Õiguskantsler

2017-2018 OVERVIEW OF THE CHANCELLOR OF JUSTICE ACTIVITIES

Tallinn 2018

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Chancellor's address

In the 2017–2018 overview of the activities of the Chancellor of Justice and her Office, we can take delight at having been able to resolve people's concerns and thank all the motivated officials, ministers and members of the Riigikogu who swiftly and effectively resolved several problems at the request of the Chancellor and her advisers. We can also praise local governments that devote serious effort with a view to better organising the life of their communities.

The experience of the Chancellor's Office affirms that improvement of the state bureaucracy must start precisely from communication between officials and the people – be it in granting or verifying authorisations, distributing social benefits or allocating pupils a place at school. Communication between an individual and an official requires no additional funds or constitutional amendments; restoring the sense of ownership of their country that some people may feel has slipped away is vital but not a particularly complicated task.

The Chancellor of Justice is not a politician. Unlike elected representatives, she has no mandate to draft legislation or deliberate it in the Riigikogu. However, the Chancellor must intervene when an intended legislative amendment may contravene the Constitution or the basic principles of society. This is exactly how the Chancellor best fulfils her oath of office – by preventing possible mistakes and the consequent damage and legal uncertainty, by attracting the attention of the parliament and, if necessary, of the public.

From 1 September 2017 to 31 August 2018, the Chancellor's Office received a total 3525 enquiries, petitions and letters (3343 a year earlier). These three and a half thousand letters included 2364 petitions (2228 a year earlier), all of which also received a substantive answer. Of course, people's concerns are different. While one petition may lead to a comprehensive legal analysis of the prescription drugs market worth annually hundreds of millions of euros, another petition may require a short answer to a single pensioner who did not receive their statutory hundred-euro state allowance due to bureaucratic mismanagement. Both are important.

Everyone can keep themselves informed of our daily work through the Chancellor of Justice website. I also post summaries on Facebook of debates I personally consider important and interesting to the public.

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Ülle Madise
Chancellor of Justice

Annual overview

The Riigikogu confers additional functions on the Chancellor of Justice

On 13 June 2018, the Riigikogu passed the Act on supplementing the Chancellor of Justice Act, which designated the Chancellor of Justice as the national human rights institution. The Chancellor will also start performing the tasks of protection and promotion arising from the UN 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.

- The so-called Paris Principles, adopted by UN General Assembly resolution on 20 December 1993, lay down that the member states will have to establish a National Human Rights Institution in line with the conditions set out in the resolution. Despite repeated high-level recommendations (the UN Human Rights Committee, the EU Agency for Fundamental Rights, the UN Human Rights Council, the UN Committee on the Elimination of Racial Discrimination, the UN Committee against Torture), Estonia had so far not established such an institution. According to an assessment by the Ministry of Foreign Affairs, the institution of the Chancellor of Justice best meets the requirements set out in the resolution. After a comprehensive discussion, the Chancellor agreed to take on the new tasks provided that they do not impede her from fulfilling her current main duties.

- On 21 March 2012, the Riigikogu ratified the UN Convention on the Rights of Persons with Disabilities by which Estonia assumed the obligation to promote the opportunities of persons with disabilities to participate fully and independently in society. The Convention obliges States Parties, inter alia, to establish an independent framework to promote, protect and monitor the rights of persons with disabilities, while the mechanism responsible for its activities must comply with the Paris Principles. To date, Estonia did not have such a monitoring framework. According to the assessment of the Ministry of Social Affairs, the institution of the Chancellor of Justice best meets the requirements for the responsible mechanism. The Chancellor also found that this kind of solution would be resource-efficient and reasonable.

After the amendment enters into force on 1 January 2019, the Chancellor's Office will start activities in these fields.

Constitutional review: memorandums, proposals and petitions

The Constitution and the Chancellor of Justice Act lay down constitutional review as one of the Chancellor's main duties. Additional tasks imposed on the Chancellor support fulfilling this duty. For example, when dealing with someone's concern, whether the source of the problem might be an unconstitutional rule is always checked. If so, official proposal must be made to bring the norm into line with the Constitution.

The Chancellor presents her proposal at the plenary session of the Riigikogu and replies to questions by members of parliament. Then the chair of the session puts the Chancellor's

proposal to public vote. If the Riigikogu (Parliament) finds that the Chancellor's proposal is justified, i.e. supports the Chancellor's recommendation, then the President of the Riigikogu passes the task to the responsible parliamentary committee to initiate a legislative amendment or a new legislation.

If the Chancellor's proposal does not gain the approval of the Riigikogu plenary session or if the relevant law is not amended within a reasonable time or if the Chancellor finds that the amendment was insufficient, the Chancellor may apply to the Supreme Court seeking a repeal of the legal provision in question.

The Chancellor exercises similar supervision over legislation of general application issued by the Government, ministries and local governments.

If a rule does not contravene the Constitution, the Chancellor provides a relevant answer.

In addition, the Chancellor provides an opinion to the Supreme Court on all constitutional review cases and, if necessary, draws the attention of the Riigikogu, the Government, local governments to possibilities to better develop the law and implementation practices in the spirit of the Constitution of the Republic of Estonia.

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

- A proposal to several local authorities to bring their statutes into line with the Local Government Organisation Act and other Acts. (Read in more detail in the Chapter "Cities and rural municipalities".)
- 18 October 2017. Proposal to the Riigikogu to amend a provision in the Social Welfare Act that does not enable persons in a social welfare institution to obtain the necessary aids with state support, thus placing them in a less favourable situation compared to persons in need of assistance living at home.
- 16 November 2017. Written report to the Riigikogu on financing election campaigns and the appropriateness and constitutionality of regulatory arrangements for election advertising.
- 26 February 2018. Proposal to the Government of Estonia annul unconstitutional amendment to the regulation on allocation of money from the ownership reform reserve fund, clause 3 sub-clause 20 of which established a basis for support to churches to redress the injustice caused during the war and occupation by violation of the right of ownership.
- 18 April 2018. Request to the Riigikogu Social Affairs Committee to prepare a legislative amendment to specify the procedure for payment of death allowance and ensure equal treatment of all people in need of this support.
- 10 May 2018. Application to the Supreme Court to annul Tallinn waste management regulations to the extent that they confer competence to set the service fee on Tallinn City Government and lay down a public financial obligation to cover expenses related to maintaining the register of waste holders and settling accounts with waste holders.
- 19 June 2018. Proposal to the Riigikogu Social Affairs Committee and the Minister of Health and Labour to open a debate on revising the unemployment insurance system.

Plain language

In the Chancellor's opinion, the words "lawyer", "official" and "plain and pleasing Estonian language" are not mutually exclusive. That is, an official text must not be a pile of bureaucratic

jargon with meaning buried beneath it. An official letter, or actually any exchange of information, is at its best when the opposite is observed: clarity, brevity, and precision. Officialese, false sophistication and evasiveness are often used as a cover when not knowing what to say or not daring to say something. Not daring, because of not wanting to take responsibility.

The Chancellor of Justice is a patron of the clear message competition. "If you know what you want to say, try to say it so that others understand. If you talk in a manner that no one understands you, this does not make you wise", she has said.

People have developed a feeling of closeness to the current Estonian Constitution in just a generation because its text can be read and understood without outside professional assistance. The text of the Constitution was written in a few months and its authors represented different walks of life. They did this work with dedication and love, with a sincere belief that these provisions would help to rebuild a good and just Estonian state. There exists no reason why the current law-drafters could not demonstrate the same kind of dedication and love towards the Estonian people.

"User-friendly" state

Strong and healthy citizens who are able to cope by themselves do not need the state or local government in their daily lives. Individuals normally only contact a government agency when they have a problem. In such a situation, they expect a swift answer to their question or to be able to resolve the problem with minimum effort themselves.

During the previous reporting year, the Chancellor took a close look at the information provided by local authorities on their websites about social services. This is vitally important information – these services help to ensure a decent life for those who find it hard to cope independently. The right to an essential service arises from law. For example, this means that the website of a city or rural municipality must provide information about services that is exhaustive and intelligible to everyone. Unfortunately, the websites of many cities and rural municipalities contain too little information about services.

Examination of the websites is ongoing, the first analyses are done and memorandums with recommendations and proposals sent.

Rules with overly complicated wording

The fight for the use of plain and pleasing Estonian is more important than might seem at first sight. The main reason is that people have trouble deciphering obscurely phrased laws and official texts.

Often government agencies spend a lot of time on long and ambiguous justifications for why a person is refused a state support or benefit. However, at the same time often no mention is made of the things that a person in need should do to reach the desired solution.

For example, during the reporting period the Chancellor dealt with a case where the Social Insurance Board had refused to increase the number of state-funded aid devices needed by a disabled child. Contesting the refusal brought no solution either. The mother of the disabled child was unable to understand either from the initial refusal or from the decision on contestation what she should have done to obtain a favourable decision. The Chancellor helped to ascertain that the medical certificate attached to the application for aid devices did not detail

a precise diagnosis or the functional impairment of the child. After obtaining the necessary information, the Social Insurance Board changed its initial decision and increased the amount for aid devices.

The Chancellor received a complaint against the European Union General Data Protection Regulation which contains unclear wording, is open to wide interpretation and is difficult to implement. The petitioner sought an assessment whether the regulation is at all suitable for Estonian legal space. The Chancellor explained that upon Estonia's accession to the European Union all of EU legislation became an inseparable part of the Estonian legal system. However, the Chancellor of Justice has no competence to review its legality. Assistance in applying the General Data Protection Regulation is provided by the Estonian Data Protection Inspectorate, which publishes on its website the necessary guidance materials on implementing the regulation as well as the duties, rights and effects arising from it.

Estonian e-State Charter

On 23 March, the Office of the Chancellor of Justice and the National Audit Office published a new version of the jointly drafted Estonian e-State Charter. Every user of public services in Estonia can look up in that document what rights they have when communicating with administrative agencies in a system of e-government, and check whether those rights have been observed. Based on the Charter, each agency can easily and systematically revise its own operations and set clear and easily measurable objectives for introducing more people-centred administration. The new version of the Charter replaces the text drafted in 2008.

Radio programme "Õigus ja õiglus" [Law and justice]

Since 4 September 2016, Kuku Radio broadcasts the programme "Law and justice" in which the moderator, Chancellor of Justice Ülle Madise, discusses issues of society in the light of the Constitution with guests appearing in the programme. Debates focus on questions such as why things are as they are, and if the Constitution requires better of us, then how to do things better. The programme airs on Sundays at 12–13 o'clock with a repeat on Sundays at 18–19 o'clock. Catch-up of the programme is available on Kuku Radio podcasting.

Power talks

At the end of 2015, the Chancellor of Justice initiated an academic lecture series, titled „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 2017 to May 2018:

- 12 September 2017 Rein Lang „Õnne võim" [The power of happiness];
- 10 October 2017 Anna Levandi „Tahte(jõu) võim" [The power of will(power)];
- 21 November 2017 Robert Kitt „Kas Eesti saab rikkaks?" [Will Estonia be rich?];
- 19 December 2017 Hagi Šein „Kas televisioon on kaotanud oma võimu?" [Has television lost its power?];
- 16 January 2018 Jekaterina Koort „Hiinlaste ärikultuur ja läbirääkimiste strateegiad" [Chinese business culture and negotiation strategies];

- 21 February 2018 Toomas Hendrik Ilves „Vaba ühiskonna kestmise võimalikkus“ [The possibility of survival of a free society];
- 27 March 2018 Märt Rask „Süüdimõistmisest enne õigusemõistmist“ [Conviction before administration of justice];
- 11 April 2018 Raivo Vare „Rongide ja raudtee võim maailma majanduses“ [The power of trains and the railway in the world economy];
- 22 May 2018 Lavly Perling „Kriminaalmenetlus ja avalik huvi. Tõde, inimesed ja aus kohtupidamine“ [Criminal procedure and public interest. The truth, people and honest administration of justice];
- 12 June 2018 Lili Milani „Tervishoiu demokratiseerumine: uued geenipõhised lähenemised“[Democratisation of healthcare. New gene-based approaches].

International relations

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 100 countries worldwide. The IOI operates in six regions – Africa, Asia, Australasia and 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 World Board. Her mandate on the Board lasts until 2020.

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

Since 2012, the Chancellor of Justice as Ombudsman for Children has been a member of the European Network of Ombudspersons for Children (ENOC). The Chancellor also represents Estonia in the networks of European Ombudsmen, the Ombudsman Institutions for the Armed Forces, police ombudsmen, and National Preventive Mechanisms.

On 13 June, the Riigikogu passed an Act on supplementing the Chancellor of Justice Act, stipulating that from 1 January 2019 the Chancellor of Justice fulfils the functions of the national human rights institution (NHRI) and exercises supervision over compliance with the UN Convention on the Rights of Persons with Disabilities.

The Chancellor's foreign guests during the reporting period
20 September 2017 – delegation of judges from the exchange programme of the European Judicial Training Network.
27 September 2017 – delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.
25 January 2018 – Adviser to Slovak ombudsman Katarína Trnková.
5 March 2018 – delegation from the parliamentary health care committee of the federal state of Bavaria.
9 April 2018 – delegation from the Jeollabuk-do province of South Korea.

7 May 2018 – Finnish Chancellor of Justice Tuomas Pöysti.
7 May 2018 – delegation of members of the working group on equal treatment of Austrian judicial authorities.
8 May 2018 – Head of the UNHCR Regional Representation for Northern Europe Henrik Mygdal Nordentoft.
9 May 2018 – Director of the Academy of European Law Wolfgang Heusel.
25 May 2018 – delegation of the Espoo Association of Lay Judges.
29 May 2018 – Swedish Chancellor of Justice Anna Skarhed with officials.
13 June 2018 – Council of Europe Commissioner for Human Rights Dunja Mijatović with advisers.
13 June 2018 – Dutch State secretary for the Interior and Kingdom Relations Raymond Knops with a delegation.
20 June 2018 – delegation of the Essen Association of Judges.
24 August 2018 – delegation of high-level public officials from the federal state of Bavaria.

Study visits
In September and December 2017, advisers to the Chancellor visited parliamentary ombudsmen in Finland and Norway, examined the situation of psychiatric hospitals and care homes for persons with a dementia diagnosis, and discussed issues of supervision in those institutions. The study visits took place with support from the Nordic-Baltic mobility programme for public administration.

International seminar "Human Rights in the Digital Age"
Chancellor of Justice Ülle Madise, in cooperation with the International Ombudsman Institute, organised a seminar on 23–24 January 2018 in Tallinn Creative Hub, where Chancellors of Justice and ombudsmen from 36 countries discussed the impact of the global digital transformation on protection of the rights and freedoms of people. Topics of discussion included national security, privacy, the right to live 'off-line', e-health, personal profiling based on databases and its consequences, and the right to protection from libel and lies on the internet.

Debates at the seminar with over 120 participants were moderated by the best experts in Estonia: IT-visionary Linnar Viik, Director-General of the Data Protection Inspectorate Viljar Peep, sworn advocates Karmen Turk and Ants Nõmper, Doctor Madis Tiik, IT-businessman Rein Lang, Professor of technology law Katrin Nyman-Metcalf, researcher Kristjan Vassil, and others. Presentations were also delivered by ombudsmen from Finland, Croatia, Serbia, and the Netherlands. The seminar was opened by the President of the International Ombudsman Institute, the Ombudsman of Ireland Peter Tyndall.

Children and young people

Estonia ratified the UN Convention on the Rights of the Child on 26 September 1991. Under Article 4 of the Convention, States Parties must undertake all appropriate legislative, administrative, and other measures for protection of the rights of children laid down in the Convention.

In Estonia, the function of the independent ombudsman for children is carried out by the Chancellor of Justice. The task of the Ombudsman for Children and her officials is to ensure that all the authorities, institutions and persons whose decisions affect the life and well-being of children respect the rights of children and proceed from the best interests of the child.

Parental care

During the previous reporting period, the Chancellor was contacted by several parents seeking an explanation of the rights of parents in relation to each other as well as to their children. The parents complained that documents transmitted in enforcement proceedings and in the expedited procedure in matters of payment order are too complicated. This demonstrates that in family law matters people need information that is clearly presented and to the point as well as procedural documents in plain language. Child protection officials in cities and rural municipalities must also provide explanations to parents.

Equal rights and responsibility of parents
Parents living separately from their child are mostly concerned that they do not see the child often enough and that they do not share equal rights with the other parent in respect of the child. Under the Family Law Act, parents have equal rights and duties in respect of their children. Parents must exercise the joint right to custody in respect of the child, perform the custodial obligation on their own responsibility and by consensus with a view to the well-being of the child.

These principles also apply in the event of the parents' separation. In that case the parents must agree on the right of access to the child for the parent living separately. This is the duty of the parents, not of the state. The child is entitled to maintain relations with both parents and the separated parent has the right and duty to communicate with the child. If parents are unable to agree on custody of the child or access to the child, the dispute is resolved by a court under the procedure laid down by law. The court must take into account the specific circumstances and make a decision that is in the best interests of the child. The interests of the child may require a decision that does not ensure equal rights for both parents in respect of the child.

When resolving disputes between parents, the focus should be on prevention as well as intermediation of agreements concerning the child. This is also affirmed by the experience of other countries that have tried to reform the procedure for resolving family law disputes. In the Nordic countries, including Sweden, which is often cited as an example, the main attention is indeed paid to achieving mutual agreement between the parents. A feasible solution cannot rely on state coercion but, first and foremost, on the free will of the parents and their mutual agreement.

Delegating parental rights
The Chancellor of Justice explained to one parent that a parent cannot waive the right to custody or delegate it to a third party. Only the court may restrict a parent's right of custody or deprive them of it. Although the law accepts a situation where a third party temporarily raises and takes care of a child, this does not mean that the parent has in that case transferred the right of custody to the third party. In that situation, the responsibility arising from the custodial obligation still rests on the parents. An inseparable part of the right of custody is the right to decide. Parents must decide matters relating to their child on their own responsibility and by consensus. The right to decide can only be modified by the court and mostly with regard to relations between the parents – the court may grant one parent the right to decide on a specific issue.

If parents enjoying a joint right to custody live apart, the parent living with the child may single-handedly decide issues concerning the child's daily life (care and control). Daily care and control includes, for example, issues such as what clothes the child will wear, what they eat, whether they may go to the cinema with friends in the evening, whether they go to grandparents for the weekend, and the like. However, decisions such as what kindergarten or school the child will attend, whether the child should undergo a required medical operation, whether the child may travel abroad with a friend's family, and so on, do not qualify as decisions on daily care and control. The parent living with the child may also let a third party take care of daily activities in connection with the child. For example, the parent may ask the child's grandparent, aunt, uncle or their new cohabitant to take the child to school or kindergarten and pick up the child in the evening. However, the parent living with the child cannot authorise a third party to carry out actions which only both parents together may decide.

Deciding on use of a child's pocket money
The Chancellor of Justice was asked whether a parent may decide on use of money earned by the child. Under the Family Law Act, parents are entitled to take care of the child's property. Thus, as a rule, parents administer their child's property and also represent the child in transactions and steps in connection with the child's property.

Although the law also enables a parent to use money belonging to their child for providing maintenance to the child, this should not be understood as relieving a parent of the maintenance obligation and allowing them to rely only on the child's income for providing the family's maintenance. Even if the child goes to work and earns income, a parent is obliged to provide maintenance for their minor child. Clearly, situations may occur where it is reasonable and necessary for a child with an income to contribute to the expenses necessary to satisfy their needs. The law does not provide a definite answer as to reasonable maintenance expenses and performance of the parental maintenance obligation. This depends on the specific situation and the family's living standard.

Enforcement proceedings concerning a parent's right of access to a child
The Chancellor of Justice has asked the Minister of Justice and the Minister of Social Protection to draft legislative amendments to ensure better protection of the interests of children. The Ministry of Justice has promised to submit the intention to prepare a Draft Act on enforcement of court decisions on rights of access by the end of 2018.

The Chancellor recommended that the Minister of Justice and the Minister of Social Protection should focus on developing a counselling service and arranging pre-judicial agreements so as to reduce the number of cases brought to court. The prospective Draft Act should set out

whether and how enforcement proceedings should be carried out when arrangements for access to a child have been set by a ruling on provisional legal protection.

