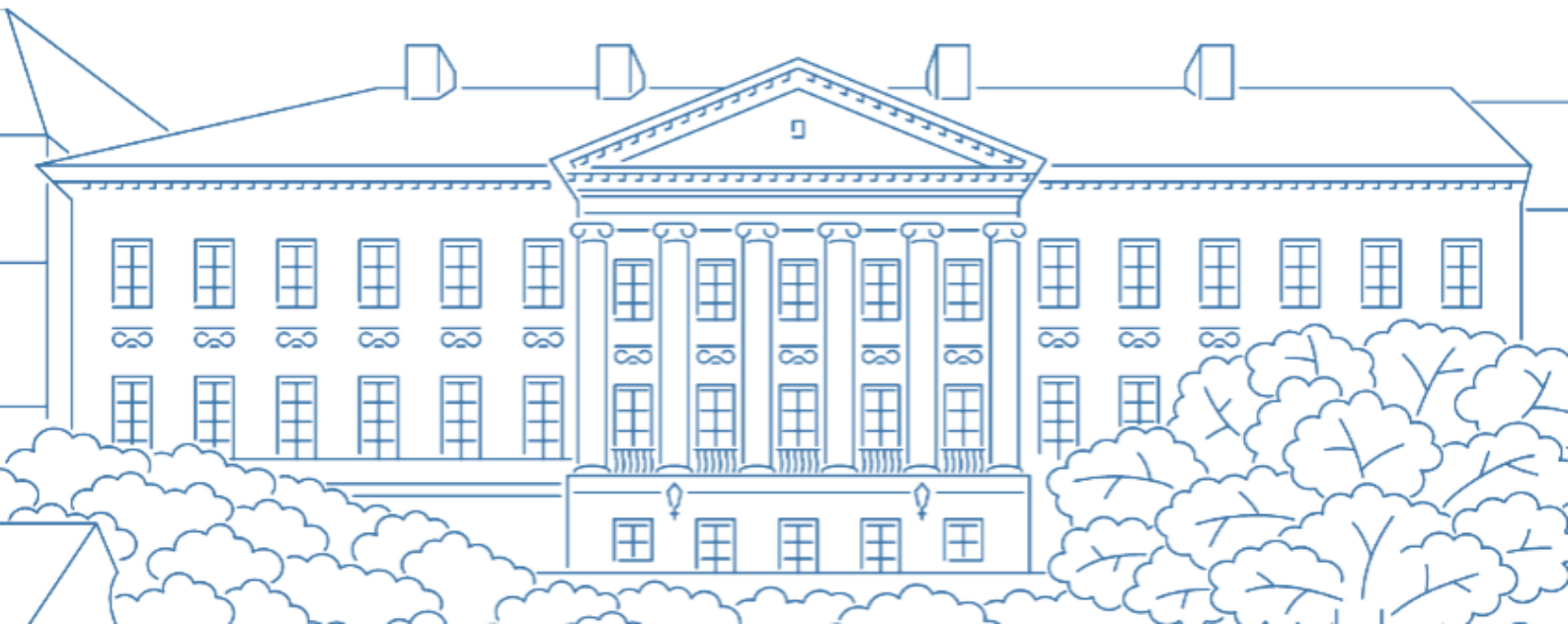
Õiguskantsler

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

Tallinn 2022



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Content

Chancellor’s Year in Review

Dear Reader

It is shortcomings in the rule of law in Estonia that mostly attract attention in the Chancellor’s report even though the report also always mentions many things that we may be satisfied with. Of course, it is also true that one can always do better.

However, let us start with positive things.

Even one person caught in the cogwheels of bureaucracy is too much. Therefore, we do not shy away from complaints just seeking a solution to a problem of one individual only. For example, with the help of the Ministry of the Interior and a notary, by using remote identity verification we managed to register a child born during the father’s foreign mission as the child of that father. The child’s parents wanted their child not to be registered as the child of a single parent. While for some this might seem like a minor detail, for this family it was a matter of support and understanding by their own country.

The situation is similar with a fair parental benefit, an allowance for children starting school, or adaptation of a person’s home – even an isolated mistake that is quickly rectified speaks of readiness on the part of the state or local authority to acknowledge their mistake and treat the person concerned fairly and with dignity. Luckily, such individual cases are but few. There was also one successful conciliation proceeding as a result of which a bank was prepared to acquire a voice-operated PIN calculator that would facilitate use of its internet bank by individuals with a visual disability.

On 1 September 2022, the State-Funded Family Mediation Services Act entered into force. For years, we have explained that separated parents should not sort out their relationship at the expense of their child’s well-being, and that even after the divorce the child’s interests must be the primary consideration. By the time of a court dispute, however, the relationship may unfortunately already be so strained that no reasonable solution is reached. This is evidenced by numerous complaints received by the Chancellor concerning contact arrangements. The national family mediation service

should help separated parents to reach agreement with a view to the well-being of children before going to court.

Although enough suitable kindergarten places are still unavailable for everyone interested, rural municipalities and cities have on several occasions taken into consideration the Chancellor's proposal and rectified the rules contained in regulations on allocation of kindergarten places that contravened the law.

Signs of maturity of society are also noticeable in the field of protecting and promoting the rights of people with disabilities as ever more people understand the need to support those with special needs so as to enable them to lead an independent life as far as possible. The Chancellor still needs to explain that a rural municipality or city cannot remain a bystander without showing initiative but must find out how to really help someone in need.

We can start the report of an inspection visit to almost any general care home with words of praise for caring and kindly staff. However, regrettably the recurring conclusion in the summaries of these visits is also a shortage of carers and activity supervisors everywhere, as well as their excessive workload. It is positive that all the general care homes inspected had made the nursing care service available for their residents. This is great progress.

The living conditions of people in need of 24-hour special care under a court order are improving. All of them now live in up-to-date family houses enabling more privacy at Viljandi, Sillamäe and Merimetsa.

For years, we have been urging prisons to stop strip searches of children prior to a visit with their parent. It is the prisoner and not the child who may be thoroughly searched. Tallinn Court of Appeal has affirmed this position. There can be no excuse for a condescending attitude to a prisoner and their children. After serving their sentence, a former offender must be capable of leading a law-abiding life, with family, home and work being extremely important for this.

An end has been put to unlawful interception by the Environmental Board of radio communication between hunters. There is also good news resulting from supervision carried out over surveillance and security agencies. The Chancellor carries out regular supervision to ensure that no one can be lightly and without restraint subjected to interception or surveillance.

The year in terms of constitutional review was diverse. For instance, a rural municipality paid support for a child on first starting school only to those parents whose child was that municipality's resident and entered a school of that municipality. However, the municipal council had failed to notice that there also exist children with special needs who, due to their disability, cannot attend that municipality's school and must therefore choose another school. The municipal council understood the problem and resolved it quickly.

Many concerns exist in the area of construction and planning, in particular in Tallinn. A dispute about the constitutionality of regulations guiding construction in Tallinn is still ongoing. Constitutional review also had to be initiated to check the Acquisition of Immovables in the Public Interest Act.

These are just some examples to illustrate the daily work of the Chancellor's Office. You will find a more detailed overview of resolved as well as pending cases in the specific chapters of this report.

I would like to thank members of the Riigikogu and the Government, judges, officials, scientists and entrepreneurs who have helped to resolve both major and minor problems that have ended up on the Chancellor's desk. I can still confirm that there are many of those who spare no effort to help make Estonia a better place.

Unfortunately, we can still also witness arrogance, disrespect for the law, worship of public opinion or expecting political guidance where an official should reach a decision independently, only by relying on the law, facts and logic.

Unfortunately, the health of the rule of law in the country has significantly deteriorated in the past couple of years. Something that we knew we should fear has now happened: violations of national constitutions and EU law spurred by the corona fear encourage new violations. We hear the excuse 'So what, even worse things were done during the corona pandemic'. Such a change in attitude is even worse than damage caused to people, businesses and the natural environment by unlawful restrictions.

Independent institutions everywhere are under overall attack while trying to protect the rule of law. At first sight, this systemic shift in attitude seems insignificant, perhaps even temporary. However, in the longer-term perspective it will hit everyone hard. We must learn from history that people easily tend to become barbarised and treat their fellow humans as senseless building material for the

future. For a seemingly noble goal, freedoms may easily be withdrawn. Especially so if there are no restraining or counterbalancing mechanisms or if these have been eliminated. Public opinion may at first even favour violation of fundamental rights because of sufficiently strong fear or anger. Stirring up the flame of anger is not at all difficult in the era of flash media. Violating another person's rights and attacking the rule of law also seems appropriate to those who actually lack other power besides the megaphone of social media. A firm hand seems necessary, even welcome, to many. It also seems safe until it grabs one's own throat. But by then it is too late.

We also saw many situations where a law is in force but is not observed. And not because the law is incomprehensible. For instance, we had to draw the attention of the city of Narva to the fact that municipal council sessions must be held in the state language. The fact that elected municipal councillors either do not know Estonian or do not wish to speak in Estonian cannot justify the violation. A mandatory examination for all candidates running for municipal councils would not solve the problem. Instead, the requirement to hold municipal council sessions in the state language must be complied with. After all, one might also ask whether resolutions passed at an illegally-held session are lawful.

We can witness state agencies increasingly using the devious technique of not passing an official decision concerning the rights and duties of people and in this way forcing people, for example, to withdraw their application for a permit. By doing so they avoid the need to justify a decision on refusal and the risk that a dissatisfied applicant would have recourse to the court. Such practice in a country governed by the rule of law is completely impermissible.

During the last reporting year, an old problem sharply arose once again: the law exists but the situation is like in an old joke. A judge tells one of the disputing parties that he is right. The other party objects. The judge affirms that he is right as well. "But both of us cannot be right at the same time," the parties wonder. "You are right again," the judge concludes.

A law that does not change anything for anyone is probably not needed at all. The situation is even worse if the law ends up being so confusing that everyone interprets it as they like. Sometimes confusion is also caused by cowardice or cunning: it is good to tell people with opposing interests that it was their right that prevailed. For example, this is what happened with the Hunting Act and allocation of rights to use hunting districts.

A rather sad issue is a knowingly wrong interpretation of the Constitution or a law. People are free to debate whether the principle of the social state gives rise to a duty to cover an individual's electricity and heating bills if that individual themselves is unable to do so. It is possible to argue both ways as to how we should understand social justice, the minimum level of dignified life, and solidarity, and how it should be expressed in society. However, we cannot express opinions in the same way about facts. For example, the list of mandatory grounds set out in the Constitution and the law for resignation of a prime minister from office is a fact. A person either knows it or not. We can only debate about how it could be or what we would like. The situation is the same with Schengen visa regulations.

The issue of a patient's last will (also termed a 'living will' or 'advance directives') is still unresolved. This means that the fundamental right to decide over one's life and health does not exist in reality, i.e. the legal order does not preclude issuing a directive about one's future but at the same time it does not guarantee that the person's will reaches a doctor in time so that it is actually respected. What legal and technical solutions should be created so that a patient's will is visible is for the Riigikogu to decide. What is important is that a patient's illusory possibility to decide themselves about the healthcare services provided to them would be replaced with an actual possibility. Estonia has also incurred the obligation to protect a person's right of bodily self-determination under international treaties.

For years, decisions shaping people's rights and duties and the business environment have shifted outside the laws, i.e. sidelining the Riigikogu. The best-known example is probably the case concerning the Infectious Diseases Prevention and Control Act, where the executive was given a free hand in significantly restricting fundamental rights. Generalised delegated powers which actually fail to impose limits on the executive are useless and do not conform to the Constitution. It is for the Supreme Court to decide whether the provisions of the Infectious Diseases Prevention and Control Act are too general and whether directives not subject to constitutional review and aimed at an unlimited number of people for resolving an unlimited number of situations may be used to lay down orders and prohibitions secured by the threat of punishment.

Estonia's governance is through the Riigikogu. The frame for restricting fundamental freedoms, including freedom of enterprise, must be provided with sufficient clarity by the people's

representative assembly, while resolving specific crisis situations and individual cases must remain in the hands of the executive. Since in the event of a crisis politicians – including in the Riigikogu – are placed under heavy public pressure to do something decisive, it is wise to leave implementation of laws in the hands of independent officials. The Riigikogu provides the frames but seeking scientifically-based solutions best suited for each specific situation should remain for officials and experts who also dare to ignore public opinion where necessary.

The rule of law should indeed be protected to avoid passing ill-considered decisions on the spur of momentary emotions under the pressure of public opinion. Estonia is founded on everyone's freedom and accountability. The Constitution is wise, it takes into account the psyche of people in our value space. Recognising the freedoms of others, respecting different views and ways of living brings success, leads to a better future, and holds Estonia together. Excessive restrictions, orders and prohibitions cause new divisions in society and incite people against each other and against the state. A person of voting age is responsible for their country. This responsibility may not be blurred and people should not be lightly impelled towards the spirit of protest, into the claws of conspiracy theories, or passivity. The Estonian state must respect the dignity of its citizens, their individuality, and freedom. The Constitution requires this.

The Constitution also requires that independent institutions – among them the Chancellor of Justice – should tirelessly and fearlessly work in the name of fulfilling this requirement. Officials in the Chancellor's Office do their best in order to effectively fulfil their constitutional duty.

Ülle Madise

Chancellor of Justice of the Republic of Estonia

Chancellor of Justice as the National Human Rights Institution

Under the Act supplementing the Chancellor of Justice Act passed on 13 June 2018, the Riigikogu decided that as of 1 January 2019 the institution of the Chancellor of Justice is simultaneously the National Human Rights Institution (NHRI). Every national human rights institution may seek official international accreditation status, which gives the institution additional rights within the UN human rights protection system and links it more strongly to other human rights institutions and international organisations. In charge of the accreditation process is the Global Alliance of National Human Rights Institutions (GANHRI), more specifically its Sub-Committee on Accreditation (SCA). Since December 2020, the Chancellor has held A-status, i.e. the highest level.

In July 2022, ENNHRI, the umbrella organisation uniting all the human rights institutions in the European region, provided an overview of all the countries, depicting the situation in 2021.

Work of the Advisory Committee on Human Rights

The Advisory Committee on Human Rights advising the Chancellor met twice during the reporting year: in October 2021 and May 2022.

The meeting in October focused on the issue of promoting and protecting human rights in practice and the question: "How to bring about change?" Protecting and promoting human rights means identifying and becoming aware of problems, and accepting that a solution needs to be found and changes brought about. The debate at the meeting focused on how to find effective solutions to complicated problems, how to change attitudes, cooperate, overcome seemingly insurmountable obstacles.

Experts in healthcare and the social, cultural and educational sphere shared their experiences. Among other things, members of the Advisory Committee together with presenters and the Chancellor's advisers discussed what tasks in promoting and protecting human rights should be undertaken by museums, what a future architect should know about equal treatment and human dignity, why young people while receiving sexual health services need centres specifically intended for young people, how to bring about change in strongly hierarchical institutions closed to new ideas, how to change attitudes and patterns of behaviour, and how to fight stereotypes.

