. However, the court, having established the existence of a legal basis, did not consider it necessary to verify its constitutionality.

The court agreed with the Chancellor that covering the costs of keeping the register of waste holders is, by law, the task of a local authority, so that costs related to keeping the register should be covered by the local authority. However, the court found that Tallinn waste management regulations could be interpreted in a constitutionally-compliant manner. With that in mind, the court relied on explanations by Tallinn City that the costs of keeping the register are actually costs related to settling accounts with waste holders and keeping records of them, and not the costs of developing the register. The court found that the concept of a register has been used in the Waste Act in a different meaning from the waste management regulations, which may lead to

confusion and also raise the issue of transparency of formation of the waste transport fee.

However, in earlier case-law, a different opinion regarding public fees has been expressed (the basis for charging a fee must be laid down with sufficient clarity, including the maximum fee rate or the principles of fee formation, and the predictability of the fee rate). The risk that the fee charged from a waste user is excessive has actually become a reality in the case of Tallinn, according to an assessment by an agency sufficiently competent to assess that issue.

According to an assessment by the Estonian Competition Authority, a charge for keeping the register and settling accounts which had been added to the costs of transporting and handling waste in Tallinn City had been economically unjustifiably excessive, making up almost 40% of the waste transport fee. The Competition Authority had a court dispute with Tallinn City and the West-Viru County Waste Centre, a non-profit association, concerning the issue of the waste transport fee. On 25 April 2019, the Supreme Court issued judgment in case No 3-16-1267/49 (Non-profit association West-Viru County Waste Centre v. the Competition Authority) and found that keeping records of waste holders and settling accounts with them constitutes activity related to exercise of public authority, to which the Competition Act does not apply and in respect of which, accordingly, no legal basis exists for the Competition Authority to exercise supervision.

The court noted in conclusion: "Despite the lack of supervisory competence by the Competition Authority, in the case of waste transport organised on the basis of § 66(1^1) of the Waste Act the amount of waste transport fees is verifiable. Since the waste transport fee set by a local authority or by a non-profit association authorised by it is a public financial obligation (Supreme Court Constitutional Review Chamber judgment in case No 3-4-1-34-14, para. 38), every waste holder may contest the obligation imposed on them in court if they find its amount to be disproportionate."

However, it is doubtful that a consumer is able to effectively protect themselves against an excessive fee if it is even unclear in comparison to what a consumer might say that the waste transport fee is too high. In order to contest the amount of the fee, it is necessary to calculate the volume-based cost of transporting waste as well as the weight-based cost of handling, and determine the volume and weight of waste of the particular consumer, and compare the correspondence of costs incurred to that effect to the real costs. In the case of small-volume waste transport, the majority of costs consist of transport, and the minority of handling. In addition, the share of other costs (e.g. settling accounts) incurred by a local authority should be assessed, as well as the justifiability of those costs with regard to a particular consumer.

In sum, it follows from the Supreme Court's latest decisions that the law no longer protects individuals against disproportionate public financial obligations; setting the maximum threshold of a financial obligation by law is no longer required and no agency is able to help ensure the balance – it is left for waste holders themselves to enter into a dispute to establish an adequate threshold.

11.1.6. Basic fee for water in Loksa Town laid down without legal basis

The Chancellor made a proposal to Loksa Town to bring the price regulation for water services into line with the Constitution. The Council of Loksa Town had stipulated in its regulation that a client connected to the public water supply and sewerage system of Loksa town pays to the water undertaking a basic fee approved by the Government of Loksa Town on a proposal by the water undertaking.

A local authority cannot regulate price formation by a legislative act of general application. Price formation for water services is laid down in § 14^1 and § 14^2 of the Public Water Supply and Sewerage Act under which a water undertaking sets the price after it has obtained approval for its application to set the price.

If the licensed territory of a water undertaking is situated in a waste water collection area with a pollution load of 2000 population equivalent or more, the water undertaking must obtain approval from the Competition Authority for its price application. Loksa Town is a waste water collection area with such a pollution load, so that approval from the Competition Authority must be obtained for the price of water services (including changing the price structure and setting a basic fee).