For example, it is worth considering whether the staff of certain agencies might be more knowledgeable about child welfare issues than bailiffs and whether that agency would be better equipped than bailiffs to enforce rulings on access arrangements. Until no new solution is found, the current practice of enforcing rulings on access arrangements should be improved, for example, by training bailiffs. Local authority child protection workers should also participate in the enforcement process, for example, by assisting bailiffs. The Ministry of Social Affairs should ensure that child protection workers are aware of their duties in enforcement proceedings concerning arrangements for a parent's access to their child.

Confidentiality of adoption

The Chancellor of Justice had to provide an assessment of potential disclosure of the confidentiality of adoption in an interview on the TV programme "Terevisioon" on Estonian Public Broadcasting where adoptive parents told their story and disclosed the name and photograph of their adopted child. Although the Family Law Act can indeed be interpreted differently in this matter, preference should always be given to constitutionally-compliant interpretation. The Family Law Act does not prohibit adoptive parents themselves from sharing information about the adoption if the best interests of the child are taken into account and the identity of the child's biological parents is not disclosed against their will. The idea behind the confidentiality of adoption is to protect the adoptive parents, the child and the child's biological parents. However, parents cannot be forced to preserve the confidentiality of adoption if they do not consider it necessary or if it is factually not even possible.

To inform a child about their adoption, a suitable time and approach should be chosen, allowing for the child's maturity, and the child should definitely be informed before making the issue public.

Infants in a shelter

An inspection visit by the Chancellor's advisers to Tallinn Shelter for Infants (*Tallinna Väikelaste Turvakodu*) revealed that some children under three years of age had been living in the shelter for several months and some for over a year. For example, a ten-month-old girl, separated from the parents at the age of one month, had spent nine months in the shelter. Since most of the infants had been referred to the shelter by North Tallinn City District Government, the Chancellor recommended that the city district head should review all cases of children under three years old staying in the shelter and, if necessary, contact the Social Insurance Board to find suitable foster families. The Chancellor also recommended that in future North Tallinn City District Government should refer children under three years old who are separated from their family to a foster family instead of to a shelter.

In the Chancellor's opinion, each child should stay in the shelter for as little time as possible. However, infants should not be placed in a shelter at all. Even a child that is in need of substitute care for a brief period should be sent to a foster family rather than a shelter. Exceptions are possible only in the best interests of a specific child.

Social guarantees of parents

The Chancellor received a letter from a parent who was deprived of the second instalment of the childbirth allowance since Järva Rural Municipal Council changed the conditions for

paying the allowance by amended regulation. The Chancellor found that the rural municipal council's regulation contravened the principle of legitimate expectations. On that basis, the Chancellor proposed that the municipal council should amend the regulation on payment of childbirth allowance so that people who had been paid the first instalment of the allowance prior to entry into force of the Järva Rural Municipal Council amended regulation would also receive the second instalment under the previously applicable conditions.

One individual wrote to the Chancellor expressing dissatisfaction with the conditions for receiving the allowance for families with many children regulated under the Family Benefits Act. In the applicant's family were three children, one of whom was alternately living with the applicant and the child's mother. The Social Insurance Board refused to pay the allowance for families with many children because the mother of the child who was alternately living in both families was receiving a child allowance for the child and did not agree to transfer entitlement to the allowance to the applicant. The Chancellor explained that even though families with three children are entitled to the allowance for families with many children, the allowance may also be granted to the family where the child partially lives. However, this can only be done if the parents agree on which family the child with alternate residences belongs to. Family benefits are paid on the basis of agreement between the parents. Neither the Social Insurance Board nor any other authority (apart from the court) can decide instead of the parents on the right to custody, family composition or the family's financial situation and shared responsibility for raising a child. Parents also agree on the child's residence to be entered in the population register.

The Chancellor was contacted by a parent with a concern that, after returning to work from parental leave, they received a significantly smaller amount of temporary incapacity for work benefit during the child's illness than they had expected because they did not work during their parental leave. This placed the family in an unexpectedly difficult situation. The Chancellor acknowledged that because of the rules for calculating care allowance many families are faced with difficult choices. However, the Riigikogu enjoys a wide margin of appreciation as to how much care allowance to pay to parents. It cannot be considered as clearly degrading human dignity that the allowance is paid on the basis of the minimum monthly wage established by the Estonian Government. Therefore, the Chancellor has no basis for misgivings about the constitutionality of the allowance.

The Chancellor was also asked about granting incapacity for work benefit based on a certificate for care leave. A doctor closed the petitioner's certificate for care leave on Friday, and not on Sunday, so that the incapacity for work benefit received was smaller than expected. The Chancellor replied that under the Health Insurance Act a certificate of incapacity for work may be issued by a doctor. The doctor is responsible that the temporary incapacity for work should be justified and that the insured event is correctly determined. Although the Chancellor could not assess whether the general practitioner closed the petitioner's certificate for care leave on the right day, the Chancellor acknowledged in her opinion that if the general practitioner believed the petitioner had to care for a close family member also at the weekend then the certificate for care leave should have been closed as of the day when the need for care ceased to exist. The Estonian Health Insurance Fund and the Ministry of Social Affairs explained to the Chancellor that in order to close a certificate for care leave a patient needs to be examined and this can only be done on working days. The Chancellor did not agree with this interpretation. Therefore, the Chancellor sent to the Ministry of Social Affairs and the Estonian Health Insurance Fund as well as the Estonian

Association of General Practitioners an explanation that under the current procedure a treating doctor may also close a certificate for care leave at the weekend without seeing a patient if the treating doctor finds it justified.

The Chancellor was asked to check whether the Social Insurance Board had correctly interpreted the rules for using parental leave. The petitioner wanted to know whether only one parent at a time may go on parental leave even if several children under three years old are in the family. The Chancellor found that the interpretation by the Social Insurance Board conformed to the Employment Contracts Act. Under the Act, either mother or father are entitled to parental leave until the child reaches three years of age, and parental leave may be used by one person at a time. This provision has to be interpreted in combination with another provision of the Employment Contracts Act, under which an employee on parental leave is entitled to parental benefit and child care allowance as prescribed under the Family Benefits Act. The state pays parental benefit during a parent's parental leave in order to compensate the family for the absence or reduction of the income of one parent. Thus, if both parents in a family were entitled to parental leave, they could both receive parental benefit but that situation would be contrary to the Family Benefits Act. Child care allowance is not paid simultaneously with parental benefit. Only a parent who is on parental leave may receive child care allowance (for all the children). Thus, in the case of child care allowance, the possibility for both parents to be on parental leave is also ruled out since only one parent may receive child care allowance.

School life

A pupil enquired whether a school requirement that justification for an adult pupil's absence from school can only be given by their guardian was legitimate. In the opinion of the Chancellor of Justice, this requirement is not correct because a young person who is 18 years of age is considered to enjoy full legal capacity. An adult person only has a guardian if the court has restricted their legal capacity and appointed a guardian − for example, because due to intellectual disability an individual is permanently unable to understand or direct their actions. Full legal capacity means that an individual decides and bears responsibility for their actions. Thus, if an adult pupil with full legal capacity is absent from school, the school must rely on explanations given by the pupil in order to assess justification for their absence.

The Chancellor was also asked whether a ten-day time limit for retaking tests laid down in school internal rules was compatible with legislation or whether tests could be retaken during half a year. Under the national curriculum for basic schools, pupils must be given an opportunity to retake an oral or written test. A more precise procedure is to be laid down by each school in its curriculum; no national-level legislation regulates this issue. Thus, a school is also entitled to set a ten-day time limit for retaking tests, though allowing for some flexibility. For example, a pupil might be ill for an extended period and unable to retake a test by the deadline set by the school. In that case, the pupil should be allowed to retake a test at a later time. It may also prove necessary to allocate sufficient study time for a pupil who has been absent for an extended period.

A pupil enquired whether a teacher may include in a mini-test material covering more than one or two lessons which a pupil must study independently. The Chancellor explained that the concept of a mini-test does not exist in legislation. According to established practice

and in view of the meaning of the word, it is customary that a mini-test is considered to mean a test used to check the knowledge acquired in the last lesson or the lesson before that. Schools themselves often lay down how a mini-test is defined and how the results of study are checked. So it is worth looking up in the school internal rules, the curriculum or other internal school documents (e.g. a school website) whether the concept of a mini-test has been clarified there. Nor has any law or regulation laid down how many and what tasks may be assigned as homework. Studying at basic school is full-time, i.e. activities under the guidance of the school account for a relatively larger proportion than independent study. At the same time, independent homework is common for all pupils and is a necessary part of studying. Its amount and content are determined by the school and teachers. However, the planning of teaching and learning, including homework, should take into account that the study load of pupils should correspond to their age and capabilities and would also leave them time for rest and hobbies.

The Riigikogu debated the Draft Act on amending tshe Basic Schools and Upper Secondary Schools Act with the main focus on the organisation of study for children with special educational needs. In a letter to the parliamentary Cultural Affairs Committee, the Chancellor conceded that even though the Draft Act addresses several shortcomings, it also raises some issues. First, supervision of individual cases and relevant supervision by the ministry are insufficiently regulated. Second, the prospective amendments fail to take into account the size of special schools or classrooms and their specificities, or the related need for additional funding. Third, the Chancellor raised the issue that, as a result of administrative reform, the way to school is becoming different and/or longer than previously for some children with special needs. For example, a child with special educational needs might not be able to take public transport to school, while local authority social transport might not be of assistance either. In that case, the Draft Act would leave the additional costs for parents to cover.

Saaremaa Rural Municipal Government sought the Chancellor's opinion on whether the rural municipality had acted in line with the Basic Schools and Upper Secondary Schools Act and the Saaremaa Rural Municipal Government regulation when assigning a school based on residence for a child and relying, first and foremost, on the proximity of the child's residence to the school (length of walking distance). If vacant places at a school exist, when assigning a school for a child the local authority also takes into account whether the family's other children attend the same school. In her letter, the Chancellor emphasised that under the Basic Schools and Upper Secondary Schools Act a rural municipality or city government must definitely keep in mind two conditions when assigning a residence-based school for a child: the proximity of a child's residence to the school and whether other children of the family attend the same school. If possible, a school may also take into account the wishes of the parents. The law does not prescribe which of those two criteria carries more weight, meaning that both are equally important. Therefore, in the Chancellor's opinion a rural municipality should not always prefer one criterion when assigning a school for a child. Each case should be dealt with individually, taking into account all the circumstances in aggregate.

The Chancellor of Justice also dealt with the case of Tartu Tamme School. The parents at that school were dissatisfied with Tartu City Government's decision that primary school pupils had to go to school for the second shift, i.e. in the afternoon. The Chancellor replied to the parents that a local authority must enable children required by law to attend school and residing within its administrative boundaries to receive a basic

education in a school operating under public law. How a local authority complies with this task depends on education policy choices. Organising study in several shifts is also allowed if a school lacks enough places for all pupils to study in one shift. Similarly, policy choices include an option to procure modular classrooms, which parents cannot directly demand. Thus, in legal terms the decision by Tartu City is not wrong. Although organising study in two shifts is allowed, the city should also take into account the effects on families and children resulting from attending school in the second shift. It should be ensured that children are treated equally and their interests are taken into account. For example, the school must ensure that children attending the second shift can also participate in hobby groups.

The Chancellor was asked at what time the school day should start. The Chancellor explained that the best interests of children should be the basis in setting the beginning of the school day. Lessons should not start before 8 o'clock in the morning but schools are free to set later starting times. Many schools also make use of this opportunity. The best result is achieved if the starting time of the school day is mutually agreed among parents, the school and the school's board of trustees, while also hearing the opinion of the student council.

The Chancellor also received a question about the school meal break. Under the Minister of Social Affairs Regulation, the meal break must be at least 15 minutes long. Since the regulation only contains the minimum length of the meal time, each school must itself decide on the length of the meal break by weighing the practical feasibility and the needs of the children. It is important that children have enough time for eating. For that, the school should pay more attention to organising meals for children.

On a request by Kernu Basic School, the Chancellor explained the qualification requirements established for teachers and support specialists. Under the Minister of Education and Research regulation, a teacher who holds a Master's degree and has undergone teacher training at university but who was not working as a teacher at a school on 1 September 2013 must apply for the teaching profession so as to have their qualification meet the requirements laid down in legislation. A social pedagogue is a support specialist in an educational institution who must have either professional higher education or hold the professional title of social pedagogue. The Basic Schools and Upper Secondary Schools Act also allows a temporary employment contract for the post of a teacher to be concluded with a person who does not hold the required qualification. At the same time, the law does not offer an option to hire a social pedagogue who does not meet the qualification requirements. The interpretation that hiring a social pedagogue who does not meet the qualification requirements is allowed, because it is not directly forbidden, would render qualification requirements for support specialists devoid of meaning.

The Chancellor was also asked about fees for school hobby groups. Under the Constitution and the Basic Schools and Upper Secondary Schools Act, fees for hobby groups operating in municipal schools may differ. Thus, the owner of a hobby school is not required to set the same fee for its hobby groups in every school. There may be differences in terms of the content of hobby activities, instructor remuneration as well as other expenses. Therefore, hobby group fees cannot be required to be the same in all schools owned by Tallinn City. Differences in fees also cannot be considered arbitrary.

The Chancellor was asked to express an opinion on whether it was lawful for Tallinn to give financial support to provision of meals for children attending its municipal kindergartens while children in private kindergartens do not receive the same support. The Chancellor found that Tallinn was entitled to give financial support to provision of meals to children in Tallinn attending municipal kindergartens. This is not a support paid based on the child's residence or so-called head money but a wish by a local authority to offer a more favourable service to those attending a municipal kindergarten. Under the Preschool Childcare Institutions Act, a child's meal expenses in a child care institution are covered by a parent. If Tallinn has decided to support meals for Tallinn children attending the city's kindergartens, this may be interpreted as a voluntary commitment assumed by the city.

The Chancellor was asked to assess whether it was lawful for Rakvere town to provide a childcare service funded from the town's budget to those creche-aged children whose parents do not receive parental benefit. The Chancellor concluded that the provisions in the Rakvere Town Council regulation that set the parents' employment or activity equivalent to employment as a precondition for receiving the childcare service were unlawful. The Preschool Childcare Institutions Act lays down that a kindergarten place is given to a child between one-and-a-half to seven years old at least one of whose parents resides in the respective local authority. With a parent's consent, a rural municipality or city government may replace the kindergarten place of a child between one-and-a-half to three years old with childcare service. However, in that case the parent must receive the childcare service under the same conditions as their child would receive a place in a kindergarten. Rakvere town assured the Chancellor's adviser that it plans to change the conditions for receiving the childcare service.

Children and the internet

Many children and parents are still not completely aware of the effects that smart devices may have on the health and well-being of a child. According to the Study on internet dependency among children, excessive internet use among children is linked to poorer academic performance by children, poorer health as well as problematic family relationships. An indication as to a child's internet dependency occurs when a child's other needs and interests begin to decline, or when a child becomes forgetful and irritated when their internet time is cut. These signs occasionally appeared in 6 per cent of children in the second school-year, and 22 per cent of children in the eighth school year. Some 22 per cent of parents with children in the eighth school year believe that no such thing as excessive internet use exists (project „Digilaps" survey). At the same time, 20 per cent of 15-year-old young people in Estonia use the internet for 4−6 hours at home after the school day, and 18 per cent of young people for over six hours (PISA 2015 Report on Estonia). Cyberbullying and sexual abuse of children over the internet is also common. According to the EU Kids Online survey, children are most bothered by pornographic material on the internet.

Estonia has web-constables who provide advice about internet safety and whom children can contact on Facebook. Since 2010, the non-profit association Estonian Union for Child Welfare has been coordinating the project „Targalt internetis" (Smartly on the Web). In cooperation with the police and with the help of the child helpline service, an attempt is also being made to combat the spread of sexual abuse materials. The website tarkvanem.ee offers practical advice

and enables asking for advice from specialists. Information on digital dependency is also available on the health information website.

- Several individuals contacted the Chancellor with the concern that a parent had disclosed on social media or shared with journalists sensitive information about the private life of their child. Children themselves cannot effectively stand up for their rights in such a situation. Therefore, the Chancellor had to draw the attention of media publications to the fact that besides the parents all other persons, including journalists, must keep the best interests of the child in mind. Journalists should not exploit persons who are less experienced in media communication. Disclosure of information about a child's private life must be based on consideration of the effect that this has on the child at the moment of disclosure as well as in the future.

- E-sports (i.e. computer games) activists enquired from the Chancellor how to organise public computer games competitions so as to comply with the requirements of the Child Protection Act. Many computer games depict fighting and other violent activities. The Child Protection Act prohibits manufacturing, showing and disseminating to children works that incite violence or cruelty or include pornographic content. The prohibition also applies to computer and video games. Under the Penal Code, showing or making available to someone under 14 years of age of works promoting cruelty, or knowingly displaying cruelty to them, is punishable. Everyone under 18 years of age is a child in terms of the law and no exceptions can be made even with permission from a parent. The purpose of the prohibition is to avoid negative effects on children's development, so that the game experience does not grow into violent and anti-social behaviour.
  The Chancellor drew attention to the fact that the law does not prohibit displaying or distributing all games containing violence or cruelty. The prohibition applies to games that incite and promote cruelty and violence. It is not possible to give universal guidelines on conduct for organisers of public events. Every specific game must be assessed in terms of substance. The PEGI rating system recognised by European Union member states and the European Commission definitely offers a good reference point for competition organisers and parents. The law imposes responsibility on businesses, i.e. in this case the organisers.

Prevention and promotion

The Chancellor's task is also to raise awareness of the rights of children and ensure that children are active participants in the life of society. As Ombudsman for Children, the Chancellor initiates analytical studies and surveys, on the basis of which she 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 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 in healthcare.

- During the reporting year, the Chancellor's advisers carried out several training events on the rights of the child and delivered lectures in kindergartens and schools. For child

protection and social welfare workers, the advisers explained rights of custody and access, as well as rules and international recommendations regulating separation of children from their family.

- Also this year the children's and youth film festival 'Just Film', held as part of the PÖFF Film Festival, included a programme on the rights of the child, 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 film programme on the rights of the child has become a tradition and this year featured for the seventh time. Screening of selected films was followed by debates with experts and well-known personalities analysing the films together with viewers. Organisers of the children's rights programme joined the campaign „Aga mina" (But I ...), emphasising the importance of listening skills among children and young people. This time 1499 cinema-goers visited the programme on the rights of the child.

- 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 fifth time in 2018. On the International Day for the Protection of Children, the President of the Republic, the Chancellor of Justice and the Minister of Social Protection recognised those who have significantly contributed to the well-being of children through their new initiatives or long-term activities.

Young people in elections

Perhaps the most important promotion project undertaken by the Ombudsman for Children during the reporting period was linked to the 2017 local elections where 16 to 17 year-old young people were able to vote for the first time. The aim of the young election monitors project initiated by the Chancellor was to educate young people politically, offer them a participatory experience, and contribute to ensuring neutrality in dealing with political issues in schools. In the course of the project, several hundred young people received an overview of organising elections, with explanations given concerning election campaigning.

In pre-election weeks, young election monitors who had received the training checked that schools complied with the principle of neutrality and, if necessary, notified violations to local authorities, the Ministry of Education and Research, the National Electoral Committee, and the Chancellor of Justice. Young people also participated in organising elections as observers and as members of polling division committees. In their monitoring activities, they relied on the good election practice guidelines drawn up by the ministry. A total of 134 young election monitors participated in the Project.

(See also the Chapter "Inspection visits. Childcare institutions".)

Cities and rural municipalities

Municipal council elections in autumn 2017 saw the mergers and assimilations of several local authorities and other administrative reform decisions enter into force. The Chancellor received numerous enquiries concerning problems of starting the work in the new local authorities. Questions were also raised with regard to implementing the amendments introduced in the Local Government Organisation Act.

The Chancellor replied to numerous petitions concerning exercise of the rights of municipal council members; for example, enabling a vote by secret ballot and obtaining information concerning a local authority. An important remaining issue is avoidance of conflict of interest in fulfilling the functions of a public authority.

After the administrative reform, the Chancellor has had to investigate repeatedly whether merged or assimilated local authorities have observed the principles of equal treatment and legal certainty, including legitimate expectations, when harmonising their services, benefits, land tax rates, etc. The Chancellor was also often asked to assess whether local authorities fulfilled their functions to the extent and manner laid down by law. The Chancellor continues to pay close attention to provision of social services in cities and rural municipalities.