In May 2022, a joint meeting was held of the Advisory Committee on Human Rights with the Chancellor's Advisory Committee of People with Disabilities. The meeting took place in cooperation with the Gender Equality and Equal Treatment Commissioner. The topic was equal treatment, focusing more specifically on what constitutes equal treatment and discrimination and why not every instance of unequal treatment amounts to discrimination. What legal instruments are available and how do they protect equal treatment in Estonia? What are the shortcomings? Also discussed were issues of accessibility and equal treatment in the context of services, education, culture and healthcare.

International information and awareness raising

The Chancellor participated in Estonia's third universal periodic human rights review (UPR). In October 2020, the Chancellor submitted a brief written report to the UN, to which reference was made in the summary drawn up by the UN and on which other countries relied during the oral hearing of Estonia in May 2021.

Among other things, in her report, the Chancellor highlighted concerns related to protecting the rights of children, accessibility of social services in rural areas, access to public buildings and transport, and the need to amend the Equal Treatment Act.

The third UPR cycle continued in the second half of 2021 when the plenary session of the UN Human Rights Council took place, as a result of which other countries offered several recommendations to Estonia. Recommendations also include those previously offered by the Chancellor. For example, the Chancellor recommended that Estonia should ratify the Optional Protocol to the UN Convention on the Rights of the Child and the Optional Protocol to the UN Convention on the Elimination of All Forms of Discrimination against Women, both of which enable individual complaints.

In February 2022, the Chancellor delivered oral positions to a delegation from the GREVIO (the organisation monitoring implementation of the Istanbul Convention, i.e. the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence).

In February, a meeting took place with representatives of the European Commission to discuss the situation of the rule of law in Estonia. The European Commission has now published a report dealing

with significant developments in connection with the principles of the rule of law in all European Union member states.

In April 2022, the Chancellor submitted written comments to the relevant UN committee monitoring how well countries comply with the duty to combat racial discrimination (UN International Convention on the Elimination of All Forms of Racial Discrimination).

The book "Human Rights"

In April 2022, under the leadership of the Chancellor's Office, the compendium "Inimõigused" (Human Rights) was published, being the first comprehensive treatment of the field of human rights in Estonian. The book consists of 26 chapters dealing with the main human rights issues: the history of human rights, the international human rights protection system, the methodology of studying human rights, the freedom of assembly and speech, the rights of children, the rights of people with disabilities, violence against women, sexual and reproductive rights. The book is freely available on the website www.inimoigusteraamat.ee and on the same page it is also possible to download a pdf version of the book.

The 33 authors of the book include the Chancellor's advisers, researchers from Estonian and several foreign universities, judges, attorneys, experts from other state agencies and non-governmental organisations. For the editor-in-chief and the Chancellor of Justice it was important to include – among both authors and reviewers – experts with backgrounds as diverse as possible so that this significant book would not be written by an existing established circle of people, i.e. by the usual suspects. The aim was that the range of authors should be cross-disciplinary and that writing about human rights would not be the privilege of lawyers only. This means that even though the book is a compendium, each chapter is autonomous and reflects the face of its author(s). Every author represents their own views (and not those of the Chancellor or their employer) and the issues treated in the chapters reflect the authors' education, professional training and everyday work.

Of course, the book is intended to be read and used by everyone interested. Since it is a referenced research text, the main addressees are lecturers and students but certainly also practitioners ranging from the social sphere to healthcare (not to mention the legal sphere).

The approach applied in the chapters is as interdisciplinary as possible, so that the book is definitely not intended only for those with legal education. The compendium could potentially be used in universities, courts, law offices, local authorities as well as ministries. For instance, every child protection worker in Estonia might read the chapter on children's rights, every care home manager the chapters on the rights of the elderly and prevention of degrading treatment, every member of the Riigikogu the chapters on human rights protection in Estonian constitutional space and on human rights and the European Union. Universities might find relevance in the chapters on the history of human rights and the methodology of human rights studies.

The book provides an overview on the theory of human rights protection and offers examples from Estonian and international practice, while numerous references to the most contemporary scientific literature are also provided. Scientific literature on human rights helps to understand the nature of human rights and presents an overview of existing national and international human rights protection mechanisms, thus contributing to promoting human rights education and better protecting human rights. Through the angle of human rights, the book also investigates those topics which for a long time have not been seen as human rights protection issues, such as poverty reduction and environmental protection.

This compendium should not be treated as a (technical) handbook describing all the relevant conventions and legal norms or providing a complete overview of judicial case-law in connection with each topic. Although case-law and international conventions are mentioned in the relevant chapters, the authors additionally offer a critical analysis about the birth and shortcomings of various human rights protection instruments, analyse the processes and development in the relevant fields, and – as is characteristic of scientific literature – ask the questions "why?" and "how?". The book also acknowledges (including through the choice of topics in the chapters) how social processes affect human rights protection, how the birth of one or another legal norm was preceded by political struggle, and often through selfless work by NGOs and academics, a wider political (protest) movement, and how everyone's human rights are still not protected equally effectively, despite the lengthy time-span of the human rights protection system.

More information about the birth of the book can be found in the foreword by the editor-in-chief and comments.

In addition to the book, the same website includes a blog on human rights, offering regular shorter posts to support the issues covered in the book.

Presentations and interviews

On 22 September 2021, the head of NHRI activities Liiri Oja delivered a presentation "Mida tähendab inimõigustepõhine lähenemine noorte seksuaal- ja reproduktiivtervisele?" (What does a human rights based approach mean for the sexual and reproductive health of young people) at the annual health promotion conference of the National Institute for Health Development.

On 24 September 2021, Liiri Oja delivered a presentation "Soopõhine vägivald. Istanbuli konventsioon ja Euroopa Inimõiguste Kohtu praktika" (Gender-based violence. The Istanbul Convention and case-law of the European Court of Human Rights" at a seminar "EU Gender Equality Law" for members of the judiciary organised by the Academy of European Law (ERA) and the Supreme Court.

On 10 December 2021, the Chancellor of Justice Ülle Madise delivered a presentation at the annual human rights conference.

On 2 February 2022, Liiri Oja participated in the debate "Rahvusvahelistest inimõigusalastest konventsioonidest tulenevad Eesti rahvusvahelised kohustused ja nende täitmine. Inimõiguste olukorra monitoorimine ja edendamine" (Estonia's international obligations arising from international human rights conventions and their implementation. Monitoring and promoting the human rights situation) at a conference in commemoration of the Tartu Peace Treaty organised by the Ministry of Foreign Affairs. She spoke about the NHRI's activities and accreditation experience.

On 17 June 2022, Liiri Oja gave an interview to the feminist online portal Feministeerium and introduced the compendium "Inimõigused" (Human Rights). "Analysis of human rights should be an inherent part of legislative drafting," Liiri Oja said in her interview.

On 2 July 2022, Liiri Oja spoke on a special programme of the Delfi portal dealing with abortion legislation.

International cooperation

Since 2001, the Estonian Chancellor of Justice has been a member of the International Ombudsman Institute (IOI). The Institute includes over 200 national and regional ombudsmen from over a hundred countries worldwide. In addition, the Chancellor of Justice is a member of the European Network of National Human Rights Institutions (ENNHRI), the European Network of Ombudspersons for Children (ENOC) and the networks of European Ombudsmen (ENO), the International Conference of Ombuds Institutions for the Armed Forces (ICOAF), the police ombudsmen (IPCAN) and National Preventive Mechanisms (NPM).

In 2022, the following mandates come to an end: the mandate of the Chancellor of Justice Ülle Madise as the Estonian representative in the Council of Europe Commission against Racism and Intolerance (ECRI) and the mandate of the head of the International Relations and Organisational Development of the Chancellor's Office, Kertti Pilvik, as the Estonian representative on the Management Board of the EU Agency of Fundamental Rights (FRA).

Cooperation and meetings

After the restrictions imposed due to the corona pandemic, international communication picked up again.

In September, in the frame of the training programme for judges, the Chancellor was visited by judges from France, Germany and Romania. On the Estonian side, the training programme is implemented by the Supreme Court. In October, the Chancellor received a visit from Mirjam Graf, the Data Protection Ombudsperson for the city of Bern. Also interested in data protection issues were the representatives of the Hungarian National Authority for Data Protection and Freedom of Information visiting Estonia in April. In February, the Chancellor welcomed a delegation of prosecutors from Ukraine, in May members of the CSU (Christian Social Union) parliamentary group of the State of Bavaria, and in June Frontex independent fundamental rights monitors. In May, the Chancellor was also visited by Nino Lomjaria, the Public Defender of Georgia, together with two deputies and the head of the children's rights department.

More actively than before, international conferences, seminars and other meetings were organised, both online and on-site. For instance, in September and June meetings of the European Network of

Ombudspersons for Children were held in Athens and Warsaw, in October a fundamental rights forum organised by the EU Fundamental Rights Agency took place in Vienna and a seminar of the Council of Europe Commission against Racism and Intolerance in Strasbourg. In April, a conference of the European Network of Ombudsmen took place in Strasbourg and in May the General Assembly and conference of the International Ombudsman Institute in Sounio.

In March and April, extraordinary online meetings of members of the European Network of National Human Rights Institutions and the European Network of Ombudspersons for Children were held in order to discuss the situation in Ukraine. Both networks expressed support for their Ukrainian colleague and condemned the Russian armed attack against Ukraine (see ENNHRI statement on ensuring that humanitarian law and human rights are respected and protected in the context of the current armed attack on Ukraine; ENOC calls for urgent action to protect children's rights in Ukraine).

International information and awareness raising

The Chancellor participated in drawing up several international reports. For example, the Chancellor submitted her positions to GREVIO, i.e. the organisation monitoring implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, the UN Committee on the Elimination of Racial Discrimination, and the European Commission, which drew up a report on the situation of the rule of law in European Union member states.

The Chancellor participated in Estonia's third universal periodic human rights review (UPR). The third UPR cycle continued in the second half of 2021 when the plenary session of the UN Human Rights Council took place, as a result of which other countries offered several recommendations to Estonia (see, in more detail, the sub-chapter "Chancellor of Justice as the National Human Rights Institution").

International conferences and training

On 13–16 June, the European congress of the International Society for the Prevention of Child Abuse and Neglect (ISPCAN) was held in Tallinn on the topic "Child Protection for the Most Vulnerable Children and Families", which the Children's and Youth Rights Department of the Chancellor's Office also participated in organising. The congress focused on mental health, ill-treatment of children, domestic violence, children in closed institutions, protection of children of parents in prison and

suffering from addiction, cross-border cooperation, and use of digital services. The participants were welcomed by the Chancellor of Justice, Ülle Madise.

On 16 June, the Chancellor's Office in cooperation with the Ministry of Justice organised a training event on "The children of parents in prison: their rights and needs" for prison service officers, probation supervisors, child protection specialists and policy-makers. The debates focused on why children whose parents are in prison need special attention; how to receive and support children in prison; what information children need and in what form it should be provided; what opportunities should be used for contact between a child and a parent, and how to support a child outside prison. Also explored was the issue how a child's well-being and contact between a child and their parent in prison affects the aims of re-socialising the parent.

The training was carried out by the head of the network Children of Prisoners Europe, Liz Ayre, and the project manager of the Probacja Foundation, Ewelina Startek. Estonian experts were also given the floor. The training was funded from the 2014–2021 European Economic Area and Norway grants programme under the heading "Local development and poverty reduction" (the project on creating a system for special treatment of juveniles).

The rule of law

The rule of law means that the state and local authorities only operate on the basis of the Constitution and laws in conformity therewith. This means separation of powers, legal certainty and a prohibition on arbitrarily or wrongly exercising power, i.e. abuse of power. Under the rule of law, unjustified unequal treatment is prohibited, and everyone must have access to fair administration of justice. The state must ensure people's fundamental rights, which may be restricted only if unavoidably necessary.

The Chancellor keeps an eye on all this by monitoring life in society and resolving petitions from people. Several cases of concern arose where fundamental rights were restricted without a proper legal basis: for instance, the Chancellor investigated interception of radio communication between hunters. The underlying principle should always be that justification must be given for restricting fundamental rights but not for ensuring fundamental rights.

The Chancellor also monitors whether and how the authorities observe the principle of good administration when communicating with people. This means that, in addition to communication which is polite and to the point, the authorities must arrange their work so that no one is left in an information gap due to the authorities' action or inaction. Unfortunately, state agencies often fail to register people's petitions or reply to applications.

During the reporting year, the Chancellor received petitions from the elderly and prisoners who were dissatisfied that public services prescribed for them by law are increasingly offered only through e-channels. This allows for the conclusion that for many people it is increasingly difficult to manage their affairs unless they have access to electronic channels. In developing e-government, we should not forget that everyone must be able to obtain the necessary services when communicating with the state, regardless of whether they have the skills, and can or want to manage their affairs through e-channels or otherwise.

Under the Constitution, local authorities must be able to independently decide and administer local matters. Issues of local life are often closest to people's hearts and essential to them, so that the Chancellor regularly receives questions and complaints about the work of local authorities. The

Chancellor verifies whether, in their activities, rural municipalities and cities observe the Constitution and other laws and respect people's fundamental rights and freedoms.

Complaints often concern matters of applying for and receiving identity documents and the general situation in Police and Border Guard Board service bureaus, e.g. involving very long queues. Everyone in Estonia must have a valid identity document. However, applying for and receiving new identity documents has become more and more complicated.

The Chancellor also had to resolve several situations concerning treatment of foreigners. The process of applying for a residence permit often tends to drag on unjustifiably and it also happens that officials refuse to provide an explanation or information.

During the reporting year, the Chancellor did not have to initiate any disciplinary proceedings related to the work of judges; however, the Chancellor asked for an explanation from a judge about procedural details of specific cases. Petitioners are mostly concerned about judicial proceedings being dragged out. This, however, does not always depend only on the work of a particular judge or court.

Unconstitutional delegation norms

During the reporting year, the Chancellor gave an opinion in constitutional review court proceedings concerning the provisions of the Infections Diseases Prevention and Control Act based on which the Government had imposed restrictions. The Chancellor reached the opinion that the definition of a dangerous novel infectious disease and the power granted to the Government to establish generally mandatory behavioural guidelines aimed at regulating an unlimited number of cases to combat an extremely dangerous and novel infectious disease under the Act was contrary to the Constitution. The Chancellor also found that establishing such behavioural rules by an order (i.e. an administrative act) is unconstitutional.

In line with the first sentence of § 3(1) of the Constitution, fundamental rights may be restricted only on the grounds laid down by law. The non-delegation principle (i.e. the principle of essentiality) arising from the same provision requires that all essential state issues must be decided by the Riigikogu or the people as bearers of supreme state power. Issues that under the Constitution can only be dealt with by the Riigikogu may not be delegated to the executive or to any other person or

body. However, the Constitution does not preclude delegating to the executive power matters within the competence of the Riigikogu if the law defines with sufficient clarity the bases and conditions for the executive to act. Less serious restrictions of fundamental rights may be imposed by a government regulation issued on the basis of a delegation norm which is precise, clear and corresponds to the seriousness of the restriction.

