



Õiguskantsler

2020/2021 OVERVIEW OF THE CHANCELLOR OF JUSTICE OF ESTONIA ACTIVITIES

**PROTECTION OF THE RIGHTS OF
PEOPLE WITH DISABILITIES**

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Foreword

The Riigikogu ratified the [Convention on the Rights of Persons with Disabilities and its Optional Protocol](#) on 21 March 2012. In doing so, Estonia assumed the obligation to promote opportunities for persons with disabilities to participate fully and independently in society.

Under Article 4 of the Convention, States Parties must undertake all appropriate legislative, administrative, and other measures for implementation of the rights of people with disabilities.

The Chancellor of Justice Act contains a provision according to which, as of 1 January 2019, the Chancellor fulfils the [role of promoter and supervisor](#) of the obligations and aims set out in the Convention on the Rights of Persons with Disabilities. The Chancellor helps to ensure that people with disabilities could exercise fundamental rights and freedoms on an equal basis with others.

In line with Article 12 of the Convention on the Rights of Persons with Disabilities, no guardianship can be assigned to persons with disabilities. By ratifying the Convention, Estonia has declared that it interprets Article 12 of the Convention so that it does not prohibit considering a person to have restricted capacity if the person is unable to understand or control their actions. When curtailing the rights of people with restricted capacity, Estonia proceeds from its domestic law. In 2021, the Committee on the Rights of Persons with Disabilities recommended Estonia to review its declaration on Article 12 in order to ensure equal recognition before the law of all people with disabilities and making supported decisions in all areas of life.

Estonian laws prescribe that assigning a guardian is the measure of last resort taken to protect a person's interests. Guardianship is not necessary if an adult's interests can be protected by authorisation and through family members or other assistants. Thus, in principle, protection of a person's interests could also be ensured without assigning a guardian since the person is assisted by family members or other assistants or the person's matters are handled by someone authorised for this purpose. Unfortunately, these other measures cannot always be used. For example, if a person has insufficient capacity in terms of comprehension in order to issue a power of attorney, if a power of attorney issued before loss of ability to comprehend does not cover all necessary situations, or if issuing a power of attorney is not in the person's interests.

In view of the Convention and the recommendation by the Committee on the Rights of Persons with Disabilities, the Chancellor [asked](#) the Minister of Justice and the Minister of Social Protection to let her know whether, how and when Estonia intends to introduce amendments to the guardianship system under the Family Law Act and related legislation.

For years, problems have been caused by lack of access to buildings. The Chancellor was asked who should make a decision on building a lift in a Soviet-period five-storey apartment building. The Chancellor noted that the decision can be made by apartment owners by proceeding from the Apartment Ownership and Apartment Associations Act. Building a lift in an older apartment building may be highly expensive, so that the costs cannot be left only for apartment owners to bear. Therefore, both the state and local authorities should be looking also for solutions to make older apartment buildings accessible to all.

The Chancellor was contacted with a similar concern by a wheelchair user who complained that the rural municipality government had not offered them sufficient assistance. Communication with the rural municipality government revealed that at first the person had wanted a lift inside the house but this could not be installed in the stairway. The person declined an outdoor lift and, instead, preferred a stair crawler.

The Chancellor [found](#) that it is one of the local authority's duties to help ascertain how a person could actually be helped. Where necessary, a local authority should ask for assistance from an expert who is able to assess the person's need for assistance and suggest specific solutions. The person should also be able to test whether the suggested aid device is suitable for them. The rural municipality government promised to provide all-round support until the person has been able to obtain a suitable device enabling access to their apartment.

In order to ensure that by the time of the 2023 Riigikogu elections people with disabilities have access to all polling stations, the Chancellor [sent](#) a memorandum to local authorities and the State Electoral Committee. While in 2019 only 60% of polling stations met the needs of people with restricted mobility, then by the 2021 local elections the indicator had risen to 80%, whereas 95% of main polling stations were accessible.

Adjusting buildings to requirements may be costly but this money should nevertheless be found. For instance, if a polling station has been set up on school premises, the Ministry of Education and

Research has also supported adjustment of the school building. The Chancellor's advisers had visited polling stations and found that some stations could be made accessible at relatively small expense – in some places it was sufficient to simply level out one step at the front door.

Ensuring a support person

The Chancellor was asked for assistance by a parent where a kindergarten had refused to admit their children with special needs unless accompanied by a support person. The parent was concerned that the kindergarten had also partially failed to comply with the recommendations given by the Rajaleidja network's extra-school counselling committee under which the assistance of a special educator and a speech therapist was prescribed for the children.

In the course of resolving the petition, the rural municipality and the kindergarten admitted to the Chancellor that the municipality is of course responsible for enabling a support person for a child and the kindergarten cannot refuse to admit a child without a support person. The Chancellor [recommended](#) that the rural municipality should analyse how to resolve the situation where for some reason a support person cannot perform their tasks. The Chancellor also asked the municipality to comply with the Rajaleidja decision and provide the necessary extent of support services to children in the kindergarten adjustment group that the children attend.