Although the Chancellor receives a lot of questions concerning local authorities' problems, these are usually already resolved in the course of proceedings and there has been no need to have recourse to the court. An exception was an application lodged with the Supreme Court on 10 May 2018 to annul some provisions in Tallinn waste management regulations that contravene the Constitution. In the opinion of the Chancellor, no legal basis exists for setting the service fee for waste transport in Tallinn. (See also the Chapter on "Entrepreneurship, ownership, environment".)

Organising local life, the work of municipal councils

Formation of municipal council committees
During the reporting year, the Chancellor repeatedly had to explain how to lawfully implement amendments to the Local Government Organisation Act entering into force on 16 October 2017 that regulate formation of municipal council committees. The Chancellor was asked whether the situation of people from outside the municipal council being involved in the work of the committees was compatible with the Constitution (see the Chancellor's letters on membership, separation of powers and incompatibility of offices and forming the composition of committees of municipal councils).

According to the Chancellor's explanations, the Constitution (including the principle of representative democracy) does not preclude having people who are not members of a municipal council sitting as members of municipal council committees. The principle of democracy already in essence assumes involvement by the public in the exercise of governmental authority (in the frame of local government administration). Forms of civic participation that do not preclude the right of the municipal council to decide, in the frame of the law, all essential local matters also do not call into question the meaning of municipal council elections or the legal status of the municipal council as local government representative body. Although municipal council committees participate in proceedings concerning council

draft legislation, they do not establish legislation instead of the municipal council. A municipal council need not consent to an opinion expressed by a committee. This does not render legislation of general application or individually addressed legal acts adopted by a municipal council unlawful if those committee members who are not members of the municipal council also participated in deliberations for them.

The Chancellor also found it to be lawful for a municipal council member to be simultaneously a member or official of the same rural municipal or city government since no legal provision bars it. The fact that a rural municipality or city government member or official acts as a municipal council committee member does not place the activities of the committee or the council under the control of the rural municipal or city government, i.e. the executive.

The law does not lay down the minimum proportion of municipal council members in municipal council committees (the exception being the internal audit committee, whose chair and members are only elected from among municipal council members). This way the right of self-organisation of rural municipalities and cities is respected. A municipal council must itself decide whether and how many persons from outside the council to involve in committees and whether those committee members who are not municipal council members also have the right to vote. Persons who are not municipal council members may also be involved in the work of committees without granting them the right to vote.

The requirement under which forming the composition of a municipal council committee must take into account the share of representatives of different political parties and election coalitions in the municipal council applies to the entire composition of a committee.

All members of municipal council committees must comply with the requirements of the Anti-corruption Act.

The Chancellor also had to explain that local authority activities are based on the principle of openness to the public. Thus, places of work and positions held by all municipal council committee members are public. Such data are not deemed to be sensitive personal data.

Appointing municipal council members to serve on a city or rural municipal government committee

The Chancellor affirmed to a petitioner that municipal council members may belong to city or rural municipal government committees if the municipal council so decides. However, it is not lawful to appoint municipal council members to city or rural municipal government committees through a legal act issued by the city or rural municipal government. This would contravene the constitutional status of the municipal council as local government representative body, the statutory status of the city or rural municipal government as local government executive body, as well as their respective competence.

The necessary number of members required to form a faction

The Chancellor was asked whether it was constitutional that the Local Government Organisation Act did not regulate issues concerning municipal council factions. The Chancellor was also asked to check whether the provision in the Tartu City Statutes that entitles at least five municipal council members to form a faction was lawful and not contrary to the principle of equal treatment.

The Chancellor explained that issues concerning municipal council factions are internal municipal council issues covered by the right of self-organisation. It is not unconstitutional for the Local Government Organisation Act to leave the conditions for forming factions for municipal councils themselves to decide. A municipal council may restrict the right of its members to belong to factions for purposes that do not contravene the law or the Constitution while respecting the principle of a free mandate and the requirement of equal opportunities in exercising the mandate.

A municipal council may, inter alia, decide on the number of municipal council members required to form a faction. A municipal council may also impose a ban on a member leaving one faction joining another faction, and require that persons elected to the council on the same list can form one faction. The rights of municipal council members not belonging to factions may not be restricted without justification or disproportionately in comparison to those members who have aligned themselves with a faction.

A municipal council lays down the minimum number of members for a faction as well as other restrictions on forming a faction with a view to ensuring effective operation of the council. The second legitimate purpose is to ensure political responsibility based on political parties and election coalitions.

The Chancellor concluded that the rules on forming factions laid down by the Tartu City Statutes in force to 1 May 2018 were lawful and proportionate to the aim sought. The rights of aligned and non-aligned municipal council members did not differ significantly. The number of municipal council members who had no opportunity to form a faction (there were eight such members, i.e. 16.3% of the total membership of the council) was not unreasonably high, and the number of members required to form a faction had not been established to specifically discriminate against certain political forces).

The residency requirement for municipal council and city district assembly members
The Chancellor of Justice was asked whether it was admissible for persons to participate in the work of Tallinn Municipal Council and Nõmme City District Assembly if they were not actually living in the respective city or city district but had recorded themselves as residents in the population register for the sole purpose of being able to run in local elections.

The Supreme Court has repeatedly affirmed that the statutory permanent residency requirement for candidates is purposive since local matters can be decided by persons who actually live in that rural municipality or city. No other criteria for assessing the residency requirement are laid down by law.

The Chancellor acknowledged that residency data in the population register alone are not proof of a candidate's connection with the life of a local community. Nevertheless, in a free society, relying on register data is generally the best way to check the residency requirement, and it would be difficult to find any other just and proportionate coercive measures. Fortunately, voters can remedy legal and administrative shortcomings by giving their vote in elections for a candidate who is sufficiently familiar with local concerns.

The procedure for electing a village elder
The Chancellor was contacted by inhabitants of Ihasalu village in Jõelähtme rural municipality, claiming that no written invitations had been sent to the inhabitants to participate in the election

of the village elder. This violated the procedure laid down by the municipal council, and the rural municipal government failed to resolve the relevant complaints in substance.

The Chancellor of Justice found that the rural municipal government had also failed to fully comply with the principle of good administration (§ 14 Constitution) or the investigative principle (§ 6 Administrative Procedure Act). Under the borough and village elder statute approved by the rural municipal council, the rural municipality had to accept a village elder elected by village inhabitants if the election had taken place in line with the established procedure. The investigative principle requires the rural municipal government to ascertain whether the election of the village elder took place in line with requirements. The rural municipal government is tasked with checking the lawfulness of the village elder's election and, inter alia, ascertaining whether all village inhabitants were properly informed in advance about the village meeting. Based on the Chancellor's recommendations, Jõelähtme Rural Municipal Council adopted a new borough and village elder statute.

Merger contracts and local authority regulations

Contesting a merger contract or merger agreement

The Chancellor was asked what happens if a local authorities merger contract or agreement is not complied with. Possibilities to contest a merger contract or agreement depend on how the contract or agreement has been violated. A merger contract or agreement in itself probably does not violate anyone's subjective rights. Thus, as a rule, an individual has no possibility to contest a merger contract or agreement in court with a view to defending their rights. If a merger contract or agreement is violated so that it leads to contravention of the law, then anyone may lodge a petition with the Chancellor of Justice.

If a merger contract is violated by an administrative act or by failure to issue an administrative act, so that a public interest is thereby interfered with, since the beginning of 2018 a person may contact the Ministry of Justice, which exercises administrative supervision over the lawfulness of administrative acts by local authorities. Initiating administrative supervision in the public interest is a discretionary decision to be made by the Minister of Justice. If violation of a merger contract interferes with the rights of a specific person, that person may have recourse to the Chancellor of Justice or an administrative court depending on the particular situation.

A former rural municipality or city that has entered into a merger contract or agreement can have recourse neither to the court, nor to the Chancellor of Justice, nor to the Ministry of Justice. In the context of a specific petition, the Chancellor of Justice has explained how an individual can defend their rights if a rural municipality decides to stop childcare activities. In the specific case, the local authority wanted to arrange the childcare service differently than had been agreed in the merger contract.

Supervision over compliance with a merger contract may also be exercised in the course of a local authority internal audit, for example, by a municipal council internal audit committee.

Harmonising the organisation of activities in merged local authorities

The Chancellor of Justice found that if the new Tartu rural municipality were to establish lower prices for services of the social centre for the inhabitants of the former Tabivere rural municipality in comparison to other rural municipality residents, this would contravene the general fundamental right to equality. By assessing the different land tax rates in different areas of Tartu rural municipality, the Chancellor found that even though this constituted interference

with the general fundamental right to equality, the interference was lawful at the time of the assessment.

When harmonising the procedure for payment of social benefits, merged rural municipalities and cities must take into account the rights already granted to local people earlier. For example, in Järva rural municipality an individual was deprived of the second instalment of the childbirth allowance because the municipality established additional conditions for receiving the allowance. In the Chancellor's opinion, the new rules on paying the childbirth allowance were not compatible with the Constitution.

Statutes of local authorities

- The Chancellor made a proposal to Sillamäe Town Council to bring the town statutes into line with the Constitution and the Local Government Organisation Act.
  Under the law, the municipal council enjoys the sole competence for forming and terminating municipal council committees, electing their chairs and deputy-chairs and approving the composition of committees. Committee members are approved on a proposal by the committee chair. However, the procedure for forming the vote counting committee and electing its chair, as laid down by Sillamäe Town Statutes, set out that the chair of the municipal council vote counting committee was to be elected by the committee from among its own members by a majority of votes in favour. Sillamäe Town Council brought the procedure for forming the municipal council vote counting committee into line with the law.
  The Chancellor found that the competence of the vote counting committee and the conditions provided for voting by secret ballot must enable a vote by secret ballot to be carried out in reality. In the new version of the town statutes, Sillamäe Town Council laid down significantly more detailed rules for the procedure for voting by secret ballot (including the conditions for organising the vote).
  The Chancellor also drew the attention of Sillamäe Town Council to the fact that local government statutes must enable municipal council members to contest, in the council, violation of the right to exercise their mandate. Communication with the municipal council ascertained that even though the statutes did not mention an objection by a municipal council member, the provisions of the statutes nevertheless enable filing an objection and are thus lawful.

- The Chancellor assessed conformity with the Public Information Act of Hiiumaa Rural Municipality Statutes, regulating the representative competence of the chair of the municipal council. The provision of rural municipality or city statutes under which the municipal council chair – within the competence conferred on them – authorises other municipal council members to represent the rural municipality or city and its municipal council, is lawful. The legal frame laid down by law is also not exceeded if the municipal council chair coordinates and decides issues during preliminary negotiations. No risk of corruption exists in that case either. The municipal council chair represents not themselves as a private individual but the municipal council or the local authority as a whole. Therefore, information on correspondence exchanged by the chair must be accessible to municipal council members.

- The Chancellor explained that processing the new Draft Statutes of Tartu City must comply with the requirements of the current statutes. The Administrative Reform Act prescribes that if local authorities have not concluded a merger contract or merger agreement, the basis will be the statutes of the rural municipality or city with which a

local authority not meeting the minimum size criterion (5000 residents) was merged or assimilated. Until new statutes are enacted, the current statutes must be fully observed. The law does not enable a municipal council not to apply the current statutes, or only to apply them selectively, until the new rural municipality or city statutes enter into force. Tartu City has adopted new statutes in line with the requirements of the current statutes.

Local referendum

The Chancellor was asked whether establishing a local referendum by a local authority legal act was lawful. Laying down a local referendum with a legally binding result by a local authority legal act is not compatible with either the Local Government Organisation Act or the Constitution. Although the Constitution does not directly prohibit a referendum with a legally binding result, the laws do not stipulate it. Therefore, neither a city nor a rural municipality may itself establish a local referendum. A rural municipality or city may hold opinion polls on local issues. A referendum and an opinion poll (poll of residents) are concepts with different legal substance. The result of an opinion poll is not legally binding either on local authority bodies or state bodies but only aims to find out the opinion of respondents in the poll.

At least one per cent of a rural municipality or city residents with the right to vote may also make proposals by popular initiative to adopt, amend or repeal rural municipal or city council or government legislation on local matters.

Prevention of corruption and conflict of interest

In September 2017, the Chancellor of Justice sent a letter to the Riigikogu Constitutional Affairs Committee, drawing attention to how legislation might better contribute to preventing corruption in local authorities.

The Chancellor submitted the following proposals for consideration:

- to establish regulation ensuring recovery of pecuniary loss caused through an intentional offence committed by a local authority official;
- to preclude a local authority from entering into any form of working relationship with a person convicted of intentionally committing certain criminal offences, during the period when the sentence imposed on that person is still valid;
- to establish legal clarity preventing conflict of interest in a situation where a municipal council member works as head of an agency administered by the local authority or is a member of the board or supervisory council of an entity in which the local authority has an interest and over which they must exercise supervision as a municipal council member;
- to specify the delegating norms regulating official travel and other personal entitlements of city and rural municipal government members;
- to establish requirements for independent auditing of local authorities.

The Chancellor's proposals were based on problems observed over a long period. It is for the Riigikogu to decide whether to establish more rules to prevent corruption or to regulate less and deal with the consequences on a case-by-case basis. The parliamentary Constitutional Affairs Committee initiated a Draft Act (574 SE) on amending the Local Government Organisation Act and other related Acts.

The Chancellor made a proposal to Valga Rural Municipal Council to bring their decisions "Granting compensation to the rural municipal council chair" and "The procedure for payment of compensation and remuneration for participation in the work of Valga Rural Municipal Council" into line with the Constitution and the law. The municipal council chair had been granted the right to pay members of the municipal council "other remuneration or compensation" if budgetary resources allow. Such a solution is not in conformity with the Local Government Organisation Act, which prescribes that "a municipal council may pay remuneration to its members for participating in the work of the municipal council and compensation for expenses incurred in performing tasks assigned to them by the municipal council on the basis of the documents submitted and pursuant to the rates and procedure laid down by the municipal council". Both municipal council legal acts had been drawn up in the form of individual acts, i.e. decisions. Valga Rural Municipal Council complied with the Chancellor's proposal and enacted a regulation, i.e. a legislative act of general application, which does not contain the unlawful provision on the right of the municipal council chair to pay other remuneration or compensation if budgetary resources allow.

Supervision over financing of political parties

Under the legislation regulating the activities of political parties, the Chancellor of Justice may appoint her representative to the Political Parties Financing Surveillance Committee. Chancellor of Justice Ülle Madise extended the mandate of the representative (Kaarel Tarand) appointed by her predecessor, Indrek Teder. The committee and its members are independent and need not account for their activities to the institutions or persons who appointed them.

During the reporting period, the committee mostly dealt with problems that had arisen during municipal council elections held in October 2017. Members of the committee reviewed the use in political activities of newsletters and other communication channels financed from local authority budgets. The year was filled with colourful individual cases but the committee also provided a wider picture of the situation of these information channels, relying on extensive data from monitoring surveys and their analysis (in cooperation with researchers from the University of Tartu).

Despite preventive explanatory work and recommendations, those in power in local authorities are still unable to use the municipal media in a balanced and impartial manner. Almost everywhere, be it in large cities or small rural municipalities, the municipal media mostly covers the activities of those in power. The Political Parties Financing Surveillance Committee analysed the pre-election situation in newsletters by means of the market concentration index used in the economy. It was found that, in almost all the over 200 publications analysed, the ruling political party or election coalition enjoyed a dominant or even monopolistic market position. To change the situation, interference by the Riigikogu is not strictly necessary; self-regulation by local authorities and best practice rules and customs would also suffice. Advice and assistance from professional organisations (such as the Estonian Newspaper Association) could also be used for this.

The Political Parties Financing Surveillance Committee issues on average ten precepts a year. The number of precepts has been growing, rather than decreasing, year by year. Proof of the quality of the committee's work is the fact that in all cases where a precept was contested the courts were satisfied with the committee's opinions and the evidence provided, and enforced the committee's decisions. The biggest bundle of problems in the committee's work originates from checking the legality of, and conducting proceedings in connection with, financing

transactions carried out years ago. The sums regarding which precepts have been issued to date have only increased over time, and now political parties enter into court disputes with the committee not just about thousands but hundreds of thousands, even millions, of euros. Considering the proportion that the potential sums to be recovered under the precepts make up in political parties' budgets, we could even speak of a threat to the stability of the system of political parties.

Several issues facilitating the work of the committee are yet to be resolved, for example the right of the committee to fully disclose their precepts before the end of court disputes. It should also be considered justified that the committee be given the right to also ask for information from non-profit associations, which participate in the election campaign as so-called outsiders. Lack of clarity provides additional work for the judicial system.

Regional disparities

The Chancellor has also been asked to assess whether uneven economic development in different regions of Estonia, the regionally varying amount of investments, and faster development in Harju County violates the constitutional provision under which Estonia is a unitary state in terms of the organisation of its government.

The Chancellor explained that the Chancellor of Justice has no competence to assess regional policy choices, but uneven development of different regions is not contrary to the principle of the unitary state. Under the Constitution, the state authority must ensure everyone's rights and freedoms. The Chancellor monitors, for example, whether statutory social services are provided by all local authorities, so that respect for human dignity and the basic principles of a social state are ensured regardless of geographical location. Regional investments to promote economic development are not a constitutionally protected benefit.

In its activities, the Estonian government has actually often preferred regions outside Harju County.

Social services

During the 2017–2018 reporting period, the Chancellor closely monitored how local authorities provide social services. In autumn 2017, the Chancellor once again reminded the heads of rural municipalities and cities of the duties of local authorities as regards organising social services. Petitions sent to the Chancellor allow for the conclusion that, unfortunately, people are often deprived of the necessary social services.

Therefore, the Chancellor also closely scrutinises local authority regulations on social services. Local legislation mostly reveals the same shortcomings – local authorities restrict provision of services and fail to give people enough financial assistance to pay for services. For example, the purpose and scope of services or the range of beneficiaries has been restricted and unlawful additional conditions imposed.

Local authorities often also justify refusal to provide assistance by the fact that a person in need of assistance has maintenance providers. On that basis, a rural municipality or city finds that the person does not need to be provided assistance or the local authority need not pay for it. Such an approach is wrong. Maintenance providers may provide care to their next of kin but they are not obliged to do so. Every rural municipality and city must organise appropriate social

services for those in need. Local authorities must also ascertain whether and how much a person in need (together with their maintenance providers) is able to pay for a service. A person may be charged for a social service but the payment should be affordable for them. Supporting a person in need should also not undermine the day-to-day life of maintenance providers themselves. The Chancellor's advisers have explained to local authority officials the organisation of social services and the most frequent shortcomings in local authority regulations. They have also written several articles on the same topic (in the magazines Sotsiaaltöö and Perearst).

During the reporting period, the Chancellor also assessed how rural municipalities and cities present social services on their websites and other information channels. The Chancellor has observed that information published on websites is not complete or easily understandable, and it is also difficult for people to find the necessary information.

Petitions sent to the Chancellor have revealed that people do not receive the services promised or that the quality of services is lacking. For example, rural municipalities and cities have delayed with resolving an application and providing the appropriate assistance. In one case, it was found that the local authority had not carried out an all-round assessment of a person's need for assistance so that the person was simultaneously granted the right to housing as well as the general care service. The Chancellor had to remind the local authority that it is the local authority's duty to assess whether and how much a specific person in need is able to pay for the service. The Chancellor also affirmed that a single pensioner allowance is not meant for paying for social services, including the general care service. The Chancellor explained once again when the burden of assistance resting on family members living together with a person in need might be deemed to have become as heavy as essentially amounting to provision of the social service. In that case, the opinion of family members should be heard to ascertain the person's integrated need for assistance and the appropriate social service.

Dignified ageing

The concept of dignified ageing cannot be summed up in one sentence. For some, it means an opportunity to work until an advanced age or to be an active member of society. For others, it relates to income and a sense of financial security. Still others value health and the joy of living and wish to decide for themselves what happens to them in the event of a serious illness. And yet someone else might hold that dignified ageing is ensured by a well-functioning and well-funded system of care homes. The Chancellor of Justice has had to deal with all these aspects one way or another.

Working, pension, taxes

Shortcomings of the unemployment insurance system
The state can do a lot to enable people of all ages to be useful to someone by letting them make best use of their knowledge and skills, for example by going to work if there is sufficient will and energy to do so. The Chancellor analysed conformity of the unemployment insurance system with current needs, and made a proposal to the Riigikogu and the Minister of Health and Labour to open a debate with a view to changing it.