In line with the non-delegation principle: the more serious a restriction, the more precise must be the law underlying the restriction of a fundamental right. In principle, this applies equally in a situation where delegating powers are granted to lay down a regulation to restrict a fundamental right as well as in a situation where delegation is granted to issue an administrative act. It is particularly important to observe this principle in a situation where a violator of a restriction of fundamental rights may be subject to punishment.

The Chancellor found that the provisions of the Infectious Diseases Prevention and Control Act contravene the Constitution because they grant the executive overly broad, unspecified and undefined powers for restricting fundamental rights. A delegation norm is impermissible if it leaves a free hand to the executive in choosing restrictions, their purpose and level of severity. It must be the Riigikogu that decides in what situations and what kind of restrictions may be imposed. The Government may choose a purposeful and proportionate restriction from among the restrictions allowed by law and apply it only where necessary and only as long as necessary.

A statutorily prescribed form for an order intended to impose obligations on an unspecified range of persons in unspecified situations is not compatible with the Constitution. In this context, it is important to distinguish between types of legal acts issued on the basis of a delegation norm. Generally mandatory behavioural guidelines aimed at regulating an unspecified number of cases must be laid down in the form of a government regulation. The combined effect of §§ 3 and 11 of the Constitution gives rise to the requirement that a legislative act of general application must be compatible with the rules of superior law throughout the period of validity of that legislative act of general application. In the case of orders, no such requirement usually applies. In the case of a regulation, constitutional review is assured. Orders are suitable to resolve individual cases.

The Infectious Diseases Prevention and Control Act lays down that violation of restrictions imposed under the Act is punishable. In line with § 23(1) of the Constitution, no one shall be convicted of an

act which did not constitute a criminal offence under the law in force at the time the act was committed. A law may not grant delegating powers to impose abstract and generally applicable restrictions by an order.

Administrative fines

The central issue in a debate in connection with administrative fines is whether fines required by European Union law can and should be applied in administrative proceedings, or whether misdemeanour proceedings are more appropriate for this.

The opinion of the Ministry of Justice in this matter has been inconsistent. The explanatory memorandum to the Draft Act (SE 94) on amending the Penal Code and other related Acts currently in the Riigikogu offers justification as to why misdemeanour proceedings should be preferred. For example, it is recalled that "the penal law reform entering into effect on 1 September 2002 merged into the penal law and penal procedure system – under the concept of misdemeanour law – the regulatory provisions on administrative offences which until then had been formally considered administrative law (although essentially they corresponded to the principles of penal law). This constituted a fundamental legal policy decision that punishing persons for offences committed by them is part of penal law and not part of administrative law. […] Considering the fact that such procedural rights are already guaranteed under offence procedure law, as well as the need to ensure the systemic uniformity of the Estonian legal order, it was currently not deemed justified to create a new separate type of procedure. Thus, a possibility is created to impose monetary fines with an enhanced maximum threshold in misdemeanour procedure."

Despite this conclusion, a Draft Act on amending the Competition Act has been drawn up seeking to establish a competition supervision procedure. The new procedure would enable imposition of punishments in the course of administrative procedure. At the same time, several shortcomings in the misdemeanour procedure still remain uncorrected (e.g. liability of a legal person).

There is no doubt that the state must ensure fair competition and, to this end, be able to detect violations and effectively punish offenders. This is clear both from the viewpoint of the Estonian Constitution as well as European Union law. Violation of the rules of fair competition may not give an advantage to anyone.

Renaming a penal procedure a competition supervision procedure does not relieve the state of the duty to ensure protection of the rights of persons in the same way as is done in penal procedure. Abandoning the rules of offence procedure intended for avoiding mistakes by the public power is not a constitutional solution. The planned administrative fines are – and in view of the specificity of the field, must be – so high that, in line with penal law theory, they qualify as a severe punishment. In order to impose severe punishments, the state must impose rules that help to avoid potential mistakes and harm, and enable the person punished to effectively protect themselves against mistakes and harm caused.

Shortcomings of misdemeanour procedure in punishing a legal person relate not only to fines arising from European Union law. A solution is needed to the overall problem which is particularly acute in the field of data protection and prevention of money laundering. When resolving gaps and problems in the legal order, the complete picture should be kept in mind and cross-sectoral problems should not be resolved by focusing on one sector only since this fragments the legal order. In its opinion on the Draft Act, the University of Tartu has called for discussion on how to increase the effectiveness of all misdemeanour proceedings while remaining within the frame of the Constitution. After all, the objective is an honest and fair competitive environment but not to punish businesses.

Persons must know what the state may do to detect and prove violations of competition rules and for what and on what conditions persons are punished. For example, a search has the same effect on someone's fundamental rights regardless of how the procedure is termed and in the course of it a person's workplace, home, computer or the like is searched. Therefore, a prior judicial check and other rules must be equivalent to offence proceedings. A search may only be carried out in conformity with § 33 of the Constitution. Thus, a law must also lay down when and for what purpose a search may be carried out and what the court must check in order to authorise it.

Under Directive (EU) 2019/1 of the European Parliament and of the Council (hereinafter 'the Directive'), Estonia must create an effective competition supervision procedure covering effective fine proceedings outside criminal proceedings. In this situation, Estonia has several options for implementing the Directive; from among these, preference should be given to the option which simultaneously offers legal clarity and ensures protection of fundamental rights on a level corresponding to the severity of restrictions of fundamental rights and the relevant sanctions.

Terming as competition supervision something which in substance is penal procedure does not relieve the state of the obligation to ensure – through procedural rights – protection of the fundamental rights of persons against abuse of public power and incorrect and unfair decisions. The Estonian Constitution stipulates everyone's protection from the arbitrary exercise of state power (§ 13(2)) and also places on the executive the duty to guarantee rights and freedoms (§ 14). And in doing so, the essence of the rights and freedoms restricted may not be distorted (§ 11). So far, protection against arbitrary exercise of state power has been provided by those procedural rules which oblige the state to ascertain the facts and prove imputed violations. Only then it is possible to impose a punishment. Protection of fundamental rights may not be seen as an unnecessary inconvenience or an obstacle to effective proceedings. The state must reach a correct and lawful solution and not quickly collect as much money from administrative fines as possible.

For instance, the privilege against self-incrimination applies to all persons in all proceedings. No one is required to provide statements which could somehow incriminate themselves or their next of kin. As a rule, this means that everyone may decline to submit documentary evidence incriminating themselves. Section 22(2) and (3) of the Constitution guarantees a person's presumption of innocence. In this regard, the interpretation prevalent in the case-law of the European Court of Human Rights (ECtHR) should be taken into account, i.e. within the meaning of Article 6 of the European Convention on Human Rights, what is considered a criminal charge (and thus also protected by the substantive scope of presumption of innocence) may also include court cases which domestically are not seen as criminal but as disciplinary cases (see, e.g. ECtHR judgment 5100/71, *Engel and Others v. the Netherlands*, 8 June 1976). Within the meaning of the European Convention on Human Rights, the severity of a sanction or the nature of an offence alone may be sufficient for a case being defined as a criminal charge. In view of the amount of administrative fines, a sanction should be deemed severe and consequently the so-called Engel criterion should be the underlying premise in that regard.

Creation of a competition supervision procedure does not do away with parallel procedures. Depending on a person's procedural status or stage of proceedings, even in the case of competition supervision proceedings it is necessary to carry out misdemeanour proceedings or ordinary administrative proceedings. So creation of a new procedure supplements the list of procedures.

Thus, if in substance it is the rules of misdemeanour procedure that should rather be followed, then it is legally clearer and more understandable if competition supervision – including in terms of its form – is carried out in accordance with the rules of misdemeanour procedure but no separate competition supervision procedure – which is deemed an administrative procedure but which is aimed at attaining penal objectives more easily – is created for this.

Good administration

The Chancellor monitors whether in their work the authorities comply with legislation, including the principles of good administration (see the Administrative Procedure Act). The principle of good administration means, for example, that state and local government officials communicate with people politely and to the point. State agencies must also organise their work so that no one is left uninformed or in an uncertain situation as a result of action or inaction by agencies.

People are often dissatisfied with how state agencies resolve their applications. The problem starts right from an agency's failure to register a person's application. Applications and other documents must be registered in the document register no later than on the working day following their receipt. This requirement is laid down by the Public Information Act (§ 12(1) clause 1). The requirement of registering documents helps to ensure that each application leaves a trace and is also dealt with. It is unlawful to keep an application simply on an official's desk or in the e-mail inbox. For instance, Põhja-Sakala Rural Municipality Government failed to register an application.

Based on complaints by persons, the Chancellor ascertained that the Ministry of Justice, the Ministry of Social Affairs, the Health Board, Tallinn Transport Department, Vinni Rural Municipality Government, and Pärnu City Government failed to respond to memorandums and requests for explanation by deadline. Pärnu City Government, failed among other things to examine in substance a proposal for putting up a traffic sign, i.e. to issue an administrative act.

By law, memorandums and requests for explanation must be replied to promptly but no later than 30 calendar days as of registration. In complicated cases, the deadline for reply may be extended to two months. In line with the principle of good administration, an individual must be informed at the first opportunity about a delay in replying or extension of the deadline for reply and the reasons for it. Even in the case of conflicting interests, administrative proceedings must be carried out within a

reasonable time. By weighing all the essential facts and interests, a decision must be made whether to issue or decline to issue an administrative act.

Service of administrative acts

The Chancellor received a complaint that if an individual wishes to receive a land tax notice by post, they must remind the Tax and Customs Board about this every year anew. The Tax and Customs Board replied that, as a rule, it sends land tax notices electronically to people up to 75 years old and by ordinary post to older people.

The Chancellor explained that communication with e-government must be a person's free choice where possible. The tax authority must proceed from the principle of the purposefulness and effectiveness of administrative proceedings. This means that the Tax and Customs Board should be able to choose how to serve documents but, at the same time, each person should, if they wish, be able to change this default choice and easily obtain relevant information about this.

Problems also occurred with filing a tax return. Specifically, a prisoner sent their tax return to the Tax and Customs Board on paper. Since prisoners have no access to the tax authority's electronic portal, they can only communicate with the Tax and Customs Board by letter (§§ 28, 31^1 Imprisonment Act). Thus, the prisoner could also not examine the decision submitted electronically, according to which their claim for an income tax refund had been denied.

The Chancellor reached the opinion that if a person has no possibility for electronic communication, it is not appropriate to send essential information to them electronically; this is not compatible with the principle of good administration. The Chancellor recommended that the Tax and Customs Board should change its administrative practice.

Compliance with the duty to explain and assist

The Chancellor was contacted by an individual who on several occasions did not manage to submit an electronic use and occupancy notice of a construction work. Although an official of Tartu City Government instructed the applicant in filling out the data fields by email, they did not offer the person a possibility to send the documents to the city government on paper.

The Chancellor found that once the state has created an online register it must also be responsible for implementing it. If, as a result of reasonable efforts, a person is unable to submit data to the register, they must have an opportunity to give the data to the administrative authority so that the authority itself can enter the data in the register.

A way out from e-government

Petitioners complained to the Chancellor that it is increasingly complicated in Estonia to live and manage one's affairs without using electronic channels.

The Chancellor explained that e-government expands and speeds up the possibilities of communication with the state. However, this should not lead to a new type of exclusion where those refraining from the digital state can no longer actively participate in the life of society. Thus, the possibility of communicating with the state and receiving services must remain available for everyone in Estonia, regardless of whether they can or want to manage their affairs through e-channels or otherwise. Those who cannot or have no possibility to use e-channels should be supported by the state in improving their skills, and the possibilities of using e-government should be explained to them.

The more people there are who actually prefer e-channels for communicating with the state, the more important cybersecurity becomes, which in turn affects people's trust in the government. If cybersecurity requirements are fulfilled, people may be certain that data given to the state is properly kept.

The Chancellor was also asked how to obtain a certificate proving recovery from Covid-19 if the health information system lacks laboratory-confirmed data about having contracted and recovered from the disease. First and foremost, this concerned people who due to having had Covid-19 were not vaccinated and who had contracted the disease and recovered without having taken a test or had done so outside the European Union. The absence of a Covid certificate significantly restricted these people's opportunities in both private and professional life.

The Chancellor explained that, exceptionally, recovery from Covid-19 may also be affirmed by a doctor, and no PCR test is necessarily required for this. People's rights may not be restricted merely because technical or procedural problems may occur. In line with the principle of good

administration, functioning e-solutions must be created for issuing certificates, so that certificates issued in Estonia could be used in conformity with the orders of the Government of the Republic and alongside European Union digital Covid certificates.

The conduct of extra-judicial challenge proceedings

The Chancellor was contacted by a person who was dissatisfied with the dealings of Narva-Jõesuu City Government after the person had contested their parking fine. The Chancellor found that the city government had failed to comply with the principle of good administration (§ 14 Constitution) since it had not properly carried out extra-judicial challenge proceedings. The Chancellor drew the attention of the city government to the fact that an e-mail sent by an individual must be treated as a challenge, and proposed that challenge proceedings should be carried out.

Extension of a weapons permit

The Chancellor was contacted about a problem appearing in the course of replacement of a weapons permit. The Police and Border Guard Board (PBGB) had declined to examine a person's application even though it had received their application along with documents complying with the requirements laid down by the Weapons Act.

When a weapons permit expires it can be replaced with a new weapons permit. In that case, the permit holder must apply to the PBGB for replacement of the permit at least a month before the expiry of the existing weapons permit. Under § 41(8) of the Weapons Act, the holder of a weapons permit must prove the existence of the weapons indicated on their permit.

However, after timely submission of the documents, the weapons permit applicant had a traffic accident as a result of which they were under hospital treatment for several months. During that period, their weapons permit expired. The PBGB was unable to check the existence of the weapons indicated on the weapons permit. This was done after the end of the hospital treatment when the weapons were delivered to be deposited with the PBGB.

During the proceedings, the PBGB did not ascertain any substantive factors to preclude replacement of the weapons permit. Despite this, the PBGB declined to examine the person's application and replace the weapons permit with a new one. The PBGB claimed that the procedural steps required

in the process of replacing a weapons permit must be carried out before the expiry of the previous weapons permit because an invalid permit cannot be replaced.

In the Chancellor's opinion, this interpretation of the Weapons Act is not compatible with the Constitution as it fails to take into account essential facts. The PBGB agreed to renew the proceedings and the person's weapons permit was replaced by a new one.

Good experience

Quite often it is possible to help people so that their concern is already resolved in the course of proceedings. The chaplain of the Defence League asked for the Chancellor's assistance with ascertaining the father of a child of a serviceman.