The law does not allow refraining from organising support services merely because a kindergarten does not have enough support specialists. The services of a speech therapist and special educator must be offered on-site at a kindergarten but in justified cases this may also be done outside the kindergarten if this is in the child's best interests and the municipality arranges the child's transport to the speech therapist and back.

Another family was also concerned about the absence of a support person. The parent explained that for a long time their child had been unable to attend kindergarten because they had no support person. This, however, also interfered with the parents going to work and, moreover, the child failed to obtain preschool education at the kindergarten. Since other families living in Tallinn have also had problems with finding a support person for their child, the Chancellor [asked](#) Tallinn city to change the organisation of the support person service so that children in need of assistance actually do receive assistance.

One petition concerned kindergarten attendance by a child suffering from diabetes. Although all problems were resolved over time, the Chancellor analysed the kindergarten's activity during the two previous school years and [found](#) that the kindergarten had failed to ensure the child a possibility to use the kindergarten place in line with statutory requirements. For a long period, the child could only attend kindergarten half a day at a time, and on several occasions the kindergarten asked that the child be left at home because the group teachers who were used to dealing with the child were not at work that day.

Since the family had on several occasions contacted the Tallinn Education Department for assistance, the Chancellor also analysed the lawfulness of the Department's activities. In the Chancellor's [assessment](#), the activities of the Tallinn Education Department were not sufficiently productive in order to enable the child with a diabetes diagnosis to continue attending the kindergarten without impediments and in a manner appropriate to the child. For instance, the Department failed to assess whether the kindergarten's activity complied with legislation. Nor did the Department try to resolve the situation when kindergarten teachers needed additional assistance to support the child but the city district administration refused to assign a support person to the child. The Department violated the principle of good administration when it failed to answer the parent's questions. The Chancellor recommended that Tallinn Education Department should avoid such mistakes in the future.

Simplified curriculum

The Chancellor was asked to assess whether the extra-school counselling team from the Rajaleidja network had acted lawfully and in the child's best interests when recommending a simplified curriculum for children. So far the Rajaleidja counselling team has recommended a simplified national curriculum only for children with a diagnosis of intellectual disability ascertained by a specialist doctor. In other cases, the recommendation has been to reduce learning results where necessary.

The Chancellor [found](#) that such practice is lawful and compatible with the child's best interests. Based on information available to the Chancellor, however, the Ministry of Education and Research intends to expand the possibilities for applying a simplified national curriculum.

Assessment of the need for assistance

The Chancellor was asked for assistance by a family with a disabled child. The local authority assessed the family's need for assistance but decided to help the family only when almost a year had passed from the moment of applying. Assessment of the need for assistance revealed that since the children needed constant assistance and supervision the mother's burden of care was too heavy. The city granted a carer's allowance to the disabled child's family but this was not sufficient to prevent the mother's burnout – this is the conclusion also reached by the city itself in its assessment of the need for assistance. Offering a kindergarten place or a place in childcare or assigning a support person would have been of assistance but the city had failed to pass those decisions and only limited itself to carrying out assessment.

The Chancellor [explained](#) that a person in need must be contacted as soon as reasonably possible if the situation so requires. After assessing the need for assistance, the local authority must decide whether and what assistance a person needs and to what extent and under what conditions it will be provided. A local authority may not limit itself only to carrying out assessment. A decision on provision of assistance must be made within ten working days.

Fee for the social transport service

The Chancellor was asked whether a fee may be charged for social transport arranged by a rural municipality while a disabled person can use national regular bus services for free. The Chancellor [found](#) that a municipality is entitled to ask people for an affordable fee for the social transport service (§ 16 Social Welfare Act). Saaremaa Rural Municipality Government had set 18 euros as the price of a ride to Tallinn. The ticket on a long-distance bus line Kuressaare–Tallinn also costs 12–18 euros depending on the operator. At the same time, according to social transport contracts entered into by Saaremaa Rural Municipality Government, for a ride with a vehicle transporting a stretcher from Kuressaare to Tallinn the municipality had to pay approximately 255 euros. Thus, it may be said that a discount was also available for people who, due to their disability, could not ride on a regular bus or use any of the national bus transport concessions. If the person found the social transport service at the cost of 18 euros set by the rural municipality government to be unaffordable, they could apply for an additional concession.

Being deprived of school support

Otepää rural municipality paid support for a child on first starting school only to those parents whose child was a resident of the municipality and entered a school in Otepää rural municipality. However, when establishing the conditions for support, the municipal council had failed to take into account that there also exist disabled children who, due to their disability, cannot attend that municipality's school and must therefore choose another school. Yet those families were not paid school support.

The Chancellor [found](#) that depriving a parent of school support for this reason alone was not compatible with § 12(1) and § 28(4) of the Constitution since no reasonable justification existed for declining to grant school support. The objective of different treatment is to influence a parent to choose an educational institution located in the municipality. By declining to grant support, the municipality cannot influence the family to decide in favour of a school in Otepää rural municipality if, objectively, the child cannot attend a school in the municipality due to their disability. For this reason, the Chancellor proposed to Otepää Rural Municipal Council that it should bring the regulation into conformity with the Constitution. The council agreed with the proposal and amended the regulation.