The current unemployment insurance system deprives the majority of people who have lost work-related income of financial assistance. For years, only one in three persons registered with the Estonian Unemployment Insurance Fund has received unemployment insurance benefit from the state. Following loss of employment and income, many elderly people are forced to resort to the emergency solution of early retirement. However, recipients of early retirement pension may not do any remunerated work. Unfortunately, the organisation of unemployment insurance and labour market services counteracts the aim of keeping people active in the labour market for as long as possible, including acquiring new skills and occupations in the course of lifelong learning. Instead, people are forced to make impractical decisions. In the Chancellor's opinion, it would be worth considering what the conditions for unemployment insurance benefit should be so as not to compel people to make such impractical decisions. It is also necessary to consider how to better facilitate re-training.

Setting the retirement age
A nationally established retirement age has a direct impact on employment of the elderly. The system must be clear and predictable – people must know at what age they may retire and what entitlements are involved.

Retirement is an important milestone in every person's life. When debating the State Pension Insurance Act in the Riigikogu, an issue was raised whether someone else besides the Riigikogu may decide on the retirement age. Section 28, second paragraph, of the Constitution says: "Every citizen of Estonia is entitled to government assistance in the case of old age, incapacity for work, loss of provider, or need. The categories and extent of the assistance, and the conditions and procedure for its allocation are laid down by law." If the right of setting the retirement age were to be given to the Government or a single minister, then the executive, i.e. the government, would begin to determine the conditions for receiving the old-age pension. This is not allowed by the Constitution.

Ability to cope financially

Single pensioner allowance
Since 2017, the state pays an allowance of 115 euros once a year to single pensioners to improve their financial independence and alleviate poverty. The allowance is paid automatically to all persons who have reached the retirement age and are receiving a pension which is 1.2 times lower than the average old-age pension and who live alone according to population register data. The state does not verify the existence of other income or the fact of the person living alone.

During the reporting period, the Chancellor was contacted by a couple of dozen people with the concern that because of incorrect address data they were deprived of the single pensioner's allowance. Investigation revealed that in most cases a rural municipality or city had failed to amend the address data of these people. At the Chancellor's request, the necessary amendments were made to the registers.

Another finding was that local authorities acted very differently when amending address data. Receiving a state benefit should not depend on how a local authority interprets a legal act. It is also not acceptable to keep people running between different authorities. Therefore, the Chancellor asked ministries and the Association of Estonian Cities and Rural Municipalities to cooperate in order to harmonise the rules on determining address data.

The Chancellor explained to rural municipalities and cities that the single pensioner allowance may not be calculated as part of a person's income when rural municipalities and cities assess a person's ability to pay for the general care service (the so-called care home service).

Death allowance
The fact that a person's right to assistance depends on the activities of rural municipalities and cities was also revealed by another petition received by the Chancellor. The Chancellor received a letter from a person who buried a close family member but did not receive support for funeral expenses from any local authority. The petitioner was not entitled to support from Tallinn, where they lived, because under the regulation in force in Tallinn the support is paid according to the residence of the deceased. The petitioner also did not receive support from Pärnu city, where the deceased had been living, because under the regulation applicable in Pärnu the support is paid according to the residence of the person covering the funeral expenses.

That situation could arise because the Riigikogu had not determined to whom and on what conditions rural municipalities and cities must pay the death allowance.

The Chancellor contacted the Riigikogu Social Affairs Committee with the issue of the death allowance. The committee considered it necessary to amend the legislation so as to make clear whether rural municipalities and cities rely on the residence of the deceased or of the organiser of the funeral when paying the allowance. The committee also considered it important to analyse the duties of rural municipalities and cities in assisting people in need in the future.

Health and social services

Patient's last will
The idea of the patient's last will requires a wider debate and a legally clear solution. The patient's last will (also termed a 'living will' or 'advance directives') means guidelines that a

person may write down concerning their medical treatment in a situation where they are no longer able to make decisions.

Under the law, doctors must also take a patient's will into account when the patient is no longer capable of making decisions. It is not prohibited or ruled out for a person to express their wishes in a written document, i.e. the 'patient's last will', drawn up before losing their capacity to decide. However, the law does not use this or any similar term, nor does the law lay down any substantive or formal requirements for a patient's last will.

A patient's last will (or end-of-life instructions) is to date a very rarely used instrument in Estonia, most probably precisely because of the absence of substantive or formal requirements for it. Neither doctors nor patients are certain what exactly this document should look like so as to be able to rely on it. For example, at present there is no clarity as to whether a doctor must execute the 'patient's last will'. There are also no rules to guarantee the validity of a patient's last will: was the person capable of sound judgment when making it, how long should the document remain valid, and what effects should be attributed to the document when its validity has expired? It is also unclear how to ensure that a patient's last will is accessible to those healthcare professionals who will decide on the person's medical treatment in the future.

Although Estonian laws do not prohibit a person from giving instructions as to their medical treatment – i.e. drawing up a patient's last will – the possibility is illusory in practice. The Council of Europe Committee of Ministers has recommended that, with a view to individual self-determination, states should regulate the possibilities for advance directives and has made suggestions to that effect (see the article in the journal Sotsiaaltöö).

General care homes

During her entire term in office, the Chancellor has drawn attention to the situation in care homes, or in other words, has dealt with the concerns of those elderly people who according to the official definition are "receiving the general care service". Last year the Chancellor drew up a circular aimed at all general care homes and local authorities as well as politicians and officials having a role in shaping social policy, drawing attention to widespread problems and making proposals for improving the quality of the service. According to data from the Ministry of Social Affairs, 11 874 clients received the general care service in 2017.

The availability of care home places and living conditions in care homes have become the centre of public debate in recent years. Among other things, this also means that awareness of both the elderly and their next of kin has improved. Many elderly people are extremely vulnerable due to their advanced age and/or deteriorating health. It is difficult for them to influence their living conditions and the quality of the care service by themselves, so that the rights of people living in care homes need particular protection.

Inspection visits to care homes

The Chancellor's advisers from the Inspection Visits Department inspected the activities of eight care homes during the reporting year. A healthcare expert (a general practitioner or geriatrician) was involved in all the visits. During the visits, the advisers inspected the rooms, perused documents, and interviewed staff and clients of the care home under inspection.

Particular attention was paid to the accessibility of rooms, as well as whether individuals' freedom of movement had been restricted (e.g. locking them in their rooms, securing them to their beds), whether people were treated with dignity (e.g. ensuring privacy, living conditions),

and whether no risks to their life and health existed (e.g. number and presence of staff, nursing and care, meals, medication, access to healthcare). During the inspection visits, the Chancellor's advisers also checked how the right to vote of the elderly in social welfare institutions was ensured.

The main problems in care homes relate to ensuring decent living conditions, the number of staff, proper preparation of care plans, unlawful restriction of people's freedom of movement, and availability of healthcare services.

Inspection of living conditions revealed that people were not ensured privacy during hygiene procedures. In some care homes, high doorsteps, narrow doorways and absence of a lift made it difficult to move around in a wheelchair or a wheeled walking frame. Problems also occurred with using aid devices corresponding to people's special needs.

In several care homes, the numbers of care staff were insufficient, in particular at night. For example, it may be difficult for the residents of a care home to call for assistance if no staff call system exists. Many care homes lacked mandatory care plans, or these were incomplete and not up-to-date. Inspection of several care homes revealed that residents' freedom of movement had been unlawfully restricted: by locking doors of departments as well as rooms.

Absence of care service suitable for persons with dementia
Freedom of movement was restricted mostly for people with dementia, whose behaviour could be problematic and unpredictable and who have serious memory problems, so as to be difficult for care home staff to handle. The cause of the problem lies in the fact that no care service has been developed corresponding specifically to the needs of people with dementia-related behavioural problems. The Chancellor has already drawn attention to this previously.

A positive development is a Ministry of Social Affairs initiative to set up a dementia competence centre and a plan to support adaptation of rooms for provision of the general care service to the elderly with dementia. Currently, it is difficult for the next of kin as well as for local authorities to find a place providing a service that meets the needs of people with dementia, including offering a suitable environment as well as an opportunity to implement the non-pharmacological approach set out in the treatment guidelines for Alzheimer's disease. In April, the Chancellor and her advisers visited the De Hogeweyk care centre at Weesp in the Netherlands, which uses a unique concept for care of dementia patients that has attracted worldwide attention.

Healthcare services in care homes
Residents of care homes need regular nursing care but the law does not oblige care homes to provide nursing care services. Primary healthcare in care homes should be ensured through the system of general practitioners and the home nurse service (home visits carried out by general practitioners and their nurses). However, many people live in a care home that is distant from their registered place of residence as well as the service area of their general practitioner.

Inspection visits have revealed that often a patient's health needs are not assessed by a healthcare professional (doctor or nurse). The need for a healthcare service is also not assessed on a regular basis. As a result, people's main health concerns may not receive the required attention and problems may deteriorate to the point where often an ambulance has to be called. The Health Board has also indicated in its survey that the number of ambulance calls in care homes has increased significantly and not always are the calls justified.

Due to absence of nursing care, problems have arisen with handling and administering medicines. A critical situation may develop when a doctor has prescribed psychotropic medication to a patient that should be used only in case of need. Only a healthcare professional with medical training can decide on the need to administer this kind of medication. However, there have been cases where a carer or another care home staff member without the necessary education decides on administering medication to be used only in the case of need.

Due to the absence of a nurse, carers often have to perform the tasks of healthcare professionals. In care homes inspected by the Chancellor, there have been cases where medical negligence could be suspected. For example, a care home delayed calling a doctor for an unreasonably long time. Such a situation may also be caused through ignorance because carers without medical knowledge are unable to correctly assess a person's condition.

Assessment and proper monitoring of a person's health may also be impeded by the fact that most care homes have no access to the health information system. Often a care home only has the information concerning a person's health which was submitted to them on paper by their next of kin. Absence of previous health data (including information on previously used medication) may lead to wrong conclusions by a care home in assessing a person's need for a healthcare service. In turn, if a person's health status changes, information from the care home does not reach the heath information system, so that general practitioners might lack an overview of the condition and needs of their patient.

Improving the situation of care homes

Improving the quality of the general care service was discussed at the information day organised at the Ministry of Social Affairs, where the Head of the Chancellor's Inspection Visits Department talked to heads of care homes about problems observed during inspection visits. The Chancellor's advisers also gave an overview of their work and discussed critical problems in the frame of the development programme for the Social Insurance Board's supervisory specialists.

In the media, the Chancellor's advisers have provided comments and clarifications about the care service (e.g. 30 November 2017 Radio 4 programme „Подробности"). The problems of restricting the freedom of movement of people were dealt with in the journal *Sotsiaaltöö* (see the article „Vabatahtlikkuse põhimõte üldhooldusteenuse osutamisel" [The principle of voluntarism in providing the general care service]).

Everything begins from mentality

Dignified ageing is often supported by changes that are small and feasible for everyone. One could start with revising the wording of contracts concluded by care homes and remove expressions that refer to people as objects.

For example, contracts often refer to "exclusion of a client from the care home" or the obligation of a "service purchaser" (a person's next of kin who pays for the service) "to place the service recipient elsewhere in the event of termination of contract". Finding out the needs and wishes of the elderly is called "cost of care calculation", which sounds rather like vehicle maintenance terminology. Communication by an elderly person with care home staff is described by a contract provision in the following terms: "disturbing the staff" is prohibited. As regards issues of quality of the care home, "the client is entitled to file a written application to remedy the

deficiency". According to some contracts, care home staff have three days to inform a care home resident's next of kin about their death.

Rule of law

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

Several of the Chancellor's tasks and a large number of petitions relate to the activities of the judiciary. By virtue of office, the Chancellor serves on the Council for Administration of Courts which held two meetings in the second half of 2017 as well as two meetings in the first half of 2018.

The Supreme Court asks for the Chancellor's opinion in constitutional review court proceedings. During the reporting year, the Chancellor had to prepare six such opinions. These dealt with issues of state legal aid to asylum applicants, absence of implementing legislation for the Registered Partnership Act, reduction of the salary of judges, procedural assistance in civil proceedings, electronic filing of annual reports and judge's pension for incapacity for work.

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.

Allocation of money to churches from the ownership reform reserve fund

The Government wanted to end long-standing disputes between the state and the Estonian Evangelical Lutheran Church and the Estonian Apostolic Orthodox Church with a financial agreement, taking the necessary money from the ownership reform reserve fund. To achieve this, the Government supplemented the regulation on using money in the reserve fund without having the necessary legal basis to do so, and issued two orders to allocate the money on that basis.

The procedure for return of and compensation for unlawfully expropriated property, including rules on the amount of compensation, have been precisely laid down by law. Movable property, including church property or pledge instruments, is not compensated and may not be compensated under the Republic of Estonia Principles of Ownership Reform Act. The Government decided to supplement clause 3 of the above regulation with sub-clause 20 so as to be able to issue orders for allocation of money to the churches from the ownership reform reserve fund to redress the injustice caused during the war and occupation by violation of the right of ownership. No law allows the Government to use money in the ownership reform reserve fund for such a purpose.

Money in the ownership reform reserve fund may only be used for specific purposes set out in § 7 subsections (1) and (11) of the Use of Privatisation Proceeds Act. The purpose for allocation of money mentioned in the regulation falls neither under the scope of § 7 subsection (1) nor of subsection (11) of the Use of Privatisation Proceeds Act. The course chosen by the Government would have deprived the Riigikogu of the statutory prerogative to decide on the purpose of using the money in the ownership reform reserve fund as well as using the balance of the fund once the initial objectives laid down by the Act are fulfilled.

The Chancellor drew the attention of the Government to the unconstitutional clause inserted in the regulation, promising to contest it in the Supreme Court if necessary. Then the Government tried to use a legislative drafting technique to divest the potential Supreme Court judgment of its effect by introducing one more clause – completely unsuitable for allocation of money – as a basis for its orders for allocating money, besides the already contested clause of the regulation. This was an attempt to leave the orders formally in force even if the Supreme Court were to annul the unconstitutional clause and thus affirm the unconstitutionality of allocating money to the churches from the ownership reform reserve fund. Neither the Chancellor nor anyone else would have been able to contest the order as being an administrative act of specific application. The Chancellor explained the essence of legal nihilism of this kind, as well as the fact that those members of the Government who sign allocation of the money to the churches would be accountable for those illegal allocations.

To comply with the Chancellor's proposal, the Government initiated amendment of the Use of Privatisation Proceeds Act. The second reading of the Draft Act was discontinued on 6 June 2018. Despite amendment of the Act, the Government must annul the unlawful clause in its regulation. Subsequent amendment of the Act will not render that clause constitutional.

Courts and administration of justice

The Chancellor never assesses court judgments on the merits or intervenes in the work of the courts otherwise than by simply reacting, where necessary, to a judge's actions amounting to failure to perform their duties of office or disreputable conduct. The Chancellor cannot assess whether a court's decision is correct in substance, whether all the necessary facts were ascertained, how the evidence was assessed, etc. Only a higher court can assess issues concerning administration of justice in substance.

During the reporting period, the Chancellor had to check the work of courts on approximately twenty occasions. Most of these cases related to problems arising in criminal proceedings. Most complaints were received against the judges of Harju County Court. Based on the facts available to the Chancellor, she did not find any of the cases sufficiently justified to initiate disciplinary proceedings against a judge.

One petitioner contended that their father had been treated poorly because of their Roma origin. By listening to recordings of court hearings, it was found that the judge had behaved respectfully and impartially towards all participants in the proceedings.

Another petitioner expressed misgivings that a judge had not shown any interest in the case materials when adjudicating a criminal case, and had allegedly fallen asleep during the court hearing. Certainly, such circumstances are difficult to verify in retrospect but based on the case materials and recordings of court hearings no proof was found for the judge's alleged dozing off.

The Chancellor also received a complaint that a judge had not presented their identity document, the diplomas certifying their education, or the authorisation for holding the hearing despite the petitioner's request for the judge to do so. On that basis, the petitioner sought disciplinary proceedings to be initiated against the judge. The Chancellor explained that a judge's powers arise from the law and the court need not prove them at a hearing. The fact that a defendant does not like a judge or their decisions is not sufficient to punish the judge.

The Chancellor received more petitions than previously concerning holding people in custody. These were mostly concerned with Harju County Court rulings by which a person was left in custody even after the pre-trial proceedings were over and the accused was committed for trial, although the judicial hearing was only scheduled to take place, for example, in half a year. The accused interpreted this mostly as acts of spite or attempts to pressure them to agree to a plea bargain. In those cases, the Chancellor verified whether the court had properly assessed the reasons for holding a person in custody. No criticism against the work of judges has been expressed so far, but a matter of concern is delay of proceedings due to the excessive workload of the courts. In the Chancellor's opinion, criminal proceedings must take place without delay and within a reasonable time, especially if the accused is held in custody.

Constitutionality of judges' salary reduction
The Supreme Court asked the Chancellor's opinion as to whether the previous version of the Salaries of Higher State Public Servants Act was contrary to the Constitution in so far as it enabled reducing the salary of county and administrative court judges as compared to the previous year's salary.

The Chancellor found that the contested rules were compatible with the Constitution. The judges' salary and the system for calculating the salary is unconstitutional only if it endangers judicial independence. One of the safeguards of independence is a sufficiently large salary and the certainty of the salary system. Safeguards must not be reduced below a certain threshold, compelling judges to look for opportunities to earn additional income. Reducing judges' monthly salary by 6 euros and 76 cents does not endanger judicial independence. While the issue was being adjudicated, the law was actually amended.

Constitutionality of limitation on procedural assistance
The Supreme Court asked the Chancellor's opinion as to the constitutionality of a provision in the Code of Civil Procedure that allowed taking into account only the deductions allowed under the same provision for assessing a person's financial situation when granting them procedural assistance. The Chancellor reached the opinion that deciding on the possibility to grant procedural assistance should take into account all the circumstances affecting an applicant's financial situation. If a provision can be interpreted in a constitutionally-compliant manner, the provision is not unconstitutional.

The Constitution ensures the right for everyone to have recourse to the courts to protect their rights. This is so even when a person is unable to bear the legal expenses, e.g. pay the state fee. The idea of the system of procedural assistance is that everyone should be able to protect their rights in court without having to suffer economic hardship as a result.

Covert processing of personal data

The Chancellor of Justice exercises supervision over state agencies that organise interception of phone calls and conversations, surveillance of correspondence, and otherwise covertly collect, process and use personal data.

Due to the covert nature of surveillance, the wider public does not know much about it. Lack of knowledge gives rise to myths and unjustified speculation, for example about alleged large-scale and illegal surveillance. Insecurity and fear of unjustified surveillance causes problems not only for individuals but damages the democratic decision-making process as a whole. The

Chancellor's task is to carry out systematic checks as to whether covert measures are taken in conformity with applicable rules and in a manner respecting fundamental rights. It is extremely important that, based on the results of these checks, a clear message and sense of security 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 by the particular measure.

During the reporting year, the Chancellor's advisers checked how the Police and Border Guard Board and the Tax and Customs Board respected the fundamental rights of individuals when carrying out surveillance. Surveillance files were inspected that reflect surveillance measures taken with a view to detecting a criminal offence within criminal proceedings. Surveillance files were selected from among the files opened in 2016–2017 in which active proceedings had ended by the time of the inspection.

Surveillance authorisations

A surveillance measure is lawful and admissible only if the prosecutor's office or the court has issued an authorisation meeting the statutory requirements, i.e. the requirements of form and reasoning.

Mostly, surveillance authorisations contained in the surveillance files in the agencies inspected contained proper reasoning. They demonstrated that surveillance was indeed necessary to verify suspicion of a criminal offence in particular cases. As regards comparison between files inspected this year and in previous years, it may be noted that the reasoning for surveillance authorisations has improved year by year. Special positive mention should be made of those surveillance authorisations issued by the prosecutor's office in which reasoning was provided with regard to the necessity of a surveillance measure as well as the impact of the measure on the subject of surveillance and third persons connected to them. Preliminary investigation judges also generally observe the opinion repeatedly expressed in case-law in recent years that the reasoning of a court order authorising surveillance must include clear and understandable arguments by the court as regards, inter alia, the necessity of surveillance as a measure of last resort (the principle of *ultima ratio*).