No law entitles the municipal council to set the price of water, so that Loksa town had set the basic fee without a legal basis under the law. The Council of Loksa Town complied with the Chancellor's proposal and changed the regulation.

11.1.7. Late interest on recovered agricultural support

The Riigikogu resolved a problem described in an earlier memorandum from the Chancellor regarding the rate of late interest claimed on recovered agricultural support.

The rate of late interest (0.1% daily, 36.5% annually) laid down in the European Union Common Agricultural Policy Implementation Act was fairly high, so that persons could find themselves in an economically difficult situation if unable to repay the support by the deadline. The agency reclaiming the support is also not entitled to reduce or cancel the interest, and no maximum limit for interest is set.

The Riigikogu adopted a legislative amendment laying down that in the event of deferral of repayment of the support the debtor will only have to pay late interest (6 months' EURIBOR plus 3% per annum). Additionally, the Riigikogu set the maximum rate of interest payable under the EU Common Agricultural Policy Implementation Act and several other Acts regulating payment and recovery of support (the 2014-2020 Structural Assistance Act, the Fisheries Market Organisation Act). Under the new regulatory provisions, late interest can only be the maximum amount of the repayable sum of support based on which late interest is calculated. The amendments entered into force on 1 January 2019.

11.2. Public space and construction

Under § 32 of the Constitution, property is inviolable and protected. Nevertheless, the right to property may be circumscribed or restricted in cases provided by law and in the public interest to protect the living environment. This does not mean that all restrictions on property should be listed in detail and exhaustively in the law. Restrictions on property imposed by an administrative act are also lawful if based on a law. However, this does not mean that any restriction on property laid down by law is constitutional. Every restriction must have a legitimate and reasonable purpose. In its absence, a restriction is unconstitutional.

11.2.1. Comprehensive plan and building regulation

Restrictions on immovable property may also be imposed by a comprehensive plan. A comprehensive plan may lay down conditions and restrictions on use of property. For example, designating an area as part of a green network and restricting construction of new buildings there. A comprehensive plan may also lay down requirements for the size of plots or prescribe that district heating must be used to provide heating to buildings.

Under the Planning Act in force since 1 July 2015, building and land use conditions must be laid down by a comprehensive plan and not by a local authority regulation. The procedure for establishing a comprehensive plan differs considerably from the procedure for adopting a regulation. For example, in the process of drawing up a plan anyone interested may make proposals which the body establishing the plan must take into account. If the body decides to disregard the proposals, they must provide justification for doing so. However, a regulation may be adopted, in principle, without involving anyone, and contesting a regulation is fairly complicated.

Rural municipalities and cities had to review their building regulations and bring them into line with the law by 1 July 2017. The majority of them have done so. However, the Chancellor made a proposal to Tallinn city to annul the building regulations of Astangu, Pelgulinn and Nõmme city districts since they dealt with issues to be resolved by a

comprehensive plan. Following the Chancellor's proposal, Tallinn annulled the building regulations of those city districts. The Chancellor sent a similar memorandum to Haapsalu town where an outdated building regulation was also in force. By now, Haapsalu has also annulled its building regulations.

The choice of the right procedure is also essential in resolving issues regarding a district heating area. Under the law, rural municipalities and cities may designate a district heating area, i.e. an area within whose boundaries the main source of heat supply must be district heating. Many rural municipalities and cities have established a district heating area and related conditions by a regulation even though by law this should be done by a comprehensive plan. Such erroneous practice is due to lack of legal clarity in the provisions of the District Heating Act. The Chancellor drew attention to this already during the previous reporting year. Hopefully, the new Riigikogu elected in March 2019 will begin to resolve this problem at the first opportunity.

11.2.2. Development plan on organisation of parking

In 2006, Tallinn City Council adopted a "Development plan on organisation of parking for 2006–2014", Chapter 4 ("Parking standard") of which laid down the principles for calculating the number of parking places prescribed for newly designed buildings. The Chancellor's attention was drawn to the fact that the Tallinn authorities still narrowly proceed from the provisions of that development plan and do not wish to familiarise themselves with the needs and nature of specific buildings.