The child was born while the father was on a foreign mission, so that he could not officially accept his paternity here on site. However, the child's parents wanted their child not to be registered as the child of a single parent in birth documents. With the help of the Ministry of the Interior and the office of Tallinn notaries Erki Põdra and Kätlin Aun-Janisk we managed to help this family by using remote identity verification.

Population

Residing and setting up residence in Estonia is regulated by several laws and regulations whose implementation and interpretation raises questions and against which the Chancellor received numerous complaints this year too.

Rights of foreigners

The Chancellor was contacted by an individual to whom the Police and Border Guard Board (PBGB) had refused to issue a residence permit to settle with their spouse. The PBGB had reached the opinion that it was entitled to make that decision based on discretion even though no legal basis existed to refuse a residence permit. Neither the law nor the Constitution confer such discretion on the PBGB.

The applicant's spouse has lived in Estonia since 2016 and has repeatedly been granted a temporary residence permit. The spouses have close contact with each other via means of communication. They have three children. Both the applicant's spouse and all the children hold an Estonian residence

permit valid to 2025. When refusing to issue the residence permit, the PBGB stated that, since these people had themselves chosen such a visitation marriage, the spouses can meet on the basis of a visa. At the same time, the PBGB was aware that they had also been refused a visa on several occasions.

The Chancellor found that the PBGB violated statutory requirements in refusing to issue the visa. In its decision on refusal, the PBGB failed to provide any justifications as to why the applicant did not meet the conditions laid down by law and under which they would have been entitled to settle with their spouse. The law sets out cases where a residence permit may be refused on account of circumstances arising from an applicant's person. The issue of a residence permit may be refused if a person poses a threat to public order, national security or public health (§§ 124–125 Aliens Act). If the PBGB ascertains facts on account of which a person may pose a threat to public order or national security, these facts must be set out in the decision and the decision must be reasoned.

To ensure lawfulness and good administration, the Chancellor asked the PBGB to re-examine the application for a residence permit. If the PBGB believes that the person endangers public order or security, or another ground exists to refuse a residence permit, then this must be written down clearly so that, if necessary, it may be verified by the court. The Chancellor asked that the PBGB should also rely on these legal explanations in the future.

Employer's security

This spring the Riigikogu adopted the Act amending the Aliens Act and the Act on Granting International Protection to Aliens (241 UA) but in doing so did not resolve all the problems related to payment of the employer's deposit which the Chancellor had pointed out last year. For example, by amending the law the problem of the definition and amount of the employer's financial security were resolved while failing to set out the procedure for making use of the security, i.e. how the security will actually be used. As a result, it remains unclear how exactly the security (i.e. both the deposit and the guarantee) secures claims in relation to remuneration of particular employees.

The Chancellor sent a new memorandum to the Riigikogu Constitutional Committee, the Ministry of the Interior and the PBGB, asking once again to consider the possibility of adding provisions regulating the procedure for use of the employer's security in the Aliens Act.

Applying for a legal basis to settle in Estonia

The Chancellor was asked for advice by a person wishing to settle with their partner in Estonia. The applicant was concerned because the PBGB helpline told them that they had no possibility to obtain a residence permit for this and suggested they contact immigration counsellors for advice.

The person held a long-term residence permit in Latvia but they were originally from Estonia and considered themselves to be an ethnic Estonian as they were born and raised in a multi-ethnic family in Estonia and went to school in Estonia. Therefore, they were also interested in acquiring Estonian citizenship.

The Chancellor explained to the petitioner that the response by the PBGB official may have been misleading because not all the relevant facts were ascertained before replying. The person decided to apply for a residence permit based on § 36(3) of the Constitution, under which every Estonian has the right to settle in Estonia. The Estonian legal order does not regulate more specifically the conditions to be fulfilled in order for an Estonian to be able to obtain a residence permit to settle in Estonia in line with § 36(3) of the Constitution.

According to the PBGB, ethnicity is a matter of self-determination with regard to which several circumstances should be taken into account. According to the Minister of the Interior regulation, a residence permit applicant who is an Estonian should submit a document proving that they are of Estonian ethnicity. That document must contain information about the ethnicity of the applicant or their parent or grandparent.

The Chancellor explained that ethnicity is to a large extent a matter of self-determination and cannot be limited only to the ethnicity of someone's parents. Especially if a person was born in Estonia and their home language is Estonian and they have attended educational institutions providing instruction in Estonian, they may identify themselves as being of Estonian ethnicity. The case-law has also reached the opinion that the concept of ethnicity is broader than merely the Estonian ethnicity of parents or grandparents. When identifying someone's ethnicity, different circumstances must be assessed in combination.

When resolving the case, it was found that Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents has not been properly

transposed into Estonian law. Under that Directive, a long-term resident has the subjective right to reside in another Member State and receive a residence permit for this. The Chancellor also sent the issue to the Ministry of the Interior for information.

The right of a child in Estonia to attend school

The Chancellor resolved a case where the PBGB prohibited a child staying in Estonia without a legal basis from attending school. The child and their mother had an Estonian residence permit which could not be extended because both their residence permits were linked to the residence permit of the mother's spouse who, however, had been expelled from Estonia. The PBGB had informed the school that the child was not entitled to attend school and had requested the school to notify the PBGB if the child came to the school again. The child having reached the school was taken back home by PBGB officials.

The Chancellor found that the PBGB had violated the law and the child's rights. The PBGB is not competent to assess whether a child is entitled to attend school. The PBGB also acted unlawfully by removing the child from school since no legal basis existed for this step. The PBGB admitted that the officials had acted unlawfully and informed the school that the child may continue studying at the school.

Every child at the age of compulsory school attendance in Estonia is entitled to education. A child is entitled to attend school for as long as they stay in Estonia.

Applying for a residence permit for a child

The Chancellor was asked for assistance with obtaining a residence permit for a child born in Estonia. A PBGB official had told the mother that the child cannot get a residence permit because illegal alien's proceedings had to be carried out in their respect, and a legal basis for residence of the child in Estonia must be applied for at a foreign embassy. At the time of the child's birth, the parents were staying in Estonia on the basis of a long-term visa and were subsequently granted a residence permit.

The PBGB admitted that the official had given the parents misleading explanations and the child was granted a residence permit.

In the course of resolving this case, a more general problem was also found. The law fails to regulate a child's legal status in a situation where at the time of the child's birth the parents are staying in the

country on the basis of a long-term visa. Naturally, it is not possible to apply for a basis of a child's stay before the child's birth, but that basis must still arise from the law. The Chancellor is continuing to deal with the issue.

Placement in an open prison during proceedings for revocation of residence permit

The Chancellor received a petition concerning a person's transfer to an open prison when the PBGB had initiated proceedings for revocation of the prisoner's long-term residence permit. According to the petition, the prison had explained to the person that they could not be transferred to an open prison since the PBGB had initiated proceedings for revocation of their long-term residence permit.

The Chancellor explained that initiating proceedings for revocation of a long-term residence permit does not preclude a decision on a person's transfer to an open prison. Usually, a decision on revocation of a residence permit is made as late as possible during the period of serving a sentence because it is then possible to assess the effect of the sentence on the person's behaviour (i.e. achieving the objectives of imprisonment).

According to the explanation given by the prison, the prison automatically considers initiation of proceedings for revoking a long-term residence permit as a flight risk. The Chancellor explained that, in order to ascertain the risk of escape, the prison must assess the circumstances characterising the person and their behaviour.

A long-term residence permit may only be revoked if a person poses a threat to public order or security. Committing an offence does not in itself mean that a long-term residence permit may be revoked. Moreover, the decision must also take account of other circumstances: the person's age, how long they have lived in the country, the potential consequences of their expulsion to them and their family members, as well as their links with the country of residence and absence of links with the country of origin. Even if a long-term residence permit is revoked, this does not mean the person's expulsion from the country. They may be entitled to a temporary residence permit.

Applying for a residence permit for a parent whose child is an Estonian citizen

The Chancellor was contacted by a citizen of the Russian Federation to whom the PBGB did not wish to issue a residence permit. The applicant was married to an Estonian citizen and their child acquired Estonian citizenship by birth. The applicant applied for a residence permit to settle with their spouse

but since the spouse was a prisoner the PBGB said that probably the applicant would not be given a residence permit. In this respect, the PBGB failed to pay attention to the fact that the applicant's child was an Estonian citizen and the applicant was the child's only caregiver.

However, in the course of the Chancellor's proceedings the matter was resolved. The PBGB decided that issuing a temporary residence permit to the applicant was justified considering that the applicant plans to visit the spouse in prison as often as possible and that the applicant and the spouse have a minor child who is an Estonian citizen.

Previously, the Chancellor has drawn attention to the fact that the Aliens Act contravenes the Constitution since the Act fails to lay down a legal basis to apply for a residence permit if an alien's minor child is living in Estonia (the Chancellor's memorandum of 28 April 2014 to the Minister of the Interior). To date, the law has not been amended even though European Union law also requires a child's rights to be taken into account.

The PBGB issued a residence permit to the petitioner.

The duration of proceedings in applications for residence permit

Similarly to the previous reporting year, this year the Chancellor also received several petitions about the PBGB delaying with resolving applications for a residence permit. For example, in one case the proceedings had lasted for 15 months, in another case almost 9 months, and in yet another case 5 months. Moreover, the PBGB had failed to inform the applicants about extending the duration of proceedings or the reasons therefor. The Chancellor is continuing to deal with the issue.

The validity of foreign identity documents

The Chancellor received a letter from a person whom the prison had denied a visit with their spouse. The prison had so decided because it did not consider the foreign travel document of the person applying for the visit to be valid since upon marriage the applicant had changed their surname.

The prison explained that, in assessing the validity of the identity document, the official had relied on § 14(1) of the Republic of Estonia Identity Documents Act, under which the holder of a document must notify the government authority within one month of any change in their data entered in the document. However, in the instant case this was not a document issued in the Republic of Estonia,

so that duties laid down by Estonian legislation could not be taken into account. The prison admitted that the officer had failed to correctly interpret the rule. The applicant was allowed to have the visit.

Detention of foreigners

During the reporting year, the Chancellor also monitored treatment of foreigners detained at the Estonian border.

In a letter to the PBGB and Tallinn Airport the Chancellor explained that keeping foreigners who have been denied entry to Estonia in the transit zone in Tallinn Airport amounts to detention of these people and not merely a restriction on their freedom of movement. Despite this, people detained in the transit zone do not necessarily have to be placed in the detention centre. A person may await their departure from the country at the airport primarily when they are departing Estonia in a few hours and placing them in the detention centre is not necessary, for example, to provide medical care.

In 2022, the Chancellor also carried out an inspection visit to the PBGB detention centre for foreigners (the recommendations given as a result of the inspection are dealt with in the chapter on inspection visits).

Applying for personal identity documents

Several people expressed dissatisfaction about applying for and receiving personal identity documents. They were not satisfied with the situation in PBGB service bureaus and very long queues there. The Chancellor's proceedings regarding these issues will continue.

Applying for documents through an authorised representative

A couple of petitions concerned receiving identity documents on the basis of an authorisation. For example, based on a notarised authorisation a person wanted to receive a document for their next of kin at the PBGB since for the applicant themselves it was extremely complicated to go and collect the document due to their age and health condition. In one case, the document was applied for through the PBGB self-service environment while in another case the authorised next of kin took the application to the PBGB service bureau but the PBGB registered it as an application sent by post.

The PBGB refused to issue the documents to authorised representatives since it followed the rule that documents are issued to an authorised representative only if the applicant personally submitted their application at the PBGB service bureau. However, no such requirement is laid down by Estonian laws. The PBGB found that, in order to maintain the security of documents, officials must have at least one direct contact with the applicant. According to the PBGB, this requirement arises from European Union law.

The Chancellor explained that, as of 2 August 2021, EU Regulation 2019/1157 is applicable to matters concerning identity documents. Article 10(1) of the Regulation stipulates that, with a view to ensuring the consistency of biometric identifiers with the identity of the applicant, the applicant must appear in person at the PBGB at least once during the issuance process for each application. The idea of the requirement is that a person should have at least one direct contact with a state representative. Thus, the PBGB may require that a person should submit an application for a document either in a PBGB service bureau or a foreign representation if they wish the document to be collected by an authorised representative.

On the basis of petitions, the Chancellor concluded that people are not aware of the conditions under which they can receive documents through an authorised representative and what legislation lays down those conditions. In view of the principle of good administration, she recommended that the PBGB should revise the information on its website as well as information presented in the self-service environment and on the application form. To ensure legal clarity, a reference to the relevant EU regulation should also be provided. The Chancellor also asked the PBGB to observe the duty of reasoning. Officials must provide people with explanations which are correct in substance and relevant.

General practitioner's certificate in delivery of identity documents

The Chancellor was asked to check whether the PBGB may require presentation of a general practitioner's certificate if due to illness a person cannot go and collect a document at the PBGB service bureau but wishes to receive the document via a social worker. The law does not lay down such a requirement.

The requirement to present a document proving a person's health status is established in § 22(1) clause 1 of the Minister of the Interior Regulation No 77 of 18 December 2015 on "The list of

certificates and data to be submitted in applying for issue of an identity card, a residence permit card, a digital identity card, an Estonian citizen's passport, a seafarer's discharge book, an alien's passport, a temporary travel document, a refugee's travel document, or a certificate of record of service on Estonian ships, and the procedure and deadlines for their issue".

The identity Documents Act lays down that a person does have to prove that they cannot collect the documents due to their health condition, but for this they need to submit confirmation from the city or rural municipal government or a social welfare institution (§ 122(11) Identity Documents Act). The law does not require a person to submit a general practitioner's certificate to the PBGB.

The Chancellor found that § 22(1) clause 1 of the Minister of the Interior Regulation No 77 of 18 December 2015 contravenes § 122(11) of the Identity Documents Act and § 3 and § 94(2) of the Constitution because the law does not authorise the Minister of the Interior to establish such a condition.

The Minister of the Interior agreed with the Chancellor's proposal to amend the above regulation.

Population records

The Chancellor was contacted with a concern that it is not possible to record in the population register data about multiple ethnicities and mother tongues. The applicant explained that if a child's parents are of different ethnicities then the child has two ethnic affiliations. The parents wished that the child should retain both their ethnic affiliations and need not choose between them.

Submission of data on ethnicity and the mother tongue to the population register is mandatory. In the applicant's opinion, the problem could be resolved either by making submission of data voluntary or allowing a record in the register containing two ethnicities and mother tongues.

In the Chancellor's opinion, the principles of lawfulness and good administration have been violated since people cannot submit to the population register data on multiple ethnicities and mother tongues. Ethnicity and mother tongue form an extremely important part of a person's identity. If the state collects data in the population register about residents' ethnicity and the mother tongue, then people must be able to submit correct data. These data must also be reflected in the population register.

In the questionnaire for the 2021–2022 census, it was possible to note two ethnicities and two mother tongues. There is no justification why the population register lacks a similar possibility if data in the population register are collected in a personalised form and the population register is also used for the census. The Chancellor asked the Minister of the Interior to create a possibility to submit data to the population register on two ethnicities and mother tongues.