However, in some cases no reasoning had been provided as to the necessity for a specific surveillance measure and the *ultima ratio* consideration. For example, questions arose in connection with a file in the frame of which the telephones of a person engaged in illegal fishing had been tapped. However, in surveillance files inspected in the East Prefecture, the Chancellor's advisers discovered several court orders issued by a Viru County Court preliminary investigation judge containing standardised and declarative reasoning which was essentially identical to the reasoning used in previous authorisations. These authorisations lacked clear reasoning linked to specific circumstances and supporting the overriding need to use a surveillance measure. The Chancellor informed the chair of Viru County Court as well as the Chief Justice of the Supreme Court about the problem.

Covert surveillance of persons not identified in authorisation by the prosecutor's office

All the surveillance measures inspected had been carried out in line with the purpose, and no measures were taken without authorisation by a prosecutor or preliminary investigation judge. Nevertheless, inspection of two surveillance files in the North Prefecture revealed that the conditions laid down in an authorisation for covert surveillance had not been scrupulously observed. Even though authorisation had been given only for covert surveillance of the suspect, other persons who had met with the criminal suspect were also subjected to surveillance. The

Chancellor drew the attention of the North Prefecture to the need for surveillance measures to always comply with the specific surveillance authorisation and the scope specified in it.
A positive observation was made with regard to competent conduct by officers of the South Prefecture in ensuring the lawfulness of surveillance proceedings and respecting fundamental rights. For example, in one instance a surveillance officer refused to carry out a surveillance measure based on an authorisation lacking the necessary reasoning.

Notifying a surveillance measure
Under the Code of Criminal Procedure, a surveillance measure is notified to the persons with respect to whom the surveillance measure was carried out, as well as persons identified during the proceedings whose private or family life was significantly interfered with by the measure. Notification may be waived only in specific circumstances set out by law if permission by a prosecutor or the court to do so exists.

Timely notification ensures effective protection of the fundamental rights of persons caught in the sphere of influence of surveillance. Inter alia, this provides the right to contest the lawfulness of surveillance measures for suspects and the accused.

In previous years, the Chancellor's advisers found numerous cases where no such notification was done or persons were notified too late. Now, things have improved in this regard as well. A major shortcoming was found in a surveillance file in the East Prefecture, where notification of eight persons (about surveillance measures carried out under eight surveillance authorisations) was unjustifiably delayed by more than a year. In the other instances, the delay was shorter, remaining mostly within three to six months.

Processing of personal data in the police information system
Upon inspection of the KAIRI subsystem of the police information system POLIS, the Chancellor's advisers concluded that, through internal legislation, implementation of the system of support persons and regular log checks, the Police and Border Guard Board had introduced measures that ensure access to personal data (including covertly collected data) in KAIRI on a need-to-know basis, as well as the lawfulness of data processing. Random checks were aimed at monitoring, inter alia, whether access rights and access restrictions for users of KAIRI were operational. With a view to ensuring better protection of fundamental rights and effective supervision, the Chancellor nevertheless proposed that the legislation regulating the use of KAIRI should be revised so as to improve the traceability of surveillance measures.

Verifying suspicion of unjustified surveillance
Besides carrying out supervision over surveillance agencies, the Chancellor also resolves complaints concerning surveillance measures and, if necessary, verifies other publicly raised claims (e.g. in the media) about illegal surveillance.

For example, during the reporting year, the Chancellor had to verify suspicions against the activities of the Central Criminal Police based on a petition by an advocate's law office. These concerned possible "massive" surveillance of a person since 2009, i.e. before criminal proceedings against the person were brought in 2016. Verification revealed no violation of the rights of the specific person.

The Chancellor also verified a suspicion raised by a public figure that illegal surveillance measures had been carried out during criminal proceedings in connection with their business. The suspicion turned out to be unfounded.

Good administration

The principle of good administration means, 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 should not mislead people or raise false expectations. If no assistance can be offered to an individual, the authorities must say so. The principles of good administration are set out in the Administrative Procedure Act.

Reasonable length of proceedings

An owner of land is not treated in line with the principles of good administration if the state is unable to establish a species protection site around the nesting tree of a flying squirrel within a reasonable time. If establishing a habitat for the flying squirrel is delayed for years, the state thereby violates the owner's right to use their land.

The Police and Border Guard Board (PBGB) delayed with examining a person's application for a residence permit and issuing a residence permit card. In the absence of a valid residence permit card, an alien is unable, for example, to use e-services or travel. As a rule, when extending a temporary residence permit the PBGB tries to ensure that an applicant is not left without an identity document. This time the reason given for the delay was amendment of the Aliens Act which, in turn, led to the need to change the PBGB databases. However, development of the databases was also delayed and thus the rights of the individual who was left without a document were violated.

Making additional demands burdening individuals

Public servants are often criticised for passivity and for failing to resolve people's concerns sufficiently quickly. However, problems are sometimes caused by the excessive eagerness of officials in the shape of gold-plating statutory minimum rules with new requirements burdensome for individuals.

For example, the Environmental Board requested animal keepers to provide detailed information on building manure stacks even though no such obligation is laid down by law. Such self-initiative on the part of state agencies does not contribute to fulfilling legal requirements. This is burdensome on persons submitting information as well as on officials who have to analyse it. Guidelines drawn up by an agency should also not restrict the legal norm that is being implemented or change the substance of the norm. The Chancellor found that guidelines drawn up by the Agricultural Registers and Information Board, which a farmer asked to check, restricted the scope of the ministerial regulation being implemented. The technical interpretation presented in the guidelines did not coincide with the instructions given in the regulation or the policy established by the European Commission, and ultimately reduced agricultural support.

The Police and Border Guard Board imposed a requirement as from June 2017 that individuals should book a time slot in a service bureau to file their application for a residence permit. The requirement was justified by the need to better plan the workload of officials. The Chancellor found that such a requirement to book a time for filing applications was not lawful and was not in line with the principle of good administration. The Chancellor proposed that service bureaus should also accept applications when an applicant has not booked a time slot but is willing to wait in a queue on the spot. Accepting and processing applications for a temporary residence permit or to extend it belongs among the tasks of the PBGB. Therefore, service bureaus must also be prepared to accept those applications on general terms. The PBGB did not agree with the Chancellor's proposal.

The investigative principle

The principle of good administration and the investigative principle laid down by the Administrative Procedure Act require that an agency should ascertain all the facts necessary to form an opinion.

There are still cases where a person tries to scrupulously follow the instructions given by an official but later finds themselves in a difficult situation exactly because of having followed the instructions. A company wanted to renew a waste recovery permit to continue its previous activity (combustion of wood waste in a boiler plant) and began to deal with all the necessary procedures well in advance of expiry of the existing permit. Substantive processing of the application lasted for several months but was abruptly discontinued because the person had forgotten to pay the state fee.

Paying the state fee is a precondition for examining an application and this must be checked before examination of the application begins. This saves the time of the relevant agency as well as of the applicant, who may by mistake have failed to pay the fee before filing the application. After return of the initial application, the applicant paid the state fee and filed the same application again. However, the second application was not registered in line with legal requirements so that processing was not continued from where it had previously discontinued due to breach of the principle of good administration. The Environmental Board also called into question the recovery operation code which the applicant had provided by following the recommendation given by the Environmental Board itself.

Justification and hearing

The Administrative Procedure Act requires that reasoning must be provided for a discretionary decision and the participants in proceedings must be heard.

Pärnu City Government made procedural mistakes in connection with building a cycle and pedestrian track connecting Pärnu city centre and the Lotte Village theme park outside the city. The city government did not justify the choice of location of the track and did not involve persons concerned in the proceedings. The Chancellor recommended that the city government should modify its procedures in future.

Exhaustive and timely reply to enquiries

Administrative authorities must reply to memorandums and requests for explanation promptly but not later than within 30 calendar days as of their registration. Depending on the complexity of the reply, the deadline for replying may be extended up to two months. In line with the principle of good administration, a person should be informed of extension of the deadline and the reasons for it at the first opportunity but definitely within the initial 30 calendar days.

An administrative authority must resolve an extra-judicial administrative challenge within ten days. This deadline may be extended by 30 days by informing the person filing the challenge.

If an administrative authority is not competent to resolve an application, an explanation should be given to the applicant as to who is competent to deal with the issue. The initial recipient of an application may itself transmit the application to the right authority while also informing the applicant.

The Chancellor had to intervene in a bureaucratic 'merry-go-round' when an applicant wanted to contest a decision in an art competition organised by the State Real Estate Company (RKAS). Under the law, the decision should have been contested with the authority that made it, i.e. the RKAS. The applicant was not aware of the law and initially sent the challenge to the public procurement dispute committee, then the Ministry of Culture, and only as a "Cc" copy to RKAS to take note of.

The public procurement dispute committee returned the challenge because the Ministry of Culture is competent to carry out supervision over art tenders. The Ministry also refused to review the challenge because it did not find a basis to initiate supervision, and noted that in this case the challenge should have been lodged with RKAS as the body that took the relevant administrative measure. RKAS, in turn, replied to the applicant that the challenge could not be examined since it had been filed with the Ministry of Culture for resolution and RKAS had only received a copy of the challenge sent to the Ministry.

The Chancellor found that the public procurement dispute committee, the Ministry of Culture as well as RKAS had all acted contrary to the principle of good administration. Several state agencies wasted a lot of working time in drawing up a reply that was completely useless for the applicant. Moreover, deadlines for filing a challenge and for having recourse to an administrative court had also passed by then. The Chancellor made a proposal to revise the „Guidelines for implementing the Commissioning of Artworks Act" drawn up by the Ministry of Culture.

The Chancellor had to reprimand the Põhja-Sakala Rural Municipal Government which had failed to reply to a local resident's questions concerning the school and kindergarten.

The Chancellor explained to Maardu Town Government that a person who wishes to file a complaint seeking annulment of a decision issued in expedited procedure by an extra-judicial body conducting proceedings – i.e. the town government – should be promptly informed (but not later than within five working days from registration of the request) of the possibility of recourse to the court. If the town government replies to the person's request only after 30 days, the time limit for appeal has passed.

Inspection revealed that Kohtla-Järve City Government had also not always complied with the statutory time limit when replying to memorandums and requests for explanation.

Good law-making

The Chancellor was asked whether a decision by the Ministry of Social Affairs to forego preparing an impact assessment for the planned pharmacy reform renders the reform unconstitutional. An impact assessment is required by the principles of good law-making set out in the Government Regulation on „Rules for good law-making and legislative drafting", the

Board of the Riigikogu decision on „Legislative drafting rules for draft legislation in the Riigikogu“ and the Riigikogu decision „Legal policy development guidelines to 2018”.

Although breach of good law-making principles, the fundamental principles of legal policy and legislative drafting rules are worthy of reproach, this does not render the rules automatically unconstitutional.

Enforcement procedure

In enforcement proceedings bailiffs enforce obligations under public law as well as claims under private law. Enforcement proceedings play an important role in a state governed by rule of law, helping to ensure the rights of creditors and debtors. In this regard, with a view to finding and maintaining a balance, choices must be made which may seem unfair to both sides.

Both creditors and debtors turn to the Chancellor of Justice Act for assistance. Someone is in a difficult financial situation and quickly needs compensation – for health damage inflicted on them – from a person who avoids payment. Some debtors also find themselves in a situation where nothing can be taken from them to cover their debts. An effective enforcement procedure must protect the rights of people, which includes ensuring that the persons concerned and their dependants have the minimum funds needed in order to subsist.

It is clear that partial attachment of income or eviction from a dwelling leads to deterioration of the standard of living, often accompanied by immediate economic difficulties. On the other side of the scales lie the interests of creditors. In the case of claims under public law, failure to comply with a decision imposing a fine means that a person is trying to avoid a sanction imposed for an act of which society disapproves.

In enforcement proceedings, the debtor must be aware of their rights, options and duties. Problems often arise when a debtor fails to make timely use of the possibilities relevant for their financial situation. It is often found that bailiffs apply the law differently. However, the fate of a person in a difficult situation should not depend on the personality of the bailiff dealing with their case. Therefore, the Ministry of Justice is planning to introduce changes in the enforcement system,

Attachment of income

Under the Code of Enforcement Procedure in force to 8 January 2018, a debtor’s income could not be attached if it did not exceed the minimum wage (in 2018, the minimum monthly wage is 500 euros).

To better protect the interests of creditors, on 9 January 2018 an amendment to § 132(1^2) to the Code of Enforcement Procedure entered into force, making it possible also to attach a debtor’s small income. Thus, 20% of income could be attached but so that the income would not fall below the subsistence level (140 euros in 2018). That amendment further reduced the ability of persons with a small income (e.g. pensioners or recipients of work ability allowance) to cope. The provision in question gave bailiffs discretion in determining the portion of income to be attached. A bailiff had to weigh the interests of debtor and creditor and also take into account that the debtor should still be able to lead a decent life after attachment of income. In actuality, bailiffs usually attached the debtor’s income to the maximum possible extent, failing to consider the amount of the debtor’s income and their needs. According to the Chancellor’s assessment, even though the main objective of enforcement proceedings – to protect a claimant’s legitimate

interests – is lawful, this may place a debtor in a situation which is not compatible with the principle of human dignity under § 10 of the Constitution.

To remedy the situation that had arisen, the Riigikogu swiftly amended the law. On 10 June 2018, an amendment to § 132(1^2) of the Code of Enforcement Procedure entered into force, aimed at ensuring that persons under enforcement proceedings would be better able to cope. According to the amendment, up to 20% of income a month may be attached. Income is not attached if it is below the estimated subsistence minimum published by Statistics Estonia (in 2017, this was 207.23 euros a month).

The Riigikogu has decided that different types of income (thus also having a different purpose) are protected differently in enforcement proceedings. For example, work ability allowance may be attached in enforcement proceedings, while unemployment allowance may not. This is compatible with the Constitution. The Constitution relies on the premise that an adult person is primarily personally responsible for their livelihood. Work ability allowance constitutes income supplementing or replacing the work-related income of someone with partial capacity for work and it may be attached (just like, for example, a pension). A person with partial capacity for work is partially themselves able to earn their livelihood. Thus, allowing attachment of their remuneration as well as the work ability allowance paid to them is justified. The law does not allow attaching unemployment allowance (Code of Enforcement Procedure § 131(1) clause 5). Unemployment allowance constitutes assistance in the event of destitution as receiving this allowance depends on the size of a person's income (Labour Market Services and Benefits Act § 26(1)). Similarly, a claim may not be enforced against social benefits (e.g. subsistence benefit).

Enforcement proceedings under a court decision on a parent's right of access to a child

In March 2015, the Chancellor of Justice sent a memorandum to the Minister of Justice and the Minister of Social Protection, noting that the procedure for a parent's right of access to a child laid down under the Code of Enforcement Procedure was contrary to the Constitution and the Convention on the Rights of the Child. Under the law, a bailiff could not decline to enforce measures even if these were against the best interests and will of the child, presuming that the child was capable of such an expression of will and if it was assessed by a person with specialist knowledge. The law gives priority to the interests of a parent seeking access over the interests of the child, thereby depriving the child of the right to express a substantive opinion. The Code also allows use of coercion against a child in certain cases. All this is contrary to the child's fundamental right to inviolability of private life.

In May 2018, the Chancellor reminded the Ministers that the problem was still unresolved. Instead of use of coercion and other steps ignoring the will of a child, the focus should be more on counselling parents. Efforts should also be made with a view to achieving pre-judicial settlements. The planned amendment should determine whether and how in future to apply provisional legal protection in enforcement proceedings, i.e. how to ensure protection of the rights and interests of all parties, first and foremost those of the child, at a time when no court decision yet exists. It is also necessary to analyse whether some other agency would be better equipped to enforce rulings on access arrangements and more professionally protect the interests of children than is currently the case with bailiffs, who have not received the relevant training.

Until no new solution exists, the current practice of enforcing rulings on access arrangements should be improved.

E-government

In a system of e-government, citizens, businesses and the state communicate with each other to a large extent by means of communication technology, and information is filed, stored and transmitted primarily via electronic channels. National information systems must significantly facilitate dealings between state and local government bodies as well as between people. However, sometimes the rigidity of information systems and out-datedness or inadequate functionality of applications restrict the rights of individuals.

Among other things, the Chancellor tries to ensure that life in Estonia and communication with the state would also be possible without the internet; that people's rights and fundamental freedoms would be protected even without a computer or network access.

Parent's right of access to a child's personal data
A parent whose right of custody is restricted by a court cannot view the personal data of their child recorded in the population register in the eesti.ee portal. The Chancellor received a letter from a parent who, under court order, had to pick up and take the child under their care from a kindergarten or the place where the child is permanently residing. However, the parent had no possibility to view the child's residence data because the technical solution in the population register either completely allows or completely denies access to those data. The technical solution fails to take into account the rights of a parent arising from a court ruling, under which a parent may also be granted partial access to their child's data.

The Ministry of the Interior, which is responsible for the population register, has prepared a Draft Act amending the Population Register Act and promised to organise information technology-related development work.

The obligation of non-profit associations to electronically file annual reports
The Supreme Court asked the Chancellor's opinion as to the constitutionality of the requirement under which non-profit associations must file their annual reports with the non-profit associations and foundations register electronically via the website https://ettevotjaportaal.rik.ee/. In the event of failure to comply with the requirement, a non-profit association may be struck from the register without the right to be reinstated.

In the instant case, the complainant had submitted documents to the court by post. Since according to the register data no annual reports had been filed, the non-profit association was struck from the register. A situation arose where the state actually had (even though with delay) the information required by law, but this was not taken into account when adjudicating the appeal against the court order on striking from the register, because the data were not in the register.

In the Chancellor's opinion, the state cannot claim that the necessary report is absent if it actually has the information from the report, even though submitted, for example, as an e-mail attachment or in paper format. If a non-profit association is struck from the register and its activities are terminated for this reason, the consequence is disproportionately severe for the association and interferes with its constitutionally guaranteed rights.

The Chancellor also investigated the proportionality of the restriction concerning electronic filing or reports and filing through the e-reporting environment in 2011 and 2017. Then the

Chancellor concluded that the obligation to file reports electronically is compatible with § 48 and § 11 of the Constitution only if flexible opportunities to prepare the report electronically are available and the person filing the report can obtain effective guidance and assistance.

As an alternative to electronic reporting, a report may also be filed through a notary. The obligation to file reports is, first and foremost, in the public interest, not in the interest of the non-profit association itself. Thus, it may be unfair to leave the costs of reporting for non-profit associations to bear. Non-profit associations must spend their money on attaining the objectives set out under their statutes. Therefore, forced use of a notary service cannot remain the only legal alternative to filing reports electronically.

By the time of completion of the Chancellor's annual report, the Supreme Court had not yet delivered its judgment in this case.

Estonian e-State Charter

The National Audit Office and the Chancellor of Justice published a jointly drafted new version of the Estonian e-State Charter, in which every user of public services in Estonia can look up what rights they have when communicating with administrative agencies in a system of e-government, and check whether those rights have been observed.

Based on the Charter, each agency can also revise its own operations and set clear and easily measurable objectives for introducing more people-centred administration. The Charter also lists the criteria based on which everyone can assess whether their rights were reckoned with while providing public services in the system of e-government.

Additionally, the principles set out in the Charter help to ensure the simplicity and logicality of electronic administration. The principles and criteria contained in the E-government Charter are also applicable outside electronic channels of communication.

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.

The Chancellor of Justice Act stipulates that the Chancellor is competent to check the conformity of legislation with the Constitution and existing laws as well as checking the activities of representatives of public authority. The Chancellor also arranges conciliation proceedings for resolving discrimination disputes between persons under private law, and promotes the principle of equality and equal treatment.

During the reporting period, the Chancellor received 58 petitions with complaints about unequal treatment. Of these, 38 petitions concerned the general fundamental right to equality and 20 concerned unequal treatment on specific grounds of discrimination (sex (3 petitions), ethnicity and ethnic belonging (3), language (2), age (6), disability (1), sexual orientation (3), and religion (2)). The Chancellor did not initiate any conciliation proceedings.

People with disabilities

Problems of people with disabilities often reach public attention when the principle of equal treatment is violated. During the reporting year, the procedure for ensuring aid devices for residents of social welfare institutions attracted considerable attention. The cost of procuring a necessary aid device (e.g. an audio reader – a Daisy player; a walking frame) is up to ten times higher for a person living in a care home or other social welfare institution as compared to someone living at home. The reason is that people living at home receive state support for procuring the aid device while people living in social welfare institutions do not. This distinction cannot be justified by saving money or by the aim of motivating people to live at home. The Chancellor found that such unequal treatment is unjustified and asked the Riigikogu to bring § 47(3) of the Social Welfare Act into line with the Constitution. The Riigikogu initiated an amendment to the Act that should enter into force in 2019.