The Chancellor noted that a development plan constitutes internal rules laid down for an administrative authority itself, which may be followed, but this should not rule out consideration of other essential facts and justified interests. Also, the development plan was drawn up as long as 13 years ago, so that the parking standard laid down in the development plan which is no longer in force might no longer be relevant and compatible with currently effective development documents.

11.2.3. Right to compensation for tolerating a utility network on residential land

Often, the central issue regarding restrictions on the right to property is whether restrictions should entitle the owner to compensation. The Constitution does not require every restriction on property to be compensated. For example, amendments to the Law of Property Act Implementation Act entering into force on 1 January 2019 do not provide for payment of a so-called toleration compensation for utility networks located on residential land.

The Chancellor found that such an amendment in this particular case was lawful. The aim of a 'toleration' payment is to compensate for a situation where the owner can no longer use their property for its intended purpose. Normally, utility networks located

on residential land do not result in the kinds of restrictions that would extensively curtail the land owner's rights. A utility network is mostly also necessary for servicing the buildings on an immovable.

11.2.4. Restrictions on property arising from heritage conservation

The Heritage Conservation Act, in force from 1 May 2019, attracted considerable attention. Implementation of the Heritage Conservation Act also entails restrictions on property that proceed from general interests. Both in connection with the previous Heritage Conservation Act as well as the new one, people have felt impelled to contact the Chancellor mostly with the issue of proportionality of restrictions on property. In connection with the entry into force of the new Act, it was also necessary to explain that the statutes of heritage conservation areas established in the form of regulations under the repealed Heritage Conservation Act are substantively administrative acts and remain in force until amended or annulled.

Implementing heritage conservation-related restrictions depends on individual decisions: for example, establishing a heritage protection area, taking an individual site or object under protection, or issuing authorisation for work. In doing so, whether the restrictions to be imposed are necessary, appropriate and proportional in the narrow sense should be considered on a case-by-case basis. The Act does not preclude making constitutionally compatible decisions in the process of its implementation.

Proportionality of restrictions can be achieved in different ways: both by easing or removing the restrictions, or by paying compensation and targeted support. Although year-by-year the state has increased the budget earmarked for support to owners of immovables for compliance with heritage conservation requirements, the needs exceed the possibilities, which naturally causes dissatisfaction among owners. Therefore, the Chancellor drew the attention of the Riigikogu Cultural Affairs Committee to the need to revise the grounds for relief of an immovable from heritage conservation. In some cases, it is not feasible to keep a building under protection, in particular if the building is in poor shape and its restoration is expensive and hopeless in view of the special heritage conservation conditions. In that case, it is probable that the building would fall apart over a longer period. Thus, whether continued restriction of the right to property is always justified should be considered – in some cases, it might be feasible to lift the protection of a building as a heritage site. Protection of cultural heritage should also take into account the public interest – such as the need to ensure safety – in addition to the rights of owners.

Not all restrictions, including heritage conservation-related restrictions, necessarily require payment of support or compensation. Absence of compensation or support does not render a restriction unlawful; however, imposition of a particularly intense restriction may trigger entitlement to claim compensation. Support paid by the state

derives primarily from the understanding that cultural heritage would not be preserved without it.

11.2.5. The requirement for fire compartmentation of a building

Under the Minister of the Interior regulation establishing fire safety requirements for buildings, fire compartments must be created in buildings and, where necessary, a fire door should be installed to parts of an apartment building used separately (e.g. basements). This requirement applies to all residential houses in use. Some old houses therefore need to be rebuilt, even if the house meets the requirements in force at the time of construction.

The Chancellor explained that the requirement has been in force for a longer time and cannot be considered excessively burdensome or disproportionate. In the event of fire, people must also be able to get out of an old house.

11.2.6. Constitutionality of the regulatory framework for a national designated spatial plan

Under the Planning Act, in certain cases the national Government may initiate and establish a national designated spatial plan. This precludes the planning competence of local authorities – a national designated spatial plan is processed by a government agency designated by the Government and a local authority is involved in the process on the same basis as all other interested parties. Also, plans established by a local authority must give way to a national designated spatial plan.