Submission of a child's data in the electronic population register

The Chancellor was contacted by a mother who submitted a notice of residence about herself and her two children in the electronic population register and later found out by chance that the notice had been cancelled. When using the e-population register she had the impression that she had submitted the notice but in actuality the system had not sent the notice of residence to the local authority which must pass a decision on amending residence data.

The notice was not transferred to the local authority because one child's father did not provide consent to changing the child's residence in the e-population register. At the same time, the mother was not notified through the e-population register about the fact that neither her nor her children's notice of residence had been transferred to the local authority but were cancelled. Only three months later the mother found out by chance that her and both her children's actual residence was not recorded in the population register. However, children's kindergarten and school places as well as access to several benefits and services depend on the registered residence.

Having analysed the relevant legislation and the explanation by the Ministry of the Interior, the Chancellor found that the technical solution for submission of a notice of residence via the e-population register contravenes the provisions of the Population Register Act dealing with examination of a notice of residence. The conflict lies in the fact that the existing technical solution does not enable the e-population register to transfer a child's notice of residence to the local authority if the other parent has failed to give consent through the e-population register. The technical solution fails to transfer such a notice of residence to the local authority and automatically cancels it after 30 days. The system does not notify the person submitting the notice of residence that the other's parent's consent was not obtained and the notice of residence was not processed. This leaves the person with the mistaken impression that they have submitted the notice of residence

to the local authority. Thus, in some cases the electronic register may actually render submission of a notice of residence more complicated even though its purpose is to simplify the process.

The Chancellor recommended that the technical solution for the e-population register should be changed so that regardless of shortcomings a notice of residence posted by a person reaches the local authority. In addition, the Chancellor recommended carrying out a comprehensive analysis of the whole procedure for submission of a notice of residence and deciding on it.

Protection of personal data

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

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

The use of head cameras

The Estonian Association of Roadworthiness Testers asked for the Chancellor's assessment as to whether the Transport Administration may require the use of personal recording devices by roadworthiness testers. The Transport Administration recommended that companies carrying out roadworthiness tests should also record the test with personal cameras in addition to stationary cameras. Moreover, the Transport Administration wanted to establish this requirement by an administrative contract. The justification given by the Transport Administration was that recording with a personal camera enables verifying whether inspection of vehicles at a roadworthiness testing point meets all the safety and environmental requirements.

The Chancellor explained that personal cameras for the purposes of supervision may only be used if a legal basis exists for doing so. Section 191(3) and (4) of the Traffic Act stipulates that the procedure

for installation and use of technical equipment and for processing data for the purposes of such monitoring and recording is established by a ministerial regulation.

The regulation does not deal with the use of personal cameras. Since the procedure for installing and using technical equipment must be established by a regulation, the Transport Administration cannot impose this requirement via an administrative contract. The Chancellor explained that if the conditions regulating supervision of roadworthiness tests are supplemented by a ministerial regulation, then this always requires assessing whether the measures planned are fit for the purpose and proportionate.

Permits for search devices disclosed in the register of cultural monuments

The Chancellor was contacted by an individual who was annoyed by processing of personal data on the homepage of the register of cultural monuments. The homepage of the register discloses in a single list the data of all holders of permits for search devices and diving permits. A search device is understood as technical equipment or a device which enables identifying the location of archaeological finds on or in the ground and under water.

Under § 19(1) of the statutes of the register of cultural monuments, the register data are public unless access to them has been restricted according to the procedure laid down by law. The General Data Protection Regulation stipulates that general principles of processing personal data must be complied with when disclosing any personal data.

The National Heritage Board explained that the landowner's permission is required for using a search device on someone's plot of land, and the landowner must be able to verify with minimal effort whether, for example, a person wishing to set out on a search holds a valid permit for the search device. Thus, the purpose of disclosing personal data is to verify the existence of a permit for a search device. This means that both the landowner and officials carrying out supervision on the ground can verify the existence of a permit without logging onto the system with an ID card.

The Chancellor and the Data Protection Inspectorate agree that a person entitled must have a possibility to verify the existence of a permit for a search device. However, disclosure of data must take into account that it should not compromise the right to inviolability of private life. A justified

objective must exist for any disclosure of data, and disclosure must always proceed from the principle of minimisation.

According to the assessment of the Chancellor and the Data Protection Inspectorate, the objective can also be attained in a manner which is less intrusive of people's private life. If the objective is to provide a simple solution for landowners and officials to verify the permit, for instance, a search bar with specific parameters (name, personal identification code, or the like) could be used. In that case, a person searching for a specific name need not be shown the names of all permit holders while the objective of disclosing specific permit holders would be achieved.

Protection of personal data of sole proprietors

The Chancellor has repeatedly drawn attention to problems related to disclosure of personal data of sole proprietors in the commercial register and register of economic activities.

If a sole proprietor enters their residence data in the register, the data become publicly available and may be linked to a specific person. The commercial register and register of economic activities do not require that a sole proprietor should note their home address as the undertaking's address, but some undertakings are forced to do this as they might not have a reasonable alternative. Several entrepreneurs have contacted the Chancellor with a complaint that such interference with private life is not, in their opinion, justified.

On the basis of an undertaking's registered address, with a relatively high probability the conclusion can be drawn as to the sole proprietor's residence (e.g. whether the person lives in an apartment or private house). Some undertakings may object to this. In the same situation are private limited companies with a single shareholder and non-profit associations with a single member of the board who do not need an office or business premises for their operation.

The Ministry of Justice has promised to analyse disclosure of personal data in registers. To date, it is not yet clear whether and when this problem will be resolved.

Disclosure of personal data on a television programme

The Chancellor was asked for assistance by a person who believed that their personal data had been disclosed on a television programme even though no public interest existed for this.

The law does not entitle the Chancellor to intervene in the activities of media channels. In the event of violation of rules of data protection, a person may have recourse to the Data Protection Inspectorate to protect their rights and, in the event of rules of journalism ethics, recourse to the Press Council. If a person believes that their honour and good name have been defamed or false information about them has been presented, they may protect their rights through the court.

The Chancellor explained that if the Google search website displays links to websites containing inappropriate data about a person (e.g. about a TV programme), the person may contact the search engine and request that the link containing their personal data be removed from the list of search results. The link removed does not affect the personal data presented on the television programme but only the list of search results that are displayed.

The issue of assessment of public interest has been clarified by the Supreme Court. The court has held (see Supreme Court Administrative Law Chamber judgment No 3-3-1-85-15, para. 23) that, in view of the nature of freedom of the press, the press enjoy a broad margin of appreciation as to how to define the range of topics concerning public interest.

The court has noted that the existence of overwhelming public interest must be identified on the basis of specific facts by comparing the facts in favour of disclosing the data with the consequences caused to a person. Disclosure of a person's data cannot be justified merely by private interest or thirst for sensation. A conclusion of lack of public interest might be reached, for instance, if details of private life are disclosed which are in no way linked to public interest or contribute to public debate. And in that case public interest should be clearly and completely absent because otherwise the executive in the course of state supervision would enjoy too broad a discretion in deciding which topics a media publication may or may not write about. This, however, would distort the freedom of the press.

Courts

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

The Council for Administration of Courts

In the second half of last year, the Council for Administration of Courts convened twice, and in the first half of this year also twice.

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

The Chancellor does not assess substantive issues concerning administration of justice (e.g. court judgments). She can only assess whether a judge has failed to fulfil their official duties or has behaved disreputably. However, the Chancellor is generally contacted about issues in which she cannot intervene. Mostly, people are not satisfied with a court decision and expect the Chancellor to intervene in judicial proceedings and assess the court decision. The Chancellor cannot do this since, under the Constitution, justice in Estonia is administered by the courts, and only a higher court can assess substantive issues of administration of justice.

During the reporting period, on fifteen occasions the Chancellor had to check whether a court had fulfilled all its official duties or whether a complaint about disreputable conduct by a judge was true. On some occasions, the Chancellor also asked for an explanation from a judge and/or chair of the court. During the reporting year, in none of the cases did the Chancellor find a reason to initiate disciplinary proceedings in respect of a judge.

Complaints to the Chancellor mostly concerned the issue that judicial proceedings last too long. First and foremost, this concerned cases dealt with by Harju County Court.

A *reasonable duration of proceedings* is a legal concept which is not precisely defined and its substance is interpreted on a case-by-case basis. The Supreme Court disciplinary chamber has explained that the reasonableness of judicial proceedings depends on the circumstances. To measure a reasonable time, it is necessary to assess the complexity of a case, the importance of the benefits at stake, and the conduct of parties to the proceedings. Certainly, the workload of a particular court and judge and the resulting objective circumstances must be taken into account: the court's resources, the availability of support staff, the number of complaints/actions, and the like.

The Chancellor received a complaint from a person whose civil court proceedings in Harju County Court had lasted for a year and eight months. Thus, more than average time usually spent for resolving a civil case had passed (see the statistics of judicial proceedings for 2021) but it was not yet possible to speak of exceeding reasonable duration of proceedings. Examination of cases revealed no inaction on the part of the court. Delays could be justified by a judge's vacation or being occupied with adjudicating other cases. Moreover, the Code of Civil Procedure (CCivP) also does not lay down specific deadlines for carrying out these procedural steps. Civil court proceedings must ensure that the court resolves a matter correctly, within a reasonable time, and at the minimum possible cost (§ 2 CCivP). The heavy workload of judges in Harju County Court must also be taken into account. For example, the docket of a judge adjudicating civil cases includes 100–200 cases simultaneously.

The guardians of an infant were left without guardian's allowance and parental benefit for two-and-a-half months because the court had delayed in extending their guardianship. The judge justified the delay by their very heavy workload. In view of the heavy workload of the civil section of Harju County Court, the Chancellor did not consider it justified to initiate disciplinary proceedings and confined herself to a mere observation that compliance with procedural deadlines concerning guardianship affects the parties directly. A delay may affect the guardian's and child's ability to cope, and this way it may also remain unclear who may make legal decisions (e.g. those concerning vaccination and medical care) on behalf of the child. The chair of the court can also help avoid such cases and where necessary, for example, reallocate cases.

The Chancellor's advisers also contacted the Social Insurance Board and the Ministry of Social Affairs to discuss whether it is possible to pay benefits retroactively for a period remaining between two court orders. The Social Insurance Board found a possibility to interpret the Family Benefits Act so that the period of paying benefit granted to the applicant was extended by the time when they did not receive parental benefit. Thus, they are also paid parental benefit for the time remaining between the validity of the two court orders.

Claims for compensation of damage caused by the court are examined by the Ministry of Justice. The law obliges the state to compensate damage caused by the court only if a judge committed a criminal offence in the course of judicial proceedings or if the European Court of Human Rights has

satisfied the person's application (State Liability Act § 15(1) and (3^1)). Nevertheless, the Ministry of Justice may also pay compensation by agreement for damage caused by the court. On this basis, the Chancellor recommended that the petitioner should consider the possibility to claim compensation from the Ministry.

Petitioners also complained about delays in administrative court proceedings. In none of the cases could the court be found at fault for delayed proceedings. Complaints about delays in proceedings are mostly made by prisoners who – unfortunately, themselves most of all – burden the judicial system with their numerous complaints. For instance, in 2022 alone a prisoner has filed 13 complaints with the administrative court, of which the court has already resolved 12 but one is still pending. The prisoner asserts that for this reason disciplinary proceedings against the judge should be initiated.

The Chancellor received a complaint from an attorney who believed that the court had failed to take into account their vacation when assigning the time of the court hearing. The attorney found that this constituted a violation of their rights as well as a breach of procedural law and sought disciplinary proceedings to be initiated against the judge.

In line with the first sentence of § 342(2) of the Code of Civil Procedure, a court hearing is scheduled without delay after receipt of the court claim, motion or application and of a response thereto, or expiry of the time limit set for responding. Under subsection (3), if possible the court obtains and considers the opinion of the parties to proceedings when scheduling a court hearing. Point 8.1 of the Guidelines for promoting best judicial procedural practice states that the court will take into account vacations of the parties' representatives when scheduling a hearing. The parties must find a vacancy for holding a hearing no later than within three months from the time suggested by the court, or if this is impossible, then ensure a replacement for themselves.

During the entire proceedings (including when scheduling a hearing), a judge must take into account many circumstances affecting the proceedings – including the justified interests of the participants in proceedings – and ultimately guarantee that proceedings are carried out within a reasonable time. When resolving the attorney's request for changing the time of the hearing, the reasoning given by the judge for their decision was that this was merely a case management hearing and thus the defendant's rights were not breached by the fact that they attend the hearing without a

representative. According to the chair of the court, this was rather an isolated case arising only from the judge's active management of the proceedings and the desire to swiftly resolve the case.

When resolving petitions received by the Chancellor, it is noticeable that judges tend to schedule the term for submission of positions or evidence for during their vacation but not after the end of their vacation. This means that in several of their proceedings the judge sets the deadline for the parties to submit their positions and then goes on vacation. This way, applications by the parties to extend the term often remain unresolved in time as well. The Chancellor certainly cannot approve of such a practice.

Opinions submitted to the Supreme Court

The Supreme Court may request the Chancellor's opinion in a constitutional review case pending in the Supreme Court.

During the reporting period, the Chancellor submitted an opinion to the Supreme Court in a constitutional review case concerning an application by Jõelähtme Rural Municipal Council to invalidate § 39 subsections (1) and (5) and subsection (7) clauses 2–4, § 40 subsections (5) and (8) of the Acquisition of Immovables in the Public Interest Act and § 155 subsection (4) of the Law of Property Act Implementation Act.

The Chancellor found that the provisions of the Acts cited in the application do not impose on local authorities any state-level obligations which, under the second sentence of § 154(2) of the Constitution, must be entirely and verifiably funded from the state budget. Establishing compulsory possession by a city or rural municipality can on the whole be seen as a local authority's mandatory function, and the money needed to perform this function need not be allocated by the state from the state budget – these expenses must be covered from revenue earmarked for local authorities for resolving local issues.

Under current legislation, the agency arranging establishment of compulsory possession cannot request that procedural expenses should be covered by the person in whose favour compulsory possession in public interest is established. This might not be the best solution. The Riigikogu may decide to lay down different regulatory arrangements but a municipal council cannot request this (under the second sentence of § 154(2) of the Constitution).

The Chancellor submitted to the Supreme Court an opinion in a constitutional review case concerning the possibility for a court to require submission of a (potential) defendant's data. The Chancellor found that in this case the specific constitutional review initiated by Harju County Court was admissible, and it is contrary to § 17 of the Constitution that the Code of Civil Procedure lacks provisions explicitly granting the possibility to seek the court's assistance in ascertaining the personal data of a (potential) defendant.