Treatment of people with disabilities in hospitals arose as a painful problem. A letter sent to the Chancellor revealed that a hospital had failed to provide necessary care to a patient with profound disability and did not allow the patient's next of kin do so either. Since the hospital itself acknowledged the scarcity of its resources and skills, the Chancellor asked that the Ministry of Social Affairs should draw up guidelines for taking care of people with disabilities in hospitals in order to avoid such incidents. The Chancellor also asked that attention be paid to training hospital staff.

Different treatment is not always unconstitutional. For example, the Chancellor found that the amount of benefits for people with disabilities of working age and retirement age may differ. The reason is that these two target groups are granted support for a different purpose.

The state has laid down various benefits for people with disabilities. However, it may be difficult to obtain them. Several individuals wrote to the Chancellor that when applying for aid devices they were not given sufficient explanation as to their rights or what documents must be produced to receive support. The Chancellor found that administrative authorities must always

provide individuals with relevant and detailed explanations. This helps to avoid misunderstandings and unlawful decisions by administrative authorities.

Insufficient health data produced for assessing the capacity for work of people with disabilities and establishing the degree of disability has sometimes led to a wrong decision that subsequently had to be amended. A person's health was assessed to be worse than before, yet they failed to obtain the prescribed benefit due to bureaucratic mismanagement. Under the Constitution, people with disabilities enjoy special care from the state, so that the state should ensure that the system of providing and implementing assistance to these people should operate flawlessly.

Several people asked the Chancellor why they were not entitled to support from the EU-funded project for physical adaptation of homes of people with disabilities. A person with a visual disability who wanted assistance in rebuilding their heating system believed that they did not receive the support because of their type of disability. In actuality, the problem was lack of awareness. Under the Social Welfare Act, everyone with disabilities is entitled to receive assistance from a rural municipality or city in adapting their dwelling or in obtaining a more suitable dwelling. Beneficiaries include people with reduced mobility as well as those who find it difficult to cope independently or communicate because of their disability. The duty of rural municipalities and cities is not affected by the conditions of the EU home adaptation project – if a rural municipality or city cannot adapt a person's dwelling to their needs with European Union funds then the rural municipality's or city's own funds must be used for this purpose.

Capacity for work reform

In connection with changes introduced by the capacity for work reform, people asked the Chancellor to clarify the difference between the previous incapacity for work pension and the current work ability allowance. The Chancellor found that the difference in the basis for calculation of the incapacity for work pension and the work ability allowance – e.g. the fact that the work ability allowance no longer depends in a person's work contribution – is compatible with the Constitution. The Chancellor is also of the opinion that the Constitution does not oblige the Riigikogu to tax the incapacity for work pension and the work ability allowance in the same manner.

If a person's income from their work is above a certain threshold, the work ability allowance granted to them begins to diminish. This has led to the question whether working and non-working people are treated equally. According to the Chancellor's assessment, the Constitution obliges the state to assist people when they are no longer able to earn income due to a reduction in their capacity for work. Thus, the choices made by the Riigikogu are compatible with the Constitution.

Some conditions for paying the work ability allowance seem unfair to people. Similarly to previous years, the Chancellor was asked during this reporting period whether it was fair that people with partial capacity for work must work or seek work (i.e. comply with the so-called activeness requirements) in order to receive the work ability allowance. In those cases, the Chancellor explained that people with partial capacity for work are partially able to earn their livelihood themselves. Therefore, similarly to other members of society they must seek opportunities to procure their livelihood.

People also expressed dissatisfaction that the work ability allowance of a person with partial capacity for work could be attached in enforcement proceedings. According to the Chancellor's

assessment, this is not unconstitutional because the law differentiates between attaching types of income according to the purpose of the income. It is also allowed to attach remuneration and income replacing it, such as work ability allowance or pension.

An individual writing to the Chancellor raised the issue of unfairness of the arrangement that bars a minor who has lost one parent from simultaneously receiving work ability allowance and survivor's pension. The Chancellor forwarded the question to the Riigikogu Social Affairs Committee for debate, because social policy choices as to the benefits and support that a person is entitled to receive simultaneously have not been consistent. The Social Affairs Committee found that a minor whose capacity for work is reduced and who has lost a provider should be entitled to receive several benefits simultaneously and this problem needs to be resolved.

The Supreme Court asked the Chancellor's opinion as to whether abolishing the old-age pension paid in the event of a judge's loss of capacity for work was constitutional. Unlike the Supreme Court, the Chancellor found that abolition of this special pension was justified by the aim of the capacity for work reform – i.e. increased employment of people with reduced capacity for work. The amendment did not completely deprive judges of income but they are entitled to work ability allowance on the same conditions as others.

Several individuals expressed dissatisfaction that assessing capacity for work and granting a work ability allowance in cross-border cases took the authorities too long. As a result, people who cannot go to work because of reduced capacity for work could remain without an income for a long time. In one instance, the Chancellor found that the criticism was justified and no exhaustive reasons existed for delaying the decision. And this was so despite the need for the Estonian Unemployment Insurance Fund to communicate with officials in another country and to apply European Union rules. The Chancellor sent a recommendation to the Estonian Unemployment Insurance Fund to avoid unjustified delays even when a case is being dealt with simultaneously in several countries. The individual must also be kept informed about the status of resolving their application.

Wages, age, sex

Regional wage differences

The Chancellor was asked on several occasions whether regional differences in wages of public servants were constitutional. For example, the wage level set for prison officers in Viru Prison is on average 25% higher in comparison to officers in Tallinn Prison. This kind of different treatment of prison officers is justified.

Rescue service staff in Ida-Viru and Harju counties may also be paid up to 10% higher basic wage than rescue service workers elsewhere in Estonia. A higher wage for rescue service workers in Ida-Viru county is justified by the aim under the regional development programme of strengthening the region's competitiveness and promoting employment. In Tallinn the justification is the higher workload of rescue service workers. This kind of differentiation in the remuneration of rescue service workers is constitutional.

Unequal treatment of older people in popular amateur sporting events

The Chancellor was contacted by an individual who was not satisfied that at popular amateur sporting events supported by the Cultural Endowment of Estonia older participants were treated unequally in comparison to others. In the opinion of the petitioner, these competitions often fail to take into consideration the interests of older participants, because women can only compete

in the age group for up to 50- or 60-year-olds and men in age groups for up to 55- or 60-year-olds and older. Therefore, for example, a 70-year-old amateur athlete must compete with those up to 20 years younger than them. In other age groups, the categorisation is usually by five- or ten-year intervals.

In the Chancellor's opinion, organisers of popular amateur sports events could consider the possibility of creating more age groups for older people in competitions. By setting conditions for granting support, the Cultural Endowment of Estonia can promote equal treatment of different age groups in sports events. All participants in a competition should be able to compete in age groups formed on comparable bases. However, failure to form separate age groups for older people does not necessarily mean discrimination. If objective reasons for this exist (e.g. insufficient competition because of the limited number of participants or the specificity of a certain sport), competition organisers need not keep separate records for older people. The Cultural Endowment of Estonia affirmed that the Chancellor's recommendations would be taken into account in granting support.

Taking ethnicity and social status into account in court proceedings
Two petitions received by the Chancellor concerned alleged discrimination in court proceedings. One petitioner contended that the court sentenced them to imprisonment because of their ethnicity and social status and not because of having committed a criminal offence. Materials of court proceedings showed that the court had justified the sentence by the facts of the criminal offence and had not relied on ethnicity or social status. When imposing expulsion from Estonia and a ban on entering Estonia as a supplementary punishment, the person's citizenship, residence and social contacts were taken into account, which constitute relevant reasons.

Another petitioner complained that their next of kin had been discriminated against in court proceedings because of their Roma ethnic origin. Allegedly, the prosecutor in the courtroom had treated the person poorly but the judge had not intervened. In the information system of judicial decisions it was found that the accused had filed with the court a complaint for recusal of the prosecutor because, allegedly, the prosecutor's conduct may have been motivated by prejudice against people of Roma ethnicity. The court dismissed the complaint because the criticism raised in the complaint did not provide grounds to conclude that the prosecutor had been impelled by subjective motives or prejudice when exercising their official duties. The materials of the court proceedings did not indicate that the court had treated the defendants in a discriminating manner.

Thus, neither suspicion of discrimination was confirmed.

Learning conditions

Formation of classes
The Chancellor was asked to verify the claim that a school was assigning pupils to classes based on their ethnicity and required that parents should communicate in Estonian with children at home.

Pupils may not be distributed to classes according to ethnicity. It is also not admissible to make demands concerning the language to be used at home – communication in Estonian with children at home may not be set as a prerequisite for admission or transfer of a pupil to a class where tuition takes place in Estonian.

The local authority's representative explained that children from non-Estonian speaking families can be admitted to an Estonian-speaking class if the child's proficiency in Estonian is sufficient. Pupils are assigned based on their language proficiency and not ethnicity. A language immersion class is recommended if this is in the interests of the child. Teachers monitor the development of children and also transfer them to another class based on the children's language proficiency and ability to cope (i.e. transfer from a language immersion class to an Estonian-speaking class and the other way round), if the parents consent to this.

The owner of the school affirmed that the school may not make any demands as to the language of communication at home. Nevertheless, parents had been given recommendations as to how a child could better learn the language (e.g. attending extended-day groups and Estonian-speaking hobby groups)

The rights of sexual minorities

Absence of implementing legislation for the Registered Partnership Act
Tallinn Court of Appeal initiated constitutional review proceedings, declaring failure to adopt implementing legislation for the Registered Partnership Act unlawful and unconstitutional. The Chancellor found that absence of implementing legislation for the Registered Partnership Act results in lack of legal clarity, so that it cannot be ruled out that errors of discretion occur when implementing the Act.

The Supreme Court affirmed that the Registered Partnership Act is valid even without implementing legislation. The Act is part of the Estonian legal order and it must be applied in conformity with other legislation.

Amendment of the Equal Treatment Act
The Ministry of Social Affairs prepared a Draft Act on amending the Equal Treatment Act with a view to ensuring more extensive protection against discrimination on grounds of religion or belief, age, disability or sexual orientation. To date, such protection is only regulated in the field of work and occupational activities. The Draft Act also stipulates that no one may be discriminated against on those grounds when providing goods and services (including access to housing).

Several persons sought the Chancellor's opinion on the Draft Act and asked how to implement simultaneously the prohibition on discrimination and freedom of religion when providing goods and services to the public, for example when buying or renting housing.

In her reply, the Chancellor explained that the state must ensure protection against discrimination in all walks of life, including legal relationships between persons in private law (§§ 13 and 14 of the Constitution). The requirement also arises from international human rights instruments. Frictions between fundamental rights must be resolved by applying the principle of proportionality. Prohibition of discrimination only applies if a person offers goods or services to the public. Thus, interference with the right to property or freedom of contract is mostly proportionate, but the circumstances of a particular case should always be taken into account. As a rule, refusal to provide goods or services (including accommodation) to people belonging to a sexual minority cannot be justified merely on grounds of beliefs (e.g. that partnership between people of the same sex is contrary to God's will).

The right of a same-sex partner to join a family member
During this reporting year, the Chancellor was again asked whether it was compatible with the Constitution and European law that an Estonian citizen's same-sex partner who has entered into a registered partnership contract or married abroad cannot apply for a residence permit on the same grounds as spouses or a cohabiting couple of different sexes.

In 2015, the Chancellor made a proposal to the Riigikogu to bring the Aliens Act into conformity with the Constitution. Although the Riigikogu supported the proposal, the Act has not been amended to date.

Refugees and asylum applicants

The right of a refugee to change their name
A person who has received refugee status in Estonia cannot change their name. The person writing to the Chancellor claimed that Tallinn Vital Statistics Office refused to accept the relevant application.

Under legislation, an Estonian citizen and an alien who is not a citizen of any country and is living in Estonia on the basis of a residence permit may apply for name change. Refugees are deemed to be *de facto* stateless persons because, by granting them international protection, their legal relationship with the country of origin ceases. So they cannot apply to the country of citizenship to change their name. Estonian identity documents are also issued to a refugee, so that the authorities can document the person's name change in Estonia.

The Chancellor found that since the right to change one's name also extends to persons who have been granted refugee status, and the legal situation of refugees is different from the situation of other third-country nationals (because essentially they are in the same situation as stateless persons), the Names Act must be interpreted in conformity with the Constitution and international treaties.

Applying for citizenship
The Chancellor was asked to assess the situation where a Syrian citizen could not apply for Estonian citizenship because they are not released from their current citizenship. Under the Citizenship Act, an Estonian citizen may not simultaneously hold the citizenship of another country. The requirement of release from previous citizenship does not apply to a person who has been granted international protection.

The Chancellor found that unequal treatment could be suspected if a person is in the same situation as a person entitled to international protection. According to statistics, 91 per cent of international protection applications by Syrian citizens were granted in the fourth quarter of 2017. Also when a person has arrived in the country based on another lawful ground (e.g. in the frame of family migration), the reason to settle in the country may be the situation in the country of origin which serves as a basis for granting international protection. Due to an armed conflict in the country of origin, normal administrative organisation might not be functional there. These circumstances must be taken into account in administrative court proceedings. In the course of proceedings, an assessment must be made as to whether the exception under the Citizenship Act can be applied by analogy.

Status of an asylum applicant after the administrative court's negative decision
The Chancellor was asked to clarify the status of an asylum applicant after the Police and Border Guard Board (PBGB) had rejected their application and the administrative court dismissed the appeal against that decision. Under the Act on Granting International Protection to Aliens, a final decision is, inter alia, a decision by the PBGB to reject an application or revoke international protection, the appeal against which has been dismissed by the administrative court.

Deeming the administrative court decision to be a final decision raises the question as to the status of an applicant for international protection during the proceedings taking place in the court of appeal or the Supreme Court; as well as in a situation where the court annuls the PBGB decision and remits the case for re-consideration to the PBGB.

The definition of a final decision arises from European Union directives. The Chancellor is not competent to carry out an abstract review of whether legislation conforms to European Union law. However, application of law must take into account the obligations arising from EU treaties and the relevant directive, as well as the case-law of the EU Court of Justice. The Chancellor is not aware of any cases to date where the rights of applicants for international protection (e.g. the right to work or receive services) would have been restricted after the administrative court decision. If necessary, an assessment should be carried out in the frame of a specific legal dispute as to whether the rules are in conformity with EU law and the Estonian Constitution.

Detention of asylum applicants
The Chancellor was asked to express an opinion on whether detention of an applicant for international protection was lawful after the PBGB renewed proceedings to examine their repeat application for international protection. The PBGB applied for court authorisation to detain the applicant in connection with initiating expulsion proceedings, but did not file a new application with the court after renewing international protection proceedings.

Under the Act on Granting International Protection to Aliens, the PBGB must apply for a new court authorisation if the person files an application for international protection during expulsion proceedings.

In the Chancellor's opinion, no legal basis existed to detain the applicant. The Chancellor recommended that the PBGB should file a new application with the court to obtain an authorisation for detention, if detaining that person is still necessary.

21st century work

Twenty-first century employment relationships and the labour market are characterised by flexibility. People are expected to show more flexibility than before in changing jobs, retraining, and adapting to change. The main yardstick for the labour market is no longer the total number of full-time employed persons. Increasingly, more people are simultaneously active in several fields, have different sources of income, use different forms of work, while the boundaries between entrepreneurship and traditional work are getting fuzzier.

These changes are also reflected in questions sent to the Chancellor, which, similarly to previous years, concern first and foremost social security issues. The consequences of changes appear most clearly in this area.

More up-to-date unemployment insurance
While the previous concept of unemployment insurance certainly met the needs of its time, changes in the nature of work and in the labour market compel us to find more flexible solutions.

In a petition sent to the Chancellor, a person explained that even though they had lost their main job the state refused to pay them unemployment insurance benefit. Granting the benefit was prevented by a valid contract of mandate which the person had entered into as an expert serving on a committee under a ministry.

A person cannot be registered as unemployed if they have a valid contract for provision of a service under the law of obligations (e.g. a contract for services, a contract of mandate) regardless of how much, when and if at all a person receives remuneration under that contract. In the instant case, the expert received only symbolic remuneration for their contribution, and during the months when the committee had no work there was not even that remuneration. The restriction on registration as unemployed deprives a person of unemployment insurance benefit since the requirement of registration as unemployed is one of the preconditions for receiving benefit. This is so even if the person had previously paid unemployment insurance premiums and meets all other conditions for receiving benefit.

The Chancellor made a proposal to the Government and the legislator that, in future, unemployment insurance should be viewed as insurance against loss of work-related income, and the underlying premise should not be whether a person is engaged in some activity. In its judgment the Supreme Court affirmed that the decisive factor in the unemployment insurance scheme is not the existence of activity deemed as work but whether it is remunerated. Thus, the unemployment insurance scheme should be updated so that people who have lost their permanent work-related income could also receive unemployment insurance benefit.

A wider debate is needed on the issue of possible reconciliation of the existence of work-related income and unemployment insurance. Following the example of the parental benefit system, consideration could be given to the idea of continuing to pay unemployment insurance benefit even when an insured person has found work which does not provide the same income as previously, yet allows the person to maintain the habit of working and participation in working life. Accepting low-paid short-term work does not mean that the person's work-related income is thereby restored. Therefore, a situation where casual work deprives an unemployed person of all state assistance in finding permanent employment might not be justified.

Similarly, a person currently cannot register as unemployed if they are enrolled in full-time study. Yet the state should make all efforts to promote life-long learning.

Forms of work and equal treatment
In connection with social benefits, an answer is needed to the question whether people may be treated differently depending on the form of work. The Constitution does not prohibit different treatment if a reasonable and relevant cause exists. Therefore, the purpose of different treatment must be analysed when granting benefits. When weighing different decisions, an assessment is always required as to whether the aim sought and the possible consequences are compatible with the changed needs of work and the labour market.

Still recently only fathers working under an employment contract were entitled to paid paternity leave. This trend was changed by reorganisation of the parental benefits scheme, making paid paternity leave an integral part of the parental benefit system. In future, a 30-day supplementary

parental benefit (to which only the father is entitled) is available to all fathers regardless of their form of work.

In spring 2018, a similar issue arose when establishing a paid carer's leave: whether to grant entitlement to paid leave only to those next of kin and carers of a disabled person who work under an employment contract, or also to next of kin and carers who provide care to an adult person with profound disability but work in a different form.

Employment contracts differ from other contracts regulating work (e.g. contract of mandate) or entrepreneurship by the fact that the law lays down the bases for employee vacations. If the law were not to do so, an employee and employer might not reach mutual agreement on issues of receiving/granting a vacation. That would harm the employee's interests. People engaged in other forms of work have considerably more freedom in organising their working life. They can decide themselves whether and when to have a vacation. Despite this, the issue of a paid vacation may be just as important for them as for people working under an employment contact – if they lose financially when taking carer's leave, a risk exists that they might not take a vacation at all.

The risk of abuse might also not significantly depend on whether a person works under an employment contract or in some other form. At first sight, it may seem that people who decide themselves over their vacation (e.g. self-employed persons or people working under a contract of mandate) might not even go on vacation but nevertheless use the opportunity to receive remuneration for carer's leave from the state. In actuality, the same suspicion may arise with regard to people working under an employment contract. The state cannot or even should not monitor whether a person uses the time intended for carer's leave in the interests of the person under their care or does something else during that time. Certainly, it is important to prevent abuses, but this is also possible in a system which is more flexible than currently and takes account of the changes in the labour market while also keeping in mind the principle of equal treatment.

The Riigikogu resolved the dispute over carer's leave in a spirit of compromise by introducing a statutory provision obliging the Government to analyse the problem and submit relevant proposals to the Riigikogu. The Government must consider whether also to give entitlement to carer's leave to those who do not work under an employment contract, more specifically people working under a contract for services under the law of obligations or people holding a position in public law as independent entities.

International labour market

The social security coordination legislation in force in the European Union should ensure that movement in EU countries would not entail any negative consequences for people. However, implementing this principle is complicated.

During the reporting period, the Chancellor received numerous complaints that obtaining an unemployment insurance benefit or work ability allowance has taken very long. For example, the Chancellor found that assessing a person's capacity for work and granting them a work ability allowance by the Estonian Unemployment Insurance Fund had clearly taken too long, even in view of the fact that communication with officials in another country and application of European Union legislation was required. The Chancellor recommended that the Estonian Unemployment Insurance Fund should avoid unnecessary delays in future and should always keep people informed about the status of resolving their application.