In the course of constitutional review proceedings initiated by Tartu City, the Chancellor had to assess whether the provisions of the Planning Act define the case of a national designated spatial plan with sufficient clarity and whether it is lawful for the costs of proceedings for a national designated spatial plan to be borne by an interested person. The Supreme Court found that the provisions of the Planning Act on a national designated spatial plan were constitutional.

11.3. Land and forest

11.3.1. Valuable arable land

During the reporting year, the Riigikogu debated a Draft Act envisaging extensive restrictions for protection of valuable arable land. The Draft Act obliged the owner of agricultural land to continue agricultural use of the land. For example, a road, well or shed could have been built or trees planted on that land only in exceptional cases with authorisation from the Agricultural Board.

The Chancellor drew attention to the fact that the approach adopted in the Draft Act would turn an owner into a state tool, a means to achieve a purpose. However, this is not compatible with a social order based on liberty (see the preamble to the Constitution) where fundamental rights may only be circumscribed to the minimum extent and circumscription may not distort the nature of the rights and freedoms circumscribed (§ 11 Constitution). Where the desired aim can be achieved in a different manner that is less restrictive of fundamental rights, the restriction is not necessary. An unnecessary restriction is unconstitutional.

Certainly, fields need to be protected. Residential and other buildings need not be built on a field which, moreover, constitutes a limited resource in terms of food production. However, measures taken to protect fields, including restrictions, have to be constitutional.

Protection of valuable arable land is laid down by the Planning Act (§ 75(1) clause 14). A person can express their interests and needs during the planning procedure, and a local authority must find a balance between different interests and values in an open procedure. Thus, restrictions for protection of agricultural land have also been imposed in current plans, and no reason exists to consider the Planning Act as defective in this regard.

Should the Riigikogu find that agricultural land is in need of better protection, the law should define the concept of valuable agricultural land. For the rest, the current Planning Act, whose provisions can and should be implemented where relevant, is sufficient for protecting fields.
Restrictions on the rights of land owners and local authorities suggested in the Draft Act are excessive. The Draft Act disappeared from the Riigikogu proceedings.

11.3.2. Changing the basic data in the land cadastre

At the end of 2018, the Land Board changed the areas of cadastral units and updated land parcels based on land cover and land use type. Many land owners could not understand why the area of their registered immovable decreased, the boundary point coordinates changed, and how the state could change the data of land owned by private persons at all without notifying the owners.

The basis for changing the data concerning land cover and land use type of cadastral units is § 13^1 of the Land Cadastre Act according to which a cadastral land cover and use type map is the cadastral map. A parcel based on land cover and land use type means part of a cadastral unit which has the same economic use and/or natural status and which shows the actual natural status of land. Based on the cadastral land cover and land use type map, areas of parcels based on land cover and land use type of cadastral units are calculated at least once a year. Where that calculation results in

changes to parcels based on the land cover and land use type of a cadastral unit or in changes to their size, this is due to changes in the natural status of the land unit. Data on the natural status of land is collected every year through aerial surveys.

Marking land cover and land use type on the map should not, in itself, impose any restrictions on property. A restriction cannot be based on an administrative measure (such as marking land cover and land use type on a map) but there has to be a law (e.g. the Nature Conservation Act) or an appealable administrative act (e.g. a plan) issued on the basis of a law. Confusion is caused by the principles and the legal bases for determining land cover and land use type and the possibilities to contest the measure. An erroneous record may result in interference with a person's rights, such as higher land tax, building restrictions, or the like. It is not clear when the land cover and land use type of a parcel is marked as natural grassland and when it is an area under cultivation. That is, many parcels whose land use type is marked as land under cultivation have for a long time been in use as permanent grassland, which it is not practicable for farmers to cultivate but to maintain as grassland motivated by conditions for support from the Agricultural Registers and Information Board. However, land tax is payable for a parcel marked as an area under cultivation.