The Chancellor maintained the same position in her opinion submitted to the Supreme Court in case No 5-21-30 concerning a request by the court for submission of the data of a (potential) defendant. The Chancellor found that the specific constitutional review initiated by Tallinn Court of Appeal was admissible, and it is contrary to § 17 of the Constitution that the Code of Civil Procedure lacks provisions explicitly granting the possibility to seek the court's assistance in ascertaining the personal data of a (potential) defendant.

The Chancellor also submitted an opinion to the Supreme Court in case No 5-21-8 concerning the constitutionality of § 4(4) of the Collective Agreements Act. The issue was whether stipulations agreed under a collective agreement also extend to those employees who are not parties to a collective agreement (e.g. are not associated with trade unions or professional associations). The Chancellor found that § 4(4) of the Collective Agreements Act contravenes the principle of freedom of enterprise laid down by § 31 of the Constitution.

The Chancellor also submitted an opinion in case No 5-21-10 concerning the conflict of the Aliens Act with §§ 26 and 27 of the Constitution, so that it is not possible to issue a residence permit to a foreigner wishing to settle in Estonia with their cohabiting partner residing in Estonia on the basis of a residence permit. The Chancellor concluded that a conflict with the Constitution indeed exists since the rule in the Aliens Act does not enable issuing such a residence permit under any conditions.

The Supreme Court received from the Chancellor an opinion and a supplementary position in case No 5-19-29 concerning the rules of European Union law and Estonian constitutional review proceedings and the right of a person with impaired hearing to work as a prison officer. The Chancellor found that Estonian legal norms may not impede effective protection of the rights arising from European Union law. According to the Chancellor's assessment, § 4 of the Government of the Republic Regulation and Annex 1 to the Regulation contravene the Constitution since these

provisions do not enable an assessment as to whether impaired hearing in actuality prevents a prison officer from performing their working duties.

During the last days of the reporting year, the Chancellor submitted an opinion to the Supreme Court in case No 5-22-2/3 concerning the Minister of Justice Regulation No 16 on "The procedure for paying the state legal aid fee and compensation of expenses to an attorney". In the Chancellor's opinion, the provision on the procedure for paying the fee contravenes the Constitution insofar as it does not enable, in justified cases, determination of the fee to take into account the actual scope of the steps performed by the attorney.

The Supreme Court also received the Chancellor's opinion in case No 5-22-3/4 concerning the Government of the Republic Regulation No 332 on "The procedure for paying remuneration and compensating expenses to participants in proceedings in criminal, misdemeanour, civil and administrative cases". The Chancellor reached the opinion that the regulation contravenes the Constitution because in establishing the fees the Government has exceeded the powers conferred on it by the Code of Criminal Procedure.

In the field of constitutional review, the Chancellor's reporting year had a worthy wrap-up in the form of an opinion in case No 5-22-4 concerning the legislative provisions underlying the restrictions imposed under the Infectious Diseases Prevention and Control Act in connection with the spread of the coronavirus SARS-CoV-2. The Chancellor reached the conclusion that several rules in the Act contravene the Constitution.

Lifting parliamentary immunity

During the reporting year, the Chancellor received two applications from the Prosecutor General's Office to lift the parliamentary immunity of a member of the Riigikogu (MPs Mailis Reps and Mihhail Korb).

Under§ 76 of the Constitution, members of the Riigikogu are immune from prosecution, and criminal charges against a member may be brought or judicial proceedings against them continued only on a proposal by the Chancellor of Justice and with the consent of a majority of the members of the Riigikogu. That provision of the Constitution protects members of the Riigikogu, for example, from political persecution and court cases brought for political motives.

In both cases, the Chancellor thoroughly examined the criminal file (in the case of Mihhail Korb also the surveillance file) and decided to make a proposal to lift the parliamentary immunity of Mailis Reps and Mihhail Korb. The Chancellor ascertained that the whole investigation so far had been lawful and no grounds existed to suspect that charges against the members of the Riigikogu could have been impelled by an inappropriate (e.g. political) motive.

The Riigikogu agreed with both of the Chancellor's proposals.

Enforcement and collection proceedings

Under §§ 14, 15 and 32 of the Constitution, the state is obliged to create a functioning enforcement system and ensure that enforcement proceedings in a specific case can be carried out. The Riigikogu enjoys a relatively free hand in shaping the enforcement system. In Estonia, enforcement of court decisions and other enforceable titles (i.e. legally authorised enforceable measures) is organised by a bailiff who is entitled to implement measures laid down for this by law. For example, a bailiff may attach a person's bank account and income transferred to the account.

In most complaints, debtors did indeed enquire whether a bailiff may attach a person's income. Parties seeking enforcement were interested in the possibility of attachment of disbursements from the second pension pillar in a situation where the transfer is made to an account with a foreign credit institution. They were also dissatisfied about the fact that due to expiry of the limitation period debtors can escape claims filed against them.

A bailiff's profession presumes compliance with the laws, integrity, dignity, and impartiality. A bailiff's actions should inspire trust in everyone in whose favour or in respect of whom the bailiff takes steps. During the reporting year, however, a shadow was cast over the bailiff's profession by criminal and disciplinary cases.

The county court convicted a bailiff who had failed to pass on to claimants and had appropriated money collected from debtors. Another bailiff overcharged the statutory amount of enforcement fee payable by debtors. The Minister of Justice removed that bailiff from office (the decision has been contested).

The Supreme Court upheld the directives of the Ministry of Justice imposing on bailiffs a fine as a disciplinary penalty since in attaching a bank account they had failed to leave a minimum non-attachable amount in the debtor's account (judgment of 20 April 2022 in administrative case No 3-19-1481; judgment of 7 June 2022 in administrative case No 3-19-1255). According to the Supreme Court's assessment, the law clearly stipulates that in attaching a debtor's bank account the non-attachable amount must be left in the account. The requirement of leaving the minimum necessary amount in the account also applies even when there is no money in the account. In the event of attaching an empty account in its entirety, the statutory automatic minimum protection for a debtor would not be ensured because when income is received in the account it would also be attached in its entirety and the debtor would have to apply to the bailiff to amend the attachment notice.

With the reform of mandatory funded pensions, people were given a possibility to withdraw their money from the second pension pillar all at once either before or at retirement age. On this basis, the Chancellor was asked to check the constitutionality of § 11^4 of the Code of Civil Procedure and Code of Enforcement Procedure Implementation Act. Due to the absence of a technical solution, up to 1 January 2023 this provision precludes a bailiff from attachment (including provisional attachment) of a debtor's claim against the Registrar of the Register of Pensions if the debtor has decided to withdraw their money from a mandatory funded pension fund. The individual contacting the Chancellor asserted that the provision was unconstitutional in a situation where payment from the second pension pillar is made to an account with a foreign credit institution. That is, an Estonian bailiff cannot attach an account opened with a foreign credit institution.

The Chancellor concluded that this provision did not contravene the Constitution. Payment from a mandatory funded pension fund is made only to a person's bank account. The money in the bank account can be attached in the course of enforcement proceedings, so that a claim by the party seeking enforcement can also be satisfied from the payment made from the second pension pillar. This also applies if payment from the second pension pillar is made to an account with a foreign credit institution. In that case, the party seeking enforcement can enforce the claim in the particular foreign country under the law applicable there. Enforcement proceedings there may be more complicated, more costly and more time-consuming but this does not mean that the party seeking enforcement cannot protect their rights. Most foreign payments have been made within the

European Union and a party seeking enforcement can protect their rights by relying on European Union regulation. Attachment (or preliminary attachment) of a debtor's claim against the Registrar of the Pension Register is not the only possibility to protect the rights of a party seeking enforcement. The debtor may also have other assets in Estonia (and abroad) against which a claim can be enforced (e.g. income, immovable property).

The Act Amending the Code of Enforcement Procedure and Amending Other Acts entering into force in April 2021 simplified termination of enforcement proceedings on account of expiry of the limitation period of a claim and made the proceedings cheaper for debtors. Bailiffs now obtained the possibility to terminate enforcement proceedings on the basis of a debtor's application in the case of expiry of the limitation period. The court examines a debtor's application in proceedings on petition. The Chancellor was contacted with a concern that now debtors can escape claims against them more easily than before. The Chancellor did not see a conflict with the Constitution in this respect.

Debts can also be claimed in collection proceedings. The law does not regulate this in substance.

Complaints sent to the Chancellor in this regard concerned first and foremost expiry of claims. For example, the Chancellor was asked to check the constitutionality of § 186 of the Law of Obligations Act. Namely, the Law of Obligations Act fails to stipulate that a debt relationship may also terminate in the event of expiry of the debt, so that no legal certainty and legal clarity exists as regards termination of a debt relationship. The Chancellor reached the opinion that in this regard no conflict exists with the Constitution. The Riigikogu is entitled to decide on what grounds a debt relationship is terminated. By relying on the Constitution, the Chancellor cannot demand precise rules on this.

Debtors were concerned that collection companies require payment of expired debts and at the same time submit personal data to the payment default register. The Chancellor did not consider the relevant legislation to be unconstitutional. When collecting a debt, the creditor (collection company) must act in good faith and comply with legislation regulating processing of personal data. After the expiry of the limitation period of a claim, a collection company may request payment of the debt but the debtor does not have to comply. In addition, the law protects them against being pressured by reminders.

Whether more precise rules are needed for the collection service and extra-judicial collection of debts can be decided first of all by ministries and the Riigikogu. A dispute arising with a collection company can eventually be resolved in court by way of civil court proceedings. Since a collection company does not perform any public duties in recovering debts arising from a relationship in private law, the Chancellor cannot supervise the activities of a collection company (including in processing personal data).

Local authorities

Chapter 14 of the Estonian Constitution guarantees the autonomy of local government, i.e. the right of local authorities to resolve and manage local matters independently. Naturally, rural municipalities and cities must observe the Constitution and other laws in their activities. A local authority must respect people's fundamental rights and freedoms, save taxpayers' money and be honest in its dealings. Uniform fundamental principles of democratic local government in Europe are determined by the European Charter of Local Self-Government.

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

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

The right to elect a municipal council

Russian aggression against Ukraine starting in February 2022 spurred an extensive public debate about the rights of people holding citizenship of the Russian Federation and Belarus in Estonia. In

this situation, members of the Riigikogu submitted to parliamentary proceedings a Draft Act on Amending the Municipal Council Election Act which would deprive foreigners (i.e. third-country nationals who are not European Union citizens, and stateless people) residing in Estonia on the basis of a long-term residence permit or permanent right of residence of the right to vote in municipal council elections.

The Riigikogu Constitutional Committee asked for the Chancellor's assessment whether such an amendment is constitutional. The Chancellor found that adopting the Draft Act in the form it was presented would lead to a conflict with § 156(2) and § 9(1) of the Constitution in combination. Section 156(2) of the Constitution confers the right to vote in local elections on persons residing permanently within the boundaries of the local authority and not just on Estonian citizens. This stipulation provided by the Constitution has been the underlying basis in all the versions of the Municipal Council Election Act since 1993.

Municipal council working arrangements

Under § 156 of the Constitution, the local authority representative body is the municipal council. This gives rise to the municipal council's right of self-organisation, meaning that municipal councils are entitled to establish their working arrangements and procedural rules. However, the council's right of self-organisation is not unlimited; it must be compatible with the Constitution and laws (about the working language, see the opinion "Municipal council's working language").

Several matters involving the working arrangements of municipal councils and rural municipality or city governments are regulated by the Local Government Organisation Act whose requirements local authorities must comply with when establishing their working arrangements. Under the Local Government Organisation Act, a municipal council establishes the rural municipality or city statutes specifying the working arrangements of the municipal council and government.

In a state governed by the rule of law, public power observes the rules laid down by itself. Thus, a municipal council, government, officials and staff must be guided in their activities by the provisions of the rural municipality or city statutes. Rules that have been enacted must also be applied in the specific situation. Those rules in statutes which cannot be applied even with the help of interpretation should be amended or annulled by the municipal council.

The Chancellor was asked whether a session of Tapa Rural Municipal Council took place in compliance with the provisions laid down by the statutes of Tapa rural municipality. The session was held on 31 March, i.e. one day before a municipal council becomes incapacitated (under § 52(1) clause 1 of the Local Government Organisation Act) if the rural municipality or city budget has not been adopted by deadline. At the beginning of the session, the council did not approve the session agenda. Then some of the municipal council members left the session. After a recess, the council approved the session agenda.

Under the statutes of Tapa rural municipality, the municipal council approves the agenda of the council session by a majority of votes in favour according to the draft agenda submitted to municipal council members. The session will discuss issues noted in the agenda. The rural municipality statutes prescribe a repeat vote only where votes in favour and against are divided equally as a result of the vote. The statutes do not further regulate the situation where the agenda is not approved.

The Chancellor concluded that even though Tapa Rural Municipal Council had failed to comply with the municipality's statutes, this procedural error does not incapacitate the municipal council, and for this reason the budget need not be annulled and processed anew. The Chancellor recommended that in the future the municipal council chair or their deputy should precisely observe the requirements of the municipality's statutes and, if possible, plan the work so that the final vote on the budget is not left for the last moment.

The Chancellor was also asked to assess the proceedings of the supplementary budget of Harku rural municipality. Under the statutes of Harku rural municipality, the municipal council may adopt a supplementary budget at one reading if a proposal for this is made by the lead committee. The Chancellor ascertained that the first supplementary budget of Harku rural municipality in 2022 was not handled in compliance with the municipality's statutes because the decision of the lead committee did not contain an explicit proposal to adopt the supplementary budget at one reading. Yet this is what the municipal council did. The Chancellor reminded the council that the municipality's statutes must be complied with.

The Chancellor was asked whether draft legislation on the agenda of Räpina Rural Municipal Council was submitted to the municipality's office by the deadline prescribed by the statutes of Räpina rural municipality. The Chancellor concluded that this was not the case but non-compliance with the

deadline did not require annulment of the legislation adopted at the session. The municipal council must keep in mind that draft resolutions and regulations constitute draft legislation within the generally recognised meaning of this concept. In case of a wish not to observe the council's prescribed deadline when submitting draft legislation to the municipality's office, it is possible to submit the draft as a matter of urgency.

In the interests of credibility of the municipality's dealings, an attempt must be made to respect deadlines and rules of decent management of affairs even if an error or delay need not lead to annulment of legislation. If necessary, a municipal council can revise its rules of procedure.

The Chancellor was asked to assess whether involving experts in the work of municipal council committees complied with the requirements of legislation. The rules of procedure of Saaremaa Rural Municipal Council allow a municipal council committee chair to involve up to two experts in the committee as fully-fledged members.

According to the Chancellor's assessment, the municipal council rules of procedure can be interpreted so that appointment as committee members of experts selected by the committee chair complies with the procedure for formation of committee membership as laid down by the law (see § 47(1) of the Local Government Organisation Act). The rules of procedure do not change the principle under the Local Government Organisation Act (§ $47(1^3)$) that formation of the composition of a municipal council committee must take into account the share of the representatives of political parties and election coalitions in the municipal council.