There has also been confusion with Estonian laws regulating cross-border cases. For example, the unemployment insurance benefit of a person who has worked in the European Union may turn out to be significantly lower than the benefit of a person who worked outside the European Union or decided not to work at all during the same time. This could be so even when these people paid the same amount of unemployment insurance premiums in Estonia. The Chancellor drew the attention of the Riigikogu Social Affairs Committee to the problem, as a result of which the Ministry of Social Affairs also started looking for a solution.

People themselves must also make an effort to obtain compensation or a benefit. If a family moves abroad, thought should be given to, for example, which Estonian authorities need to be informed about this. The Chancellor had to explain that the state can continue paying a child allowance to a child at least 16 years of age and studying abroad only if the state has data about the fact that the child is studying. Data on children studying in Estonia are recorded in the Estonian education information system, but the Social Insurance Board needs to be specifically notified of the fact of a child studying abroad.

Inspection visits

The Chancellor must monitor respect for the fundamental rights of individuals held in 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.

Places of detention mean all institutions where persons are or may be deprived of their liberty, either by virtue of an order by a public authority or at its instigation or with its consent or acquiescence. In Estonia, such custodial institutions include prisons, police detention facilities, psychiatric hospitals providing involuntary treatment, closed childcare institutions, social welfare institutions providing 24-hour special care services, etc.

Special care homes

During the reporting period, the Chancellor inspected seven special care institutions: Imastu Residential School, Võisiku Home and Karula Home, the non-profit association Valga County Support Centre, the welfare department of Valga Hospital, Hellenurme Home, and South Lääne County Health and Social Welfare Centre.

The twenty-four-hour special care service financed from the state budget is intended for people with mental disorders or severe or profound disability who are incapacitated for work and in need of daily guidance, counselling, assistance, and supervision due to their mental health condition. As at the end of 2017, Estonia has a total of 43 24-hour special care service institutions, with 2503 residents. During the reporting period, the Chancellor paid closer attention to institutions providing 24-hour special care to people with profound multiple disability.

During inspection of special care institutions, the Chancellor's advisers reviewed whether residents' freedom of movement was restricted (e.g. by locking them in rooms, securing them to their beds) and how means of restraint were used. The advisers also assessed the living conditions in these institutions and checked whether staffing was sufficient and whether the staff had received the necessary training to work with people with mental disorders. The advisers also investigated whether residents were offered enough meaningful free-time activities, as well as activities necessary to support maintaining their health. The advisers also monitored how dispensing of medication was organised and whether healthcare services were available. A general practitioner was involved as an expert on all inspection visits.

Special care institutions often lack a sufficient number of competent activity supervisors, in particular in the evening and at night. The work of activity supervisors should be organised so as to enable an individual approach to all residents of a special care institution and, if necessary, to keep an eye on their movements and activities. Staffing should be sufficient so as to enable swift resolution of dangerous situations in a manner that ensures the safety of all patients as well as the safety of the staff themselves. The minimum staffing level laid down in legislation for special care institutions might not always ensure quality service and the fundamental rights

of residents. In addition, the specific characteristics of the buildings and residents in a particular institution should be taken into account.

Until 2020, activity supervisors of people with profound multiple disability may also be individuals who have registered for further training required for such work. Many activity supervisors without the necessary training have spent years working with people with profound multiple disabilities. Some have not even received basic training as activity supervisors. The state has established training requirements in view of the specific nature of care and assistance needed by people with mental disorders. Untrained staff might not know how to properly assess situations or choose the right working methods to ensure the safety and well-being of the client. Special care homes must ensure that their staff receive the training required by law as soon as possible.

In several special care institutions, residents' freedom of movement had been unlawfully restricted. For example, the entrance door to a family house or to a department was locked. People living in locked units should be constantly monitored because of their health. Without a court ruling, a special care home may restrict a resident's freedom of movement only in exceptional conditions laid down by law, placing a resident in a secure seclusion room for up to three hours.

In some of the special care homes inspected, residents lived in pass-through bedrooms, while the cleanliness of washrooms and toilets was also lacking, and in several buildings moving around in a wheelchair was also difficult.

The Chancellor also inquired how Imastu Residential School and Võisiku Home helped their residents under the reorganisation plan for special care institutions to relocate to smaller social welfare institutions, since those homes are planned to be closed down in a while. Preparations have been carefully considered and thorough. The Chancellor once again reminded care homes that staff should also provide as much information as possible to residents about the reorganisation.

The Chancellor asked the company AS Hoolekandeteenused to ensure that nursing care services are available at least to the statutory minimum extent.

Childcare institutions

The Chancellor inspected the department for minors placed in Imastu Residential School under a court ruling, the Centre for Infants of the Tallinn Children's Home and two hospitals providing in-patient psychiatric care for minors: the Children's Mental Health Centre of Tallinn Children's Hospital Foundation and the Child and Adolescent Mental Health Centre of the Psychiatry Clinic at the University of Tartu Hospital.

The department for minors in Imastu Residential School is a closed facility for minors in need of individual guidance, even for coping with simpler tasks. It was good to observe that staffing numbers at the department were sufficient during the daytime.

The Chancellor found that the closed yard of Imastu Residential School should be developed into a playground suitable for children so as to offer them sufficient activities. Imastu Residential School must also make the route to the seclusion room safer and improve the monitoring possibilities of the seclusion room. The route from the closed department to the

seclusion room leads along narrow corridors with several closed doors, clothes racks, etc., which could make escorting a restless child or a young person to the seclusion room dangerous for them as well as for the staff. The door of the seclusion room has an observation window with safety glass, though this did not enable monitoring of the whole room – there was a so-called blind spot.

As a result of inspection of the Centre for Infants of the Tallinn Children's Home, the Chancellor asked them to improve living conditions and decorate the children's bedrooms so as to make them more child-friendly. The shelter could have a separate cosy guest room; currently visits take place in the group room or the lobby.

The Chancellor also inspected the Children's Mental Health Centre of Tallinn Children's Hospital Foundation and the Child and Adolescent Mental Health Centre of the Psychiatry Clinic at the University of Tartu Hospital as regards provision of psychiatric care to minors.

In hospitals providing psychiatric care to children, patients must be able to lock the door of the toilet. At the same time, medical staff must be able to enter the toilet if a suspicion arises that a child might injure themselves while behind a closed door. Children must be able to communicate with parents and guardians in privacy. Telephone conversations should not take place in the presence of staff.

Both of the hospitals visited use video surveillance, although its implementation in practice differs in some aspects. The Chancellor emphasised that using video surveillance in wards interferes with patient privacy, so that its use must be justified and well-considered in respect of each patient, and not a measure to be applied automatically. Patients under voluntary treatment must consent to using video surveillance in their ward, but patients receiving involuntary treatment must definitely also be informed about the use of video surveillance. If a patient needs constant monitoring, for example due to risk of suicide, the hospital staff must indeed actually carry out such monitoring, as otherwise video surveillance would not serve its purpose − i.e. to protect the life and health of the patient.

The Chancellor emphasised that restraining of patients must be recorded so that the documents always include the reason for applying means of restraint or continuing to apply them. The doctor must provide separate reasoning for continuing the use of restraint; merely repeating the description of the patient's behaviour prior to restraint is not sufficient.

During in-patient treatment, hospitals must offer children and young people possibilities for spending free time. In the hospitals visited, the patients could watch films, read books, walk in the yard and engage in sports if the patient's condition so allows. Youth work specialists and activity supervisors helped patients with free-time activities.

Police detention centres and prisons

The Chancellor inspected Kuressaare, Rapla, Paide, Pärnu and Kärdla police detention centres of the West Prefecture of the Police and Border Guard Board. Deaths of detainees in police facilities were also analysed.

Most cells in the police detention centres visited had insufficient natural light. In Rapla and Paide police detention centres, detainees have no access to the exercise yard at weekends. In

Kuressaare and Pärnu police detention centres, detainees can spend no time outdoors at all. In Kuressaare, they can only walk in a cell with an open window.

Use of 24-hour video surveillance in cells at police detention centres presumes a well-considered decision in each case. At Kuressaare police detention centre, hygiene corners in cells should be better partitioned from the rest of the cell, so that a detainee should not be forced to use the toilet while in view of all others present in the cell. In some police detention centres, those placed there for sobering up had no clean drinking vessel.

Documents in relation to detainees are drawn up more carefully than before by police detention centres. The health condition of a person admitted to a police detention centre must still be properly recorded. Potential subsequent legal disputes could be resolved more easily if it were recorded for how long special equipment was used in respect of a detainee. Some documents failed to record whether and with what result a person's next of kin were notified about their detention.

In a couple of instances, the Chancellor's advisers found that information on receiving parcels and visits published on the Police and Border Guard Board website and posted in the service hall of a police station differed from the information on the wall of a detainee's cell. The conflicting information was swiftly corrected.

Plans exist to build a new rescue and police building in Pärnu in the near future. Conditions in the current police detention centre are still poor. Detainees cannot spend time outdoors and short-term visits take place in the corridor, between bars. Access to a toilet is available only in one sobering-up cell. Due to plans for the new building, extensive construction works in the current detention centre are financially questionable. Nonetheless, detainees should not be held in non-compliant conditions.

In 2017, three persons placed in police detention centres for sobering-up died there. Four detainees committed suicide. The Police and Border Guard Board analyses and takes into consideration a detainee's risk-prone behaviour, including the propensity to suicide. Every suicide incident was immediately investigated. If disciplinary proceedings reveal that a staff member has breached their work duties, a disciplinary sanction can be imposed depending on the nature and level of guilt. Deaths could be avoided by use of more extensive video surveillance in all sobering-up cells and by combining technical supervision with effective and direct visual monitoring.

At the request of a prisoner, the Chancellor checked the norms for release on parole and found that the Riigikogu has a wide margin of discretion in establishing the relevant conditions. For example, a person who is released may be required to live at a permanent residence assigned by the court, a ban on consumption of alcohol may be imposed, etc. Release on parole does not relieve a person from serving their sentence. A person who violates their conditions for parole must resume serving their sentence in a custodial institution, and it is only justified for the court to reconsider the possibility of release on parole after a year has passed.

Defence Forces

During the reporting year, the Chancellor of Justice inspected two units of the Defence Forces and analysed the organisation of alternative service.

The Chancellor asked Viru Infantry Battalion to ensure that all conscripts can wash with hot water if necessary. In Kalevi Infantry Battalion, the Chancellor did not find any shortcomings needing attention.

On her own initiative, the Chancellor of Justice investigated the organisation of alternative service. Interviews with individuals in alternative service and heads of institutions organising alternative service revealed that most of them were satisfied with the organisation of alternative service. Individuals in alternative service found the duties performed to be interesting and the attitude of the relevant institutions to them was friendly. In the opinion of the heads of institutions, individuals in alternative service are of great assistance. The Chancellor recommended considering the possibility to give individuals in alternative service the right to express their preference for the place of service and let them get acquainted with the place of service in advance. It would also be reasonable if the institution assigned as the place of service could assess the suitability of individuals in alternative service in advance. Better consideration should also be given to the type of training provided to individuals in alternative service in future. Changes to organisation of alternative service are currently being prepared.

Refugee centres

The Chancellor of Justice inspected Vao Centre and its Vägeva unit of the Accommodation Centre for Asylum Seekers. Applicants for international protection as well as beneficiaries of international protection live in accommodation centres.

The sympathetic attitude to residents by the staff of accommodation centres and their readiness to swiftly resolve residents' daily concerns left a very good impression. Residents are ensured healthcare services: an initial health check, the possibility of an appointment with the local general practitioner as well as with specialist doctors. If necessary, an interpreting service can be used during a doctor's appointment as well as in other situations. Smooth access to necessary medication is ensured.

Children living in the accommodation centre have been provided with free dental care, and all residents of the centre have access to psychological counselling on request. School-age children attend the local school and learn Estonian. Language learning also takes place in the accommodation centres; the centres also organise free-time activities for residents on their premises. Children living in Vao centre can communicate with local children in the centre's playground.

Children in accommodation centres can play with toys suitable for their age. However, in the Chancellor's opinion, more of these toys are needed in Vägeva centre. In both centres, children should also be offered regular activities contributing to their development, such as organising hobby groups.

As a rule, children with families are placed in accommodation centres and often live there for more than just a few months for practical reasons. Unfortunately, at the beginning of summer 2018 it was not yet clear how to organise the opportunity for children in the centre to attend kindergarten, even though the Chancellor had already drawn attention to such a need during the previous inspection visit to Vao centre. The Chancellor can note with satisfaction that in autumn 2018 the problem was resolved and now children in the accommodation centre can also attend the local kindergarten. In the Chancellor's opinion, the kindergarten contributes to integrating children in the centre in Estonian society, facilitates their language learning, better helps them

to forge friendships, and enables them to find out about the local culture. This is particularly important for pre-school aged children who will probably cope better at school after having attended kindergarten.

General care homes

The Chancellor inspected the activities of eight care homes during the reporting year. A healthcare expert (a general practitioner or geriatrician) was involved in all the visits. During the visits, the advisers inspected the rooms, perused documents, and interviewed staff and clients of the care home under inspection.

Particular attention was paid to the accessibility of rooms, as well as whether individuals' freedom of movement had been restricted (e.g. locking them in their rooms, securing them to their beds), whether people were treated with dignity (e.g. ensuring privacy, living conditions), and whether no risks to their life and health existed (e.g. number and presence of staff, nursing and care, meals, medication, access to healthcare). During the inspection visits, the Chancellor's advisers also checked how the right to vote of the elderly in social welfare institutions was ensured.

The main problems in care homes relate to ensuring decent living conditions, the number of staff, proper preparation of care plans, unlawful restriction of people's freedom of movement, and availability of healthcare services.

Inspection of living conditions revealed that people were not ensured privacy during hygiene procedures. In some care homes, high doorsteps, narrow doorways and absence of a lift made it difficult to move around in a wheelchair or a wheeled walking frame. Problems also occurred with using aid devices corresponding to people's special needs.

In several care homes, the numbers of care staff were insufficient, in particular at night. For example, it may be difficult for the residents of a care home to call for assistance if no staff call system exists. Many care homes lacked mandatory care plans, or these were incomplete and not up-to-date. Inspection of several care homes revealed that residents' freedom of movement had been unlawfully restricted: by locking doors of departments as well as rooms.

Absence of care service suitable for persons with dementia
Freedom of movement was restricted mostly for people with dementia, whose behaviour could be problematic and unpredictable and who have serious memory problems, so as to be difficult for care home staff to handle. The cause of the problem lies in the fact that no care service has been developed corresponding specifically to the needs of people with dementia-related behavioural problems. The Chancellor has already drawn attention to this previously.

A positive development is a Ministry of Social Affairs initiative to set up a dementia competence centre and a plan to support adaptation of rooms for provision of the general care service to the elderly with dementia. Currently, it is difficult for the next of kin as well as for local authorities to find a place providing a service that meets the needs of people with dementia, including offering a suitable environment as well as an opportunity to implement the non-pharmacological approach set out in the treatment guidelines for Alzheimer's disease. In April, the Chancellor and her advisers visited the De Hogeweyk care centre at Weesp in the Netherlands, which uses a unique concept for care of dementia patients that has attracted worldwide attention.

Healthcare services in care homes

Residents of care homes need regular nursing care but the law does not oblige care homes to provide nursing care services. Primary healthcare in care homes should be ensured through the system of general practitioners and the home nurse service (home visits carried out by general practitioners and their nurses). However, many people live in a care home that is distant from their registered place of residence as well as the service area of their general practitioner.

Inspection visits have revealed that often a patient's health needs are not assessed by a healthcare professional (doctor or nurse). The need for a healthcare service is also not assessed on a regular basis. As a result, people's main health concerns may not receive the required attention and problems may deteriorate to the point where often an ambulance has to be called. The Health Board has also indicated in its survey that the number of ambulance calls in care homes has increased significantly and not always are the calls justified.

Due to absence of nursing care, problems have arisen with handling and administering medicines. A critical situation may develop when a doctor has prescribed psychotropic medication to a patient that should be used only in case of need. Only a healthcare professional with medical training can decide on the need to administer this kind of medication. However, there have been cases where a carer or another care home staff member without the necessary education decides on administering medication to be used only in the case of need.

Due to the absence of a nurse, carers often have to perform the tasks of healthcare professionals. In care homes inspected by the Chancellor, there have been cases where medical negligence could be suspected. For example, a care home delayed calling a doctor for an unreasonably long time. Such a situation may also be caused through ignorance because carers without medical knowledge are unable to correctly assess a person's condition.

Assessment and proper monitoring of a person's health may also be impeded by the fact that most care homes have no access to the health information system. Often a care home only has the information concerning a person's health which was submitted to them on paper by their next of kin. Absence of previous health data (including information on previously used medication) may lead to wrong conclusions by a care home in assessing a person's need for a healthcare service. In turn, if a person's health status changes, information from the care home does not reach the heath information system, so that general practitioners might lack an overview of the condition and needs of their patient.

Improving the situation of care homes

Improving the quality of the general care service was discussed at the information day organised at the Ministry of Social Affairs, where the Head of the Chancellor's Inspection Visits Department talked to heads of care homes about problems observed during inspection visits. The Chancellor's advisers also gave an overview of their work and discussed critical problems in the frame of the development programme for the Social Insurance Board's supervisory specialists.

In the media, the Chancellor's advisers have provided comments and clarifications about the care service (e.g. 30 November 2017 Radio 4 programme „Подробности"). The problems of restricting the freedom of movement of people were dealt with in the journal *Sotsiaaltöö* (see the article „Vabatahtlikkuse põhimõte üldhooldusteenuse osutamisel" [The principle of voluntarism in providing the general care service]).

Everything begins from mentality

Dignified ageing is often supported by changes that are small and feasible for everyone. One could start with revising the wording of contracts concluded by care homes and remove expressions that refer to people as objects.

For example, contracts often refer to “exclusion of a client from the care home” or the obligation of a “service purchaser” (a person’s next of kin who pays for the service) “to place the service recipient elsewhere in the event of termination of contract”. Finding out the needs and wishes of the elderly is called “cost of care calculation”, which sounds rather like vehicle maintenance terminology. Communication by an elderly person with care home staff is described by a contract provision in the following terms: “disturbing the staff” is prohibited. As regards issues of quality of the care home, “the client is entitled to file a written application to remedy the deficiency”. According to some contracts, care home staff have three days to inform a care home resident’s next of kin about their death.

Entrepreneurship, ownership, environment

When assessing freedom of entrepreneurship, the viewpoint – either too little or too much freedom – depends on whether someone is an entrepreneur or whether they have to put up with the effects of entrepreneurship. The natural environment and its protection is becoming a bludgeon that is employed relatively rashly, whereas the environment itself seems to be the only actual loser in this. To protect eagles and flying squirrels, it is not sufficient to have the state only exert pressure on owners of land while nothing else is done to protect these birds and animals.

Freedom and restriction are opposites. Where there is a restriction, full freedom no longer exists. Therefore, a balance must be found between freedom and restrictions imposed for the benefit of all. If we fail to do this, we could find ourselves suffocating under norms in the fervour of administering excessive caution and risks.

Spatial planning and building

Spatial planning and building combine aspects of ownership, freedom of entrepreneurship as well as the natural human desire to enjoy one's home and living environment. All these rights can be used simultaneously only when agreements are honoured and solutions to problems are sought.

A spatial plan is a community-based agreement, and reaching it involves weighing different solutions and finding a mutually satisfactory balance between private and public interests. In the case of an established spatial plan, its conditions may be presumed to be complied with and the local authority may be presumed to be following the spatial plan in all its relevant proceedings.

During the reporting period, the Chancellor dealt with several cases where not all the requirements of the spatial plan – inserted in it for protection of people's interests – were being complied with. A dispute arose as to whether the noise level in a certain area exceeded norms precisely because the requirements laid down in the spatial plan had not been complied with. A spatial plan is valid as an integrated whole. A local authority cannot afford solutions that are contrary to the spatial plan.

If a spatial plan allows a choice between several solutions, a local authority should not restrict those conditions when processing a building permit – for example, by requiring only one solution and excluding another. A person interested in a spatial plan (e.g. a developer) is entitled to presume that they are not presented with demands that conflict with the spatial plan or are even unlawful.