To date, it is unclear on what basis the land cover and land use type of some residential land is categorized as forest land. Forest land is characterised by woody plants meeting specific parameters (Forest Act § 3(2) clause 2). Under the Forest Act, forest is an ecosystem consisting of forest land and its flora and fauna. The definition of forest land is provided by the Forest Act. No other definition of a forest land parcel based on land cover and land use type (e.g. clear cut area, young growth) set out in the Minister of the Environment regulation shows the natural status of land as forest but proceeds from the economic use of forest land (silviculture).

However, under § 3(3) of the Forest Act, a parcel has no economic purpose if located on residential land and designated as forest land. This means that if trees growing bigger year by year on a residential plot are suddenly deemed as forest based on aerial photography taken by the Land Board, along with all the consequent restrictions, this is misguided. It is also odd that land owners themselves are not notified of these changes. In certain cases, wrongly marking forest land as located on residential land may result in significant restrictions on property. For example, under § 23(1) clause 1 of the Lahemaa National Park protection regulations, erecting buildings on forest land located in a limited management zone in the park is prohibited.

Within the area of administration of the Ministry of the Environment, matters concerning parcels located on residential land while designated as forest land have to be clarified and, if necessary, the rules brought into line with each other. What parameters woody plants growing on residential land should meet in order to be deemed as forest should be clear for people.

11.3.3. Planning and organising construction on state land

The Chancellor drew the attention of the Minister of the Environment to the fact that the state's activities must be consistent and proceed from the wishes and aims of the people contacting the state.

A striking example is a case concerning a harbour on Hiiumaa Island. The creator of the harbour complained to the Chancellor that they could not use the breakwaters that they built themselves because, over a period of ten years, the state had not given them the land use right to use the boat harbour. This had happened regardless of the fact that the state was aware of the building of the harbour, that the Ministry of the Environment had given the necessary permit for this, and the harbour was planned and built under legislation in force. The state has thereby placed the person in an unacceptable and odd situation: they are allowed to build breakwaters attached to state land, but cannot use the land for the intended purpose because the state has still not given the right to use the shoreside land.

The Chancellor found that such conduct by the state contravenes the principles of good administrative practice. Resolving the application by the builder of the port has been delayed for an unacceptably long time and contradictory explanations have been given to them. However, failures in inter-agency cooperation may not cause financial damage to someone or violate people's rights.

11.3.4. Implementation of rule ensuring nesting peace for birds

The Chancellor was asked to assess whether existing rules are sufficient to implement § 55(6^1) (ensuring nesting peace) of the Nature Conservation Act.

The prohibition laid down in § 55(6^1) of the Nature Conservation Act must be observed by those undertaking work in a forest and it should also be taken into account by the state when authorising an activity. Although the existence or absence of nests is assessed directly by the person carrying out forest work, environmental officials must also have a good overview of the probable nesting preferences of birds in each forest stand and of the impact that different types of cutting have on birds during nesting. Assessment of the impact of forest cutting on birds should be based on scientific research and, where necessary, proportionate conditions should be set for a forest notification to ensure a reasonable balance between the interests of forest owners and nature conservation. When planning cutting work, the executive authorities cannot disregard the prohibition laid down in § 55(6^1) of the Nature Conservation Act nor can they leave the impact of cutting on the nesting peace of birds unassessed. Nor can the executive place the whole responsibility on those carrying out work in the forest.

According to the Chancellor's assessment, the Environmental Board may impose additional conditions on forest notifications (including temporal restrictions) intended for cutting forest during the nesting period of birds. Thus, the existing rules are sufficient to ensure the nesting peace of birds.

11.3.5. Decision to initiate establishment of a nature reserve

The law does not prescribe how quickly steps should be taken to include an area under nature conservation. Nor does the law lay down a deadline for how quickly the state should form a position of principle on establishing a nature reserve. At the same time, the speed of deciding significantly impacts on the rights of a land owner to use their land. For example, for the time of the relevant proceedings the state may suspend the validity of forest notifications and building permits, and economic activities or even movement of people in the area may be restricted upon establishing a nature reserve.