The procedure for budget proceedings and implementation

The Local Government Financial Management Act (§ 21(1)) lays down that a rural municipal or city council by its regulation must establish the conditions of and procedure for preparing a draft budget or supplementary budget, and its processing and adoption by the municipal council.

The procedure for preparing, processing and implementing the budget of Kuusalu rural municipality lays down that, after reading of the budget, municipal council committees and members submit to the rural municipality government proposals for amendments and additions by the deadline set by the chair of the municipal council session. The rural municipality government is also entitled to submit proposals for amendments and additions to the draft budget. The procedure for preparing,

processing and implementing the rural municipality budget does not oblige the rural municipality government to submit its proposals to municipal council committees and council members by the set deadline.

The Chancellor drew attention to the fact that if the municipal council has set a deadline for the rural municipality government for submission of amendments, then the government must observe the deadline.

Municipal council members on supervisory boards

The Chancellor was asked whether municipal council members as local authority representatives may belong to supervisory boards of companies with rural municipality or city participation or supervisory boards of foundations established by a rural municipality or city. Such practice is widespread in Tallinn as well as other municipalities. It has been justified to ask whether the best representatives of city or rural municipality interests are appointed to supervisory councils, or whether paid positions of supervisory board members are allocated with other objectives in mind.

According to the Chancellor's assessment, reconciling the work of a municipal council member and supervisory board member may lead to both seeming and substantive conflicts of interest. Attention should be given to becoming aware of them and mitigating them. A member of a supervisory board should understand that they are also liable with their personal assets for decisions passed as a member of the board. If a supervisory board member causes damage by failing to perform their duties with due diligence, the damage must be compensated by them.

The Local Government Organisation Act does not preclude appointing municipal council members to supervisory boards. Under the Constitution, no demand can be made to impose such a ban. However, the Act (§ 48(2^2)) precludes a member of a municipal council audit committee from performing the functions of a member of the chief executive, director or member of the management board of a company, foundation or non-profit association under the control of the same rural municipality or city, or the head or deputy head of an agency administered by the administrative agency of the same rural municipality or city.

Functions of rural municipalities and cities

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

Performance of public functions must comply with the principles of lawfulness. People's fundamental rights and freedoms may only be restricted if a sufficiently clear legal basis for this exists in view of the nature of the particular restriction.

Maintenance of property and public amenities

It is one of the local authority's functions to organise maintenance of property and public amenities (§ 6(1) Local Government Organisation Act), i.e. to ensure human-friendly and environmentally-friendly, aesthetic and maintained space in a rural municipality or city. Property maintenance conditions are established by the municipal council through property maintenance rules (§ 22(1) clause 36^1 Local Government Organisation Act).

The Chancellor was asked to check the lawfulness of a provision in Tallinn property maintenance rules which prohibits feeding in a public place of birds and animals living freely in the city.

According to the Chancellor's assessment, such a prohibition does not contravene the Constitution. The procedure for assisting stray domestic animals and wild animals and birds in distress has been established separately. In addition to the Animal Protection Act, protection of animals, birds and fish is also regulated by the Nature Conservation Act and other laws. Helping animals in distress is not prohibited, nor can it be prohibited by property maintenance rules. By prohibiting feeding in a public place of birds and animals living freely in the city, the city wishes to prevent fouling of buildings and green areas and harming these birds and animals (e.g. by offering inappropriate food).

Section 157(2) of the Constitution stipulates that local authorities may, on the basis of the law, establish and levy taxes, and impose encumbrances. More specifically, a property maintenance encumbrance is regulated by provisions of the Local Government Organisation Act (§ 36(2)–(9) and § 22(1) clause 4). It does not follow from these provisions that a local authority should impose an encumbrance to ensure property maintenance on their public territory. Several options are available

to a local authority. When imposing an encumbrance, the resulting interference with fundamental rights must be taken into consideration.

When resolving a petition from a rural municipality resident, the Chancellor ascertained that Anija Rural Municipal Council had failed to properly regulate the property maintenance encumbrance. The regulatory provisions in the property maintenance rules of Anija rural municipality partly lacked legal clarity. Additionally, it had failed to adopt a legal act which had to be established under the property maintenance rules ("The maps of cleaning areas of apartment buildings, the conditions and scope of discharging the encumbrance shall be laid down by a separate legal act.") This gave rise to a conflict with the general fundamental right to equality (§ 12(1) Constitution).

The Chancellor asked the rural municipal council to establish an encumbrance that enables equal treatment of people. The Chancellor also recommended that the property maintenance encumbrance as a whole should be regulated in the property maintenance rules, and consideration should be given to amending the rules so that they enable taking into account the specific situation when determining the size of the cleaning area and, if necessary, reducing the area (see also the opinions "Encumbrance imposed by property maintenance rules of Paide city" and "Encumbrance imposed by property maintenance rules").

Anija Rural Municipal Council amended the municipality's property maintenance rules. The rural municipality government was given the right, in justified cases, to relieve people from discharging the encumbrance or to amend the conditions for its discharge.

Outdoor advertising

Outdoor advertising means advertising located in a public place or advertising which can be viewed from a public place (§ 2(1) clause 8 Advertising Act). The Advertising Act (§ 13(1)) authorises a rural municipality or city to establish – by regulation – rules for placing outdoor advertising that set out the requirements as to the manner and place of displaying outdoor advertising.

Kose Rural Municipality Government, when granting a permit for installing advertising, imposed a condition that the advertising may not have a direct or indirect reference to political associations (political parties) or to political views.

The Chancellor found that this condition imposed by the rural municipality government was not compatible with the Advertising Act or the Kose Rural Municipal Council regulation on "The installation of advertising and establishment of the advertising tax in Kose rural municipality" and restricts freedom of expression (§ 45 Constitution) and freedom of enterprise (§ 31 Constitution). The Advertising Act does not lay down such a condition, nor does it authorise a local authority to impose one.

The Chancellor asked the rural municipality government to abolish this restriction and refrain from imposing unlawful conditions in the future. Kose Rural Municipality Government abolished the unlawful condition.

The Chancellor was contacted by an individual who had applied on behalf of an election coalition to Valga Rural Municipality Government for use of advertising space at Valga bus stops. A rural municipality official replied to the applicant that they were not authorised to submit applications on behalf of the election coalition. The justification given for this assertion contained a reference to § 31^1 subsections (1) and (3) of the Municipal Council Election Act laying down the definition of an election coalition and stipulating that an election coalition shall be presented for registration to the rural municipality or city electoral committee not earlier than on the 60th and not later than on the 45th day before election day.

The Chancellor found that the rural municipality government incorrectly interpreted and applied the law and asked for the application to be re-examined.

Under § 48 of the Constitution, everyone may form non-profit organisations and associations. The right of association means the right, under the relevant legal basis, to form associations enjoying the status of a legal or non-legal personality (Supreme Court Constitutional Review Chamber judgment of 10 May 1996, 3-4-1-1-96).

The issue whether an election coalition has been formed and who is authorised to represent it cannot be decided by a rural municipality or city government on the basis of the provisions of the Municipal Council Election Act. This Act does not regulate formation of election coalitions. No law restricts the time for forming an election coalition or precludes an election coalition from operating on the rural

municipality or city level even during the period between elections in order to express the political interests of its members and supporters.

The procedure for management of rural municipality property on a permanently inhabited small island

The Permanently Inhabited Small Islands Act lays down the specifications arising from the special nature of permanently inhabited small islands and which are not established by other Acts. Under this Act, a permanently inhabited small island is an island with an area below a hundred square kilometres and with a population of at least five inhabitants.

A permanent inhabitant is a person who permanently and predominantly resides on a small island and whose residence data are entered in the population register to a level of accuracy stating a settlement unit located on a small island (§ 2 clause 6, see also the opinion on "The definition of a permanent inhabitant").

The Chancellor was asked to check the compatibility with the law of several provisions in the Ruhnu Rural Municipal Council regulation on "The procedure for management of rural municipality property" since the regulation granted advantages to permanent residents.

The procedure for management of rural municipality or city property is established by a rural municipal council (Local Government Organisation Act § 22(1) clause 6; § 34(2)).

Legal rules enabling advantages to be granted to a certain group of persons by placing benefits for the public good (rural municipality property) at their disposal simultaneously restrict fundamental rights, including freedom of enterprise (§ 31(1) Constitution), of persons deprived of it. The Constitution prohibits violation of the fundamental right to equality (Supreme Court Special Panel judgment of 20 December 2001, 3-3-1-15-01, para. 24), but not all kinds of restrictions (Supreme Court Constitutional Review Chamber judgment of 2 May 2005, 3-4-1-3-05, para. 20). The principle of equal treatment may also be violated if unjustified advantages are created for a person by placing municipal property at their disposal (Supreme Court Special Panel order of 20 December 2001, 3-3-1-8-01, para. 23).

The Chancellor found that the provisions checked remained within the frame of a municipal council's constitutional margin of appreciation. "The procedure for management of rural municipality

property" indeed enables municipal property to be placed at the disposal of third parties either for free or below the market price, but this is done for objectives arising from the specificity of the locality (creating jobs and coping possibilities for permanent inhabitants, supporting entrepreneurship, and the like). The grant of advantages alone cannot lead to the conclusion that the regulation discriminates against people who are not permanent inhabitants.

The procedure for participative budgeting

A rural municipality resident asked the Chancellor to check whether it was compatible with the rural municipal council's regulation that, during the vote on 2022 participative budgeting proposals, the distribution of votes between proposals was public for most of the time of voting.

Jõgeva rural municipality allowed the municipality's residents to make proposals and vote on which objects would be allocated 30 000 euros from the rural municipality budget. Voting on the proposals took place from 21 January to 4 February 2022, while distribution of votes between the proposals was public from 21 January to 1 February.

The Chancellor ascertained that such a situation indeed contravened Jõgeva Rural Municipal Council regulation No 19 of 1 March 2018 on "The participative budgeting in Jõgeva rural municipality". The regulation laid down that "the distribution of votes between the proposals shall not be disclosed before the end of voting". Thus, disclosing the distribution of votes during voting presumed amendment of the regulation on participative budgeting in Jõgeva rural municipality. By now, the municipal council has amended the regulation.

The pandemic

The spread of the coronavirus SARS-CoV-2 among humans was first detected at the end of 2019 in China. However, the general belief is that a few people already carried the virus some months earlier. It is not known precisely, and with great probability we will also never know, who was actually the first person who contracted the disease, i.e. patient zero from whom the pandemic outbreak started that has now affected the lives of us all. Similarly, it is not known precisely where the virus came from and what will happen to it next.

Such uncertainty is rather the rule than the exception. Do we know precisely where the coronavirus SARS-CoV-1 (2002) came from or why it faded away and did not develop into a global epidemic? Do we know why the coronavirus MERS (2012) that was detected for the first time has to date not been able to successfully spread among people? Do we know precisely the origin of the new pandemic flu virus (2009)? Why is it precisely now that the monkeypox virus has started to spread in Europe being previously merely a distant, exotic and relatively insignificant viral infection seldom caught while travelling?

These are exciting questions to which scientists are trying to find accurate answers. In general, the answers still remain hypothetical because ascertaining the absolute and final truth is complicated. It may be difficult to imagine but despite enormous scientific developments the knowledge of humankind about infectious diseases, including details of their spread and mutation, is still limited. One might think that modern molecular genetic methods or the revolution of bioinformatics enable ascertaining the links between cause and effect and also do so retrospectively or prospectively. Yet currently this is still not the case.

During the whole of its existence, humankind has lived with infectious diseases. This so-called cohabitation is enabled, on the one hand, by the extremely adaptable and complicated human immune system and, on the other hand, by the ability of infectious diseases simultaneously to mutate and adapt. It is futile trying to investigate whether this cohabitation is friendly or hostile, useful or harmful. Living nature is grounded on rules-based processes, and not on feelings and judgements. However, it is important to understand that constant changes and adaptation to them do occur in this cohabitation.

In general, an important change in the usual balance of cohabitation between humans and infectious diseases emerges precisely when a new infectious disease or one with significantly changed qualities has appeared which is able to spread sufficiently well among humans and against which people do not have sufficient immunity acquired from previous cohabitation. It is precisely these two prerequisites that led to the latest global pandemic. The result was the rapid and extensive spread of an infectious disease and higher than average morbidity, need for treatment, and mortality.

However, as we know, change is followed by adaptation, which may take place in several stages leading towards the usual balance. Thus, fortunately, no pandemic can last forever. The coronavirus pandemic starting in early spring 2020 could be justifiably considered to be over once that SARS-CoV-2 no longer exists or when it is possible to reach the judgement that further cohabitation between humans and the virus will take place in a reasonable and usual balance. In line with the overall scientific consensus, the first condition cannot be achieved, and the reasons for this are several. However, the second condition is achievable, and according to the assessment of several countries this condition is already fulfilled.

Thus, we, including the Estonian state, are faced with the question: do we still have a coronavirus pandemic? There is no single and clear answer to this because it would presume a uniform understanding of the definition of a pandemic. No such uniformity exists in Estonian or European Union legal space. Although we are able to speak of the classic, or the most widespread, definition of a pandemic, even this is still used and understood differently, which has already previously caused critical debate.

In general, definitions of a pandemic in any case involve the global spread of a new infectious disease but fail to describe its accompanying effects in more detail. At the same time, definitions of a pandemic do focus on the exceptionally harmful effect of a new infectious disease on human health and on the functioning of healthcare systems. An infectious disease which is able to spread globally at great speed but rarely causes any health problems would probably not attract much attention as a pandemic.

The World Health Organisation has a legal instrument for determining events or public health emergencies of international concern. In the Estonian legal system, the concept of an emergency (*hädaolukord*) is used. Thus, now – approximately two-and-a-half years after the start of the

pandemic – we should seek the answer to a much more specific question. That is, whether the spread of the coronavirus causes – or in great likelihood may still cause – an emergency. If this is not so, then we may consider at least the acute stage of the pandemic to be over. Taking into account that our – as well as the whole of humankind's – inevitable cohabitation with SARS-CoV-2 will continue at least for some time, we should also describe what such post-emergency cohabitation means.

During this reporting year, too, the Chancellor had to deal with this as well as other issues – in particular the lawfulness of restrictions imposed for combating the pandemic – by replying to numerous petitions and, where necessary, providing legal advice both to those imposing the restrictions as well as those whose everyday life the restrictions significantly affected.

The rules during the pandemic

Despite many still unanswered questions, certain unchanged rules apply to the coexistence of people and infectious diseases. These rules help us so that we can continually make sense of a changing situation and understand what can or should be done in that situation.

Thinking about the rules applied or still applicable in the pandemic, a clear distinction must be drawn between rules created by nature and rules imposed by people. Yet for some reason we tend either unintentionally or intentionally to confuse them.