The possibilities for a local authority to influence implementing a spatial plan after it has been established are limited. If a spatial plan lays down several buildings but the sequence of building them is not set, the local authority cannot prescribe which buildings should be built first. A spatial plan grants the right to build something but does not oblige anyone to do so. If a local authority wishes to make the requirements more specific – for example, set the sequence of constructing the buildings set out in the spatial plan – this can be done based on agreement reached prior to establishing the plan.

Several important issues can also be resolved through authorisation for use, which can subsequently be modified if necessary. This means that, at the latest when issuing authorisation for use, a local authority must resolve all inconvenient and conflicting problems that were previously evaded or sidestepped. Dealing with consequences any later could be complicated, so that suitable solutions should be suggested to the local authority, the developer and the local community as soon as possible.

The value of a spatial plan as a community-based agreement lies in its completeness. Even though a spatial plan need not decide on every detail, issues that should only be determined in a spatial plan should not be sidestepped. Under the District Heating Act, the district heating area is determined by a comprehensive plan. On this depends whether and when a building must be connected to a district heating network. Probably due to its ambiguous wording, the provision is implemented in various ways. Many local authorities have determined a district heating area by a regulation, thus depriving local residents of the possibility to be involved in deciding issues affecting their life. Everyone can have a say and submit their proposals during the planning procedure. If proposals are not taken into account, recourse to an administrative court is available for protection of one's interests. However, if the same issue is resolved by a regulation, people cannot have a say in deciding. Therefore, the wording of the Act should be modified. The Chancellor of Justice also sent a memorandum to the Riigikogu on this.

If a local authority spatial plan authorises an extensive real estate development, the local authority itself also usually assumes more obligations. The local authority must find out how to organise provision of public services to people settling in the spatial planning area and how much money this requires. A complete living environment presumes the existence of access roads, a public water supply and sewerage system, as well as buildings needed to provide public services (e.g. a kindergarten and a school). In new development areas, all this is usually absent. By law, a local authority must ensure the existence of infrastructure needed in the public interest.

Often local authorities lack money to perform the public functions inherent in a spatial plan. For this reason, and as a precondition for initiating and establishing a detailed spatial plan, local authorities have started to demand that developers should also contribute to creating the public infrastructure either through co-financing or otherwise. These additional expenses are reflected in the sale prices of the development, so that purchasers of a new dwelling also cover the expenses of creating public infrastructure. Such a practice also helps to ensure that development of new real estate does not take place at the expense of all local residents. This also helps to avoid a situation where a developer earns a profit but leaves problems for the local authority to resolve.

Although the solution offered by local authorities is lawful, it is not transparent because agreements concluded between local authorities and developers are not public. Therefore, this entails the risk of unequal treatment and corruption. It may be that some development projects gain an advantage over others because of unjustifiably more lenient conditions. A situation where making these decisions is within the competence of city or rural municipality officials and the municipal council cannot control the process is also lacking in credibility.

Because of these problems, a statutory amendment is worth considering in order to deal with obligations imposed on developers in the public interest. Consideration should be given to the possibility of conferring on local authorities the right to use a legislative act of general

application to establish the methodology and conditions for granting so-called development benefits, and why not also establish the benefit rate. In that case, everybody could anticipate with some certainty what obligations may accompany the development, which in turn would ensure transparency of the process and equal treatment. In the interests of transparency, that part of the agreement concluded with a developer whereby obligations under public law are imposed on the developer could be made public,

Entrepreneurship

Freedom of entrepreneurship means that the state may not create unjustified obstacles to entrepreneurship. Entrepreneurs have the right to be free of state intervention. During the reporting period, the Chancellor analysed two important restrictions on freedom of entrepreneurship.

With regard to pharmacy reform, the Chancellor found that the law had provided a sufficient transition period (five years) for implementing the ban on vertical integration of a retailer and wholesaler (i.e. a wholesaler may not simultaneously be a retailer) and the requirement for a pharmacy to be owned by a pharmacist. Besides, under the Constitution, the Riigikogu may introduce reforms necessary for reorganising a certain sector for essential reasons (e.g. health protection). Therefore, there exists no reason to consider restrictions on operators to be disproportionate.

The state has a duty to protect people's health. The pharmaceutical service is part of the healthcare sector, which differs somewhat from ordinary economic activity. The population of Estonia is small and its population density low, so that simultaneously ensuring a viable pharmacy market, strong competition, and availability of medicines at a reasonable price is difficult. It is for the Riigikogu to decide what measures to use for achieving these objectives. Certainly, restrictions may not be arbitrary and the time for adapting to new rules should not be too short.

With the ban on connection between retailers and wholesalers and the requirement for a pharmacist to have a majority holding in a pharmacy, the Riigikogu wanted to facilitate competition, the commercial independence of pharmacists, and their occupational accountability for the quality of the pharmaceutical service. Whether the objectives sought would be attained as a result of reorganising the pharmacy market is impossible to say at the moment. Clearly, the state must ensure compliance with the new rules, including preventing concealed participation and *de facto* influence by wholesalers in pharmacies run by a pharmacist. All market participants must be able to operate honestly.

Some operating licences have already been issued under the new rules to pharmacies run by a pharmacist. The Estonian legal order has rules necessary to acquire or transfer a holding in a company, so that there is also no reason to speak of absence of implementing provisions.

In July 2019, a ban on the display of tobacco products will enter into force, meaning that customers visiting a grocery store may no longer see tobacco products on sale or their trademarks. The experience of several countries shows that a tobacco display ban has led to a significant decrease in the number of young people who smoke. Therefore, in the Chancellor's opinion the restriction is constitutional.

Assessing the extent and intensity of interference by the display ban with freedom of entrepreneurship should take into account that several exceptions have been laid down for implementing the ban (e.g. separate shops for sale of tobacco products) and use of trademarks will not disappear – a trademark can still be found in text format on a price list and/or in a catalogue. Although this would limit the possibility to display a trademark – presumably decreasing the profit gained from a trademark – but since using a trademark to a limited extent is still possible, interference with the fundamental right to property and freedom of entrepreneurship is moderate.

According to the explanatory memorandum to the Draft Act, advertising at a point of sale and display of tobacco products in retail stores affects purchasing decisions. According to the 2014 survey of health behaviour among adults and schoolchildren in Estonia as well as general health data, tobacco consumption among young people at school is a serious problem. Smoking begins at an early age – both boys and girls take up smoking on average at the age of 12.

In conclusion, in view of the public interest, the objective of public health protection (in particular protecting the health of minors) outweighs the restrictions imposed on undertakings.

The aim of undertakings is to earn a profit from their investment. It is mandatory for commercial associations to accumulate a legal reserve, which must be done continuously because the law does not allow them to act differently. The Constitution does not preclude imposing somewhat different rules on commercial associations in comparison to other companies. At the same time, all distinctions must be justified and every limitation must serve a certain objective. In this connection, the Chancellor of Justice asked the Riigikogu to form an opinion that takes into consideration the realities of life.

The Chancellor sent a memorandum to the Riigikogu Rural Affairs Committee concerning late interest calculated on agricultural support to be recovered. The rate of late interest (0.1% a day, 36.5% a year) laid down by the European Union Common Agricultural Policy Implementation Act is high, and interest charged for a long period may place persons unable to repay the support by the deadline in an economically difficult situation. The agency reclaiming the support has no option to reduce or cancel the interest. After debating the issue, the Riigikogu Rural Affairs Committee preferred the solution based on the 2014-2020 Structural Assistance Act, under which only interest (3% of the amount of debt a year) would be charged in the event of postponed repayment of debt by instalments. The Rural Affairs Committee tasked the Ministry of Rural Affairs with preparing the legislative amendments.

Taxes

Undertakings and employers' representatives have repeatedly expressed concern about hastily introduced tax amendments, underlining how important a stable tax environment is for them. Undertakings also expect the state to analyse all tax policy changes more thoroughly than so far.

During the reporting period, the Chancellor had to reply to numerous enquiries about a change in the principles for calculating tax-free income and restrictions on income tax incentives and tax exemptions.

- Dissatisfaction was caused by the fact that calculating the amount of the basic exemption for tax-free income also takes into account, for example, dividends, income earned abroad, savings account interest, and lump-sum payments of supplementary funded pension. Several petitioners found this to amount to double taxation, in particular if the same income had already been previously taxed either abroad or by the entity paying the dividends. However, this does not constitute double taxation because income already taxed previously is not taxed again. Dividends are taken into account only when deciding on the amount of basic exemption deductible from income.

- In the Chancellor's opinion, the parliament is entitled to decide that calculation of the basic exemption deductible from income takes into account, inter alia, lump-sum supplementary funded pension payments, i.e. so-called third-pillar pension payments. Since a person is refunded the income tax paid on sums invested in the so-called third pension pillar, taxation of money so invested is deferred until disbursement. As taxation of payments into the third pension pillar is deferred to the moment when a person receives the income, it is problematic to argue against the fact that taxable disbursements are taken into account in calculating the basic exemption similarly to other taxable income. Lump-sum disbursements from the so-called third pension pillar are mostly also taxed at a more favourable 10% income tax rate. Regular pension payments made under a lifelong pension contract are tax-exempt and do not affect the amount of tax-free income. The Riigikogu is entitled to direct people to use their money collected in the third pension pillar in such a way as to ensure that they have a steady supplement to their pension in the form of regular disbursement during retirement.

- When establishing the graded basic exemption system, the Riigikogu overlooked several technical tax issues as a result of which the basic exemption cannot be used immediately. For example, a low-paid person with several places of employment receiving less than 500 euros remuneration from each employer must wait until filing their tax return in order to fully use the basic exemption to which they are entitled. An application for basic exemption can be filed only with one employer. If basic exemption for the whole year had not been exhausted when income tax was withheld, any income tax overpaid is refunded on the basis of the tax return.
  Working pensioners would have been in a similar situation. After intervention by the Chancellor, the Riigikogu amended the Income Tax Act at the end of 2017. Pensioners can now file an application for basic exemption both with the Social Insurance Board and their employer. This enables them to use the 500-euro basic exemption to the maximum extent immediately and not a year later when reclaiming tax on the basis of their income tax return.

- No possibility was established for low-paid workers to divide the basic exemption between different employers. The reason is the current Social Tax Act, which places the minimum obligation for social tax on the employer who computes a person's basic exemption for income tax. In order for an employee to be able to file an application for basic exemption with several employers, the issue of the employer required to execute the minimum social tax obligation should have been resolved. A possible solution is seen through an information technology development in the Tax and Customs Board system, which would allow employees themselves to choose how to compute the basic exemption. The new system cannot be expected before 2020.
  On the other hand, people with several places of employment have the opportunity to get 'credit' from the state in certain cases. If the employer paying the lowest wage (e.g.

500 euros) were to be chosen as the entity executing the basic exemption, the income tax obligation could be deferred until filing the tax return and until the obligation to pay extra tax arises on the basis of the return. A person with one place of employment and earning the same amount of income has no such option. The Chancellor found that the deviations described above are inevitable in the case of a new system and are not unfair because, when taking the entire taxation period into account, people are nonetheless taxed fairly. As at July 2018, according to information from the Tax and Customs Board, approximately 36 000 people had used their basic exemption to an extent exceeding the entitlement available to them based on their annual income. These people will later incur an obligation to pay additional income tax.

- The Chancellor dealt with a case where a pensioner did not receive the pension amount to be delivered to their home at the right time. They received the money one month later together with the next month's pension. Due to the larger amount, the system automatically also calculated income tax which would not have been withheld if the pension had been paid in time. In the Chancellor's opinion, the system could be more flexible because in this case the state actually knew that the pensioner had two months' pension delivered to their home, which falls under the basic exemption if calculated separately for each month. The law can also be interpreted so that pension that is to be delivered to a person's home, but is not delivered, is actually deposited with the state until disbursement, and taxation is not deferred to the actual time of disbursement. Unfortunately, this is not currently technically possible; a change in the IT systems of the Social Insurance Board and the Tax and Customs Board is needed.
  In a situation similar to this one, the state should apply the principle of good administration. The Social Insurance Board is checking every month whether the pension that has not been disbursed can be delivered to the person within the same month. Recipients of a pension to be delivered to their home are also notified that upon receiving several months' pension the pension could be temporarily smaller because of the month-based threshold for calculating the basic exemption.

- As of 2018, the Riigikogu abolished the tax exemption for savings account interest paid to natural persons. In this connection, the Chancellor received several petitions in which people pointed out a possible violation of their rights. When opening a savings account, they had not taken into account the fact that by the time of payment of interest, the tax law may have changed and the expected income could be smaller due to taxation. Because the law has not laid down a fixed-term tax exemption and no other assurance exists either as to how long the tax exemption would last, the amendment is not unconstitutional.

- In 2018, a maximum amount of 300 euros of housing loan interest is deductible from taxable income. Just as in the case of savings account interest, the Chancellor acknowledged that the Income Tax Act does not lay down a fixed-term tax exemption with regard to housing loan interest nor have any other assurances been given that the tax exemption would remain unchanged for decades. Thus, a borrower has not developed a legitimate expectation that the right of deduction of loan interest could be used without change during the whole period of loan repayment. The parliament decided to increase the basic exemption for lower-income people and at the same time to limit other tax exemptions and incentives – a choice that has been made within the boundaries of the Constitution.

- The Chancellor drew attention to the fact that the Tax and Customs Board was not following the law when deducting housing loan interest from taxable income. Under the Income Tax Act, housing loan interest may be deducted from taxable income in the case of existence of a building permit as well as a construction project. This tax incentive can be used in the case of a housing loan taken for building and installation work for the purposes of erecting, expanding or reconstructing a building, changing the division of space in a building, as well as technological modification of a building. Under the Building Code, no building permit or filing of a building notice is required for some of these works. Thus, to do these works, a construction project need not always be entered in the building register or otherwise approved by the local authority. A project drawn up by persons themselves is also legitimate if it meets the general requirements and if building is possible according to it.
  The Chancellor was contacted by an individual whom the tax authority had barred from deducting housing loan interest from taxable income because the construction project submitted to the Tax and Customs Board had not been approved. In actuality, the construction project conformed to legal requirements. The Chancellor has to explain once again to the Tax and Customs Board that the activity of an administrative authority must be in conformity with the law and the Board must take into consideration amendments introduced in legislation. Administrative authorities may not restrict statutory rights or change their substance. Unfortunately, the Tax and Customs Board did not agree to change its implementing practice, so that taxpayers must protect their rights in court if necessary.

- In the opinion of several people contacting the Chancellor, the maximum limit for deduction of training expenses from taxable income is not in conformity with the principle of equal treatment. A uniform exemption applicable for everyone restricts deduction of expenses for children's hobby education. In the opinion of the petitioners, a parent should have the right of deduction separately for each dependant within the applicable limit. The Chancellor found that the Riigikogu has the right to decide on the issue of supporting families with children. In view of the fact that other tax incentives have been granted to parents (e.g. additional basic exemption per child as of the second child) and that family benefits are paid to cover expenses related to children, parents are not in a disadvantaged situation as compared to other taxpayers.

- Taxing the income of people with reduced capacity for work raised the issue of different treatment. The Chancellor was asked why work ability allowance is tax-exempt and is not taken into account when calculating a person's basic exemption, whereas incapacity for work pension is taxable and is taken into account in the formula for calculation of the basic exemption. Work ability allowance was also exempt previously, but because additional basic exemption was then also applicable to pensions (236 euros a month in 2017; the average incapacity for work pension was 229 euros a month in 2017, i.e. mostly tax-exempt), this did not lead to such a markedly different tax burden for allowance recipients and pension recipients as now. For example, a person whose incapacity for work pension is 200 euros a month and remuneration 1100 euros a month pays 613 euros more income tax in 2018 than a person receiving the same amount of work ability allowance and remuneration.

- The Chancellor was asked why people with reduced capacity for work need to be taxed differently, depending on when and on what basis the state assessed their capacity for work. Considering the possibility that the Riigikogu may have overlooked the issue

when discussing changes to the basic exemption for tax-free income at the end of 2016, the Chancellor asked for an opinion from the Riigikogu Finance Committee. After having listened to the opinion of the parliamentary Social Affairs Committee, the Finance Committee found that different treatment could be justified by several arguments, even though initially the Riigikogu had no intention to tax recipients of the incapacity for work pension and work ability allowance differently. In view of the wide margin of appreciation enjoyed by the Riigikogu with regard to social policy issues, and taking into account the opinions of the Riigikogu committees, the Chancellor of Justice acknowledged that no conflict with the Constitution existed. When granting tax incentives, the Riigikogu is entitled to direct people to behave in a manner that facilitates attaining the objectives of capacity for work reform.

- Several people asked the Chancellor's assessment of the road toll imposed on goods vehicles, the collection of which began as of 1 January 2018. For some goods vehicles, the road toll, the heavy goods vehicles tax, as well as the special carriage fee has to be paid. The Chancellor found that taxing the same object of taxation with several taxes is not prohibited by the Constitution and the heavy goods vehicle tax, the road toll and the special carriage fee are also different financial duties by their nature and purpose.

Environment

The principle of good administration means, 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 a simply confusing situation as a result of action or inaction by the state.

If the state is unable to establish a protected area around the nesting tree of a flying squirrel and protects only the nesting tree, this goes against the principles of good administration. As a result of delay in dealing with the issue, the owner of land has no clarity for a long time as to whether and within what borders and under what protection scheme their property will be taken under protection. This may lead to violation of the rights of the owner.

As a counterweight to the state's occasional passivity, officials often eagerly present people with new requirements. For example, the Environmental Board requested cattle farmers to provide detailed information on forming manure stacks on fields even though no such obligation is laid down by law. No one doubts that ground and surface water need protection against pollution. The Riigikogu has also set out the relevant requirements in law, and compliance with them is being monitored. Therefore, self-initiative on the part of state agencies does not particularly contribute to fulfilling legal requirements. This is burdensome on persons submitting information as well as on officials who have to analyse it. If detailed information requested about manure stacks is not substantively used, the result is waste of time and people's nerves. Officials maintain the right to ask additional information in the event of reasonable suspicion, but no such information should be collected just in case.

Guidelines prepared by an agency should not restrict a legal norm or change the substance of the norm. This is not compatible with the principle of good administration, under which people should be able to trust guidelines given by the state. For example, guidelines drawn up by the Agricultural Registers and Information Board, and their rigid technical interpretation, which the Chancellor analysed at the request of a farmer, qualified a seaside pasture with occasional small junipers in it as being forest ineligible for support.

Activities by state and local government may not mislead persons or raise false expectations. Opinions expressed by officials must also be intelligible. If no assistance can be offered, the authorities must say so. Good administration means that a state agency should resolve a matter swiftly and reasonably, while avoiding causing people inconvenience and costs.

The principle of good administration and the investigative principle laid down by the Administrative Procedure Act require that an agency should ascertain all the facts necessary to form an opinion. This means that, for example, if registers contain conflicting information concerning an immovable, then the actual situation should be ascertained. The Chancellor dealt with a case where the Environmental Board had concluded that construction was impossible on a plot of land because forest was growing on the immovable, and in that case the building exclusion zone overlaps with the limited management zone on the lake shore. The petitioner assured that in actuality there is no forest on the immovable and this was also indicated by the land cadastre. However, according to the information in the forest register, the immovable was covered in forest. The Environmental Board was aware that there was no forest according to the land cadastre, but nevertheless relied on the information in the forest register without ascertaining the facts, thus reaching the conclusion that construction on the immovable was impossible. The matter could have been clarified by a responsible official in the Environmental Board who should have ascertained the actual situation.

During the reporting year, it was found that in the process of organising waste transport Tallinn city had created an opportunity for itself to collect a separate fee from residents for settling accounts and for keeping the register of waste holders. Since such fees can only be laid down by law (and not by local government regulations), the Chancellor proposed that Tallinn City Council should bring the waste management regulations into line with the Constitution and stop collecting the unlawful fee from residents. Tallinn did not consider it necessary to change the contested norm and the Chancellor of Justice lodged an application with the Supreme Court to annul some provisions of the Tallinn waste management regulations on account of their unconstitutionality.

When organising waste transport, neither Tallinn city government nor Maardu town government have complied with the rules laid down by the municipal council for waste containers. This meant that even though people's waste containers conformed to the requirements of waste management regulations, the waste transporter considered them to be inappropriate and refused to empty them. For some reason, neither the city nor the town governments have considered it necessary to organise a tender to find a waste transporter under conditions where the transporter should in reality be able to empty containers that meet the requirements established by the local authority. Having considered the Chancellor's recommendations, the waste transporter provided new waste containers to residents free of charge.