A proposal to establish Sõrve nature reserve was made in 2006 but at the beginning of 2019 the state had still not formed a position on initiating establishment of the nature reserve.

The Chancellor found that 13 years is an unreasonably long period to reach a decision involving such considerable restrictions. On that basis, the Chancellor recommended that the Minister of the Environment should reach a decision on Sõrve nature reserve as quickly as possible. On 16 April 2019, a decision was made.

11.3.6. Diffuse pollution

The Chancellor was contacted with a request for assistance by the owners of a house in the middle of fields who had discovered that the water in their well was contaminated with nitrates. The source of the pollution is unknown but the water in the well is no longer drinkable and the inhabitants must bring drinking water from a distance of several kilometres.

The issue is how the responsible agencies can identify the probable source of contamination and who can do what to compensate damage.
Environmental officials have several possibilities to resolve the concern related to water pollution, and the Chancellor also sent a recommendation on this. It may be a case where resolution may require applying the Environmental Liability Act or the Water Act. The choice of Act depends on the extent of pollution.

However, it is incompatible with the principles of good administrative practice if agencies are aware of contaminated well water for several years but refuse to apply the relevant legal norms to resolve people's concern.

XII. ENFORCEMENT PROCEDURE

In enforcement proceedings, bailiffs enforce obligations under public law as well as claims under private law. The task of bailiffs is to collect, for example, fines imposed for a misdemeanour, or tax debts, but they also have to enforce court judgments for eviction from a dwelling and for removal or return of a child.

A person who is unwilling to comply voluntarily with a judgment or other enforcement instrument also has to pay the enforcement fee and enforcement expenses to a bailiff. Everyone is entitled to receive information about enforcement actions initiated against them.

In most petitions about enforcement proceedings, the Chancellor is asked about the right of bailiffs to seize income or an immovable, or 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.

12.1. Debtors and creditors

The rights of both debtor and creditor must be ensured in enforcement proceedings. Some debtors are in a difficult financial situation and need urgent compensation for health damage inflicted on them from someone who avoids payment. However, some debtors are completely without assets.

In enforcement proceedings, the legitimate interest of the person claiming the debt is placed first. Nevertheless, the rights of the debtor and their family to a decent life must also be considered. The Chancellor recommends that debtors should always submit exhaustive and truthful information about their financial situation, based on which a bailiff's activity can be contested, if necessary.

On account of violation of debtors' rights, the Ministry of Justice initiated five disciplinary proceedings against bailiffs in 2019. The Ministry is also planning an extensive overhaul of the enforcement system with a view to making the process cheaper, quicker and more professional.

12.1.1. Enforcement against income below the minimum wage

The Chancellor received several petitions where a bailiff had seized part of income below the minimum wage, such as a pension or work ability allowance. The Code of Enforcement Procedure in force to January 2018 did not allow seizure of a debtor's income if it did not exceed the minimum wage. To ensure better protection of creditors' interests, since 2018 seizing up to 20% of income below the minimum wage is allowed if it does not fall below the estimated subsistence minimum. The law leaves a margin

of discretion to a bailiff in determining the proportion of income to be seized but in doing so the bailiff must ensure the debtor's decent ability to cope. As a rule, bailiffs have usually seized the debtor's income to the maximum possible extent, failing to consider the amount of a person's income and their needs. However, the Supreme Court in its orders No 2-18-4482/25 and No 2-18-4480 has affirmed that a bailiff can and also should take into account a debtor's ability to cope.

12.1.2. Use of unseized income in credit institutions

As at May 2019, approximately 150 000 natural-person debtors were subject to enforcement proceedings. Several of them complained to the Chancellor that banks restrict use of debtors' bank accounts: for example, they do not enable payments by debit card; transfers through the internet bank or withdrawal of cash from ATMs to the extent of the unseized amount (hereinafter 'core payment services'). These bank account transactions are indispensable for people in everyday life: benefits and compensation are received to bank accounts, utility bills are paid from them, and they are used to pay for a kindergarten place or for hobby education, or also a state fee.

A bank must ensure that everyone can use core payment services to the extent of the unseized amount. Restriction of these services cannot be justified merely by a wish to simplify control over a seized bank account. A debtor's consumer rights may not be violated. On that basis, the Chancellor contacted the Consumer Protection and Technical Regulatory Authority with a request to consider initiating state supervision over such violation of consumer rights.

12.1.3. Refund of deposit

In the course of enforcement proceedings, assets are often sold at auction and the rights of a person wanting to buy assets at auction may also be interfered with. A security has to be paid to participate in an auction. In constitutional review proceedings, the Supreme Court asked the Chancellor's opinion on the constitutionality of § 100(4) (second sentence) of the Code of Enforcement Procedure. Under that provision, unrefunded deposit is to be transferred to the common budget section of the Chamber of Bailiffs and Bankruptcy Trustees, and no discretion is allowed concerning a decision not refund a deposit.

According to the Chancellor's assessment, the contested provision was constitutional since bailiff proceedings constitute a formalised procedure and leaving extensive margin of discretion might harm attaining the purpose of an auction – i.e. to sell the assets at auction at the best price. However, the Supreme Court reached the opinion that § 100(4) (second sentence) was unconstitutional and repealed it.

12.1.4. Movable property in eviction from apartment

In the course of eviction, a debtor may be deprived of both their immovable and moveable property. The Chancellor was contacted by an individual who was evicted from their apartment in the course of enforcement proceedings and was also deprived of some of their belongings, while the bailiff deposited the rest of the property. According to the petitioner's opinion, this restricted their right to use and dispose of their movable property.

The Chancellor found that provisions relating to depositing of belongings and eviction of items of small value were not unfairly strict towards debtors. These provisions are applied only as a last resort when a debtor has failed to comply with the duty to remove their immovable property. The debtor has several possibilities at their disposal to have the belongings returned to them.

12.1.5. Voluntary compliance with a penalty payment claim

Public authorities may issue precepts to eliminate a violation. In the event of a failure to comply with the precept, a penalty payment may be imposed.

The Chancellor was contacted by an undertaking which had expressed a wish to voluntarily pay a penalty imposed by the Environmental Inspectorate to the Inspectorate's bank account but the Inspectorate had not agreed to the proposal. The Environmental Inspectorate was of the opinion that enforcement proceedings should be initiated immediately when penalty payment is imposed and the penalty along with the resulting enforcement procedure expenses must be paid to the bailiff.

The Chancellor recommended allowing voluntary compliance with a penalty payment claim. The regulatory framework on penalty payments does not enable giving a person a deadline for voluntary compliance before recourse to a bailiff. In line with the principles of good administrative practice, administrative proceedings need to be carried out as simply and swiftly as possible. Involvement of a bailiff in a situation where it is not actually necessary causes both inconvenience and unnecessary expenses for a person.

12.1.6. Compensation of damage caused by a bailiff

Bailiffs are liable for damage wrongfully caused in the course of their professional activity. The Chamber of Bailiffs and Bankruptcy Trustees asked the Chancellor to assess the constitutionality of § 9(6) of the Bailiffs Act. Under that provision, if damage caused by a bailiff cannot be compensated from the assets of a bailiff or any other person liable for the damage, first the Chamber and second the state shall be liable for the damage caused.

The Chancellor found that, in view of the Chamber's status as entity in public law, its financial autonomy and the role in ensuring the legality of professional activities of bailiffs, such a division of liability between the Chamber and the state is not unconstitutional. Moreover, in the event of compensation of damage caused the Chamber may file a claim of recourse against the bailiff or other person responsible for damage. If in some cases a question of disproportionately large-scale liability of the Chamber should arise, the Chamber may request that the legality of consecutive liability of the Chamber and the state should be assessed by a court.

12.2. Arrangement of a parent's access to child

In recent years, the Chancellor has directed attention to problems arising in enforcement of court rulings regulating access arrangements between parents and children. In this connection, the Chancellor made a proposal to the Minister of Social Affairs to prepare legislative amendments protecting the interests of children. (See also the Chapter "Children and young people").