It is not the virus that closes schools, hobby groups, sports halls, theatres or cinemas. Nor does the virus require a certificate or wearing a mask. These are decisions made only by people. Thus, only people can bear responsibility for whether and in what form these decisions are needed, justified and proportional in the narrow sense. Debating about rules established by people must be possible – and is often also necessary – because it must be possible to amend or abolish rules which are insufficiently justified.

A virus is a phenomenon on the borderline of living and inanimate nature and whose spread may cause infection and disease among people. Risks and their consequences can be partly influenced and partly not. For instance, people cannot change such risk factors of a serious form of the coronavirus infection as age or reduced immunity resulting therefrom. However, people can reduce the risks of being infected and contracting the disease.

We may of course argue about these simple rules set by nature but in general such disputes are futile as, in principle, these rules cannot be changed or abolished. It is wiser to try and better understand these rules – in order for people themselves to be able to establish justified and balanced rules for achieving reasonable objectives.

To date, we do not know which specific mandatory restriction – and to what extent, or in combination with what – actually reduced the likelihood of catching the coronavirus, morbidity, the need for hospital treatment and deaths. Despite a large number of studies – mostly based on modelling – conclusions still remain speculative. For example, the European Centre for Disease Prevention and Control (ECDC) recently carried out a methodological consultation among Member State experts, revealing that most experts considered it extremely important to find an answer to the question of the effectiveness of the measures and restrictions imposed on the population: closing of establishments, wearing of masks, requirement for certificates, and so on.

According to a consensual expert assessment developed even before the spread of the coronavirus, the primary and most effective – but also the most unjustified – curbing measure in terms of the spread of the virus, is isolation of the infected person until their recovery. This means that a person who has already been found to carry the infection or who has contracted the disease is recommended or required to refrain from contact with other people, i.e. stay in isolation until recovery. At the same time, people are identified who have been in close contact with them and who with great likelihood may also be infected. They too are recommended or required to refrain from contact with other people, i.e. to stay in quarantine until the onset of symptoms, i.e. the end of the incubation period. Isolating an infected or ill person and quarantining someone suspected of being infected is a fundamental truth in epidemiological case management of infectious diseases and combating the further spread of infection.

All other activities, including in the form of mandatory restrictions, can only have an indirect effect. They do not help us to deal with specifically known cases of infection or illness. The aim is to affect people's behaviour and activities in general, in order to help mitigate the risks of spread of infection. For example, the objective might be avoiding casual physical contact between people, which in turn would reduce the probability of incidental spread of the virus.

When imposing such rules, every government must always decide whether a rule formulated for combating the spread of infection is optional or mandatory. Prior to the appearance of SARS-CoV-2, expressions such as *total lockdown* or *border closure* were generally not used in international debates, training events and meetings in the field of epidemiology. On the contrary, earlier international legal agreements stipulated that in the event of the emergence of risks related to new infectious diseases, the approach must be balanced, prior mutual consultation is needed, and any disproportionate restrictions should be avoided. It was not even considered necessary to discuss issues such as recommending people to wash their hands or requiring them to wear a mask.

Yet why did previous consensual practice and understanding of resolving threats related to new infectious diseases eventually lead to complete or partial – and also repeated – closure of state borders, many businesses and activities? Whether and what did states achieve with such mandatory restrictions or what harm resulted from them? Did the benefits gained from mandatory restrictions outweigh the resulting harm? These are extremely important questions and seeking an answer to them should not be bogged down in mutual accusations, self-justification or entrenched beliefs.

During the reporting period, the Chancellor received many petitions related to the corona pandemic. They arose from different circumstances and were also differently emotionally charged.

The majority of complaints concerned restrictions and requirements laid down by government orders. In some cases, people in their complaints also pointed out obvious shortcomings regarding the substance of restrictions as well as the manner of their enactment. However, the Chancellor lacks the statutory right to assess the lawfulness of rules established by government orders. In justified cases, the Chancellor has drawn attention – both at government meetings as well as publicly – to problems related to restrictions. The Chancellor has been able to recommend to petitioners that, to ensure the best protection of their rights, they should have recourse to the court.

Even though many petitioners believed that the government restrictions and requirements were not justified in this form, a frequent problem was actually understanding them. The way orders were drawn up, including their wording, and their frequent amendment, resulted in a situation where several petitioners simply did not understand what restrictions or exceptions applied or did not apply to them specifically. Thus, people needed an explanation of the applicable requirements and to be given recommendations for finding a reasonable solution in a particular situation.

The corona passport

In Estonia, the requirement for a Covid certificate was in force for more than six months and the conditions for the issue, validity and presentation of the certificate were changed several times by the Government. For this reason, the Chancellor also received numerous complaints about the Covid certificate requirement. Petitioners pointed out essential and fundamental shortcomings in terms of the certificate's substantive, organisational and technical aspects, which were mostly interrelated. When replying to petitions concerning the conditions and exceptions for issuing the certificate, the Chancellor explained the applicable requirements and, where necessary, provided recommendations on how to act in a particular situation.

"Wrong" contraction of and recovery from corona

If we were to ask whether it is possible to contract and recover from an infectious disease in a so-to-say wrong way, then with the coronavirus this indeed seemed to be the case. The Chancellor received numerous complaints from people who seemed to be deemed to have somehow wrongly contracted and recovered from the coronavirus, thus placing them in a kind of an anecdotic but complicated and unfair situation.

The circumstances of the complaints came down to a fundamental contradiction reflected in the fact that, on the one hand, a doctor was also entitled to give a Covid-19 diagnosis without a laboratory confirmation, while, on the other hand, a diagnosis given without a laboratory confirmation did not enable a person to obtain a European Union digital Covid certificate proving recovery from the disease. Specifically, in the European Union it was initially agreed that a digital Covid certificate would be issued only if the diagnosis was confirmed by a laboratory and only by methods enabling detection of the presence of the ribonucleic acid (RNA) of the virus. To detect the nucleic acid of the virus, the polymerase chain reaction method, i.e. the PCR test, is mostly used.

This contradiction between the possibilities for diagnosis of the disease and the conditions for issue of the European Union digital Covid certificate resulted in a kind of absurd situation where a number of people had, figuratively speaking, wrongly contracted and recovered from the coronavirus. This means that even though they had been ill and they also had a doctor's diagnosis to confirm it, this was not sufficient to obtain the EU digital Covid certificate.

In this respect, it is important to note that these people had been diagnosed with Covid-19 absolutely legitimately, i.e. in accordance with international and national guidelines and in compliance with the relevant applicable legal act. When giving the diagnosis, the doctor could rely on the disease symptoms and/or known close contact with someone whose Covid-19 diagnosis had been confirmed by a laboratory.

For instance, a situation where at first one family member became ill and their PCR test confirmed the coronavirus. Then other family members became ill. There was no practical necessity for them to undergo a PCR test in a laboratory because, based on disease symptoms and contact with family members, it was possible to conclude with sufficient certainty that all the family members had contracted corona. Reaching a diagnosis of an infectious disease this way without a laboratory analysis is not something exceptional but common practice. As a rule, a laboratory analysis is carried out on the basis of a doctor's decision. A laboratory confirmation of a disease pathogen may be necessary, for example, for a doctor to be able to decide which medication to prescribe for the patient. However, so far no specific medication exists for treatment of corona at home, so that as a rule corona treatment means mitigating acute symptoms (cough, fever, head or muscle aches, and the like) with common medication prescribed for this.

Very narrow and limited conditions for issuing the European Union Covid certificate also raised questions because at the same time a uniform case definition for corona disease had been agreed in the European Union. According to this definition, a disease case was confirmed if it was proved by laboratory analysis. The laboratory criterion was – and still is – that the coronavirus nucleic acid (RNA) or antigen was found in a patient's clinical specimen. Thus, according to the case definition, an antigen test would also have been sufficient to provide a laboratory confirmation of the disease, but this was not sufficient for issuing the Covid certificate. Consequently, if the Covid-19 diagnosis had been confirmed by a laboratory and by using the method detecting the presence of the virus antigen, then this would still not have been sufficient to obtain an EU digital Covid certificate.

In early spring 2022, the European Commission changed the conditions for issuance of the Covid certificate. These conditions set out the possibility to issue a certificate even if the Covid-19 diagnosis had been confirmed on the basis of an antigen test. This raises the justified question as to how

serious were the arguments based on which the requirement for issuance of a digital Covid certificate had previously been imposed.

Even more bewildering is the fact that the conditions for European Union Covid certificates enabled issue of a valid Covid-19 test certificate to a person based on a rapid antigen test. This certificate was considered sufficiently reliable to confirm that in the event of a negative test result the person was not a coronavirus carrier at that moment. Yet an antigen test was not suitable to confirm recovery from the disease.

It is generally known that, in comparison to a PCR test, antigen tests are less sensitive. This means that with an antigen test the likelihood of a false negative result is higher. A false negative result means that a person is actually infected but the test is not sufficiently sensitive to detect it. Thus, antigen tests would actually be better suited to confirming a disease diagnosis than excluding the infection or disease.

The contradiction between the requirements and possibilities for disease diagnosis and the conditions for issuing the EU digital Covid certificate was also exacerbated by the widespread misconception that the conditions agreed for issuing the EU digital certificate were absolute and overriding, and that actually doctors should proceed from them in deciding how to diagnose the disease. Several technical reasons have been given to justify why exactly these conditions were set for issuance of EU Covid certificates. However, as a rule, technical conditions should be defined in line with medical knowledge and not vice versa.

Under the law, the Chancellor cannot supervise European Union legislation. During the debate on and approval of such legal EU-wide agreements, a Member State is represented by the responsible ministry.

In Government orders, the requirements and derogations from them were laid down uniformly both for people having received a laboratory-confirmed as well as non-confirmed Covid-19 diagnosis. Thus, everyone with a Covid-19 diagnosis was considered to be recovered. For people who had recovered, Government orders set out derogations under which they did not have to quarantine after being in contact with a Covid-19-diagnosed person. According to the orders, that person could thus also participate in activities for which a valid Covid certificate was required.

However, those having received a Covid-19 diagnosis from a doctor but unable to obtain a digital Covid certificate in line with European Union requirements found themselves in a complicated situation. Estonia had created electronic solutions only for issuing digital Covid-19 certificates. Certificates issued on other conditions, including recovery certificates without a laboratory confirmation, had to be applied for from a doctor and were issued on paper. Proving the authenticity of a paper certificate caused problems both for holders of the certificates as well as for businesses who had to check them.

Antibodies acquired through "wrong" contraction and recovery

The Chancellor received several petitions from people who had a laboratory confirmation of detection of antibodies to the coronavirus but who, because of this, had found themselves in an even more contradictory situation. That is, according to the conditions for EU digital certificates, issuing a recovery certificate based on a positive test result as to the presence of antibodies was also not possible. This recommendation was also given by the European Centre for Disease Prevention and Control (ECDC), citing primarily technical considerations and knowledge gaps related to immunity and its duration.

Fortunately, no fundamental doubt was cast on the overall suitability and reliability of antibody tests. At the same time, the Health Board did not recommend giving a Covid-19 diagnosis on the basis of an antibodies test, for some reason citing its unreliability.

On certain conditions, the presence of the infection or recovery from disease can also be confirmed by laboratory methods if the person is no longer infectious or ill and the disease pathogen can no longer be found in their body. If people have developed an immune response to a pathogen, this can be detected under certain conditions. Most frequently used are study methods which are able to detect antibodies generated in the human body against the pathogen, i.e. so-called antibody tests. Antibodies mostly also appear after vaccination. Thus, if a person is not vaccinated against Covid-19 but antibodies against the pathogen are detected in their body, then it actually means that at some point previously the person was infected with the coronavirus.

People pointed out various reasons why they did not receive a laboratory-confirmed Covid-19 diagnosis at the time when the disease pathogen would still have been detectable in their body. For

instance, petitions revealed that some people did not undergo a laboratory analysis because they did not have a vehicle to drive to the testing point. As a responsible person, they did not want to use public transport while ill and infectious, so that they failed to undergo testing. At the same time, people were constantly reminded that if they felt ill they should stay at home and keep their distance from others.

Another reason given by petitioners was that, since the onset of the disease was severe and they felt very poorly, they failed to go to the testing point. Moreover, before the establishment of the Covid certificate, PCR testing was not considered as important and people stayed at home while recovering.

The Chancellor also received letters describing cases where all family members fell ill one after another but some of them had a borderline PCR test result and the subsequent repeat test was already negative. A borderline PCR test means that the result does not enable confirmation of the presence of the pathogen with sufficient reliability. However, the PCR test result may depend on the stage of infection or disease when the sample is taken. For instance, if someone is already recovering the sample might no longer contain sufficient pathogenic material.

However, all these people subsequently had a positive laboratory antibodies test result, which enables retrospectively to confirm with fair reliability that their disease was actually caused by the coronavirus. Naturally, there were also those who went to do the antibodies test simply out of curiosity and their test result turned out to be positive. It is generally known that a large number of people may have and recover from the coronavirus with very modest disease symptoms that they might not even notice, or with symptoms not usually characteristic of the disease so that people would not think of linking them to the coronavirus.

At the same time, a blatant contradiction could be seen between the recommendations given to these people and the applicable restrictions. That is, in professional recommendations and guidelines a positive antibodies test result was treated as (sufficient) confirmation of recovery from the disease. For example, this was the case in recommendations provided by the immunoprophylactic expert committee of the Ministry of Social Affairs and guidelines for healthcare professionals issued by the Health Board.

The recommendation based on medical arguments set out that these people should be considered as recovered from the disease and should be vaccinated against Covid-19 only with one vaccine

dose six months after the antibodies were detected. This recommendation was given with a view to both the effectiveness and safety of vaccination. Thus, the recommendation on vaccination concluded that a person with a positive antibodies test result is proved to have recovered from the disease, while at the same time in terms of retrospective diagnosis of the disease the antibodies test result did not seem to be treated as sufficiently suitable or reliable and was not recommended. The antibodies test result was also not deemed sufficiently reliable to be used as a basis to relieve a person of the quarantine obligation or enable them to participate in activities for which a Covid certificate was required.

This contradiction put a number of people in a situation where they were forced to choose between two options. One was to observe their doctor's medically reasoned recommendation to vaccinate themselves only six months after receiving a positive antibodies test result. In this respect, they had to take into account that during those six months they were subject to the quarantine requirement and the ban – punishable if violated – on participating in controlled activities imposed by Government orders. Another possibility was to disregard the medically reasoned recommendation and still get vaccinated before the expiry of six months so as to be relieved of the quarantine restriction and be able to participate in controlled activities.

Other problems in connection with the Covid certificate

Some petitioners complained that they had not received a Covid certificate because their vaccination course remained unfinished due to the suspicion of serious side effects developed after the first vaccination. So these people had neither a vaccination certificate nor a certificate confirming that vaccination was contraindicated to them. In this regard, it should be understood that the doctor might not make an immediate decision on permanent contraindication to vaccination but would first like to carry out additional tests. At the same time, the doctor should take into account the situation in which a person finds themselves and issue a suitable certificate on temporary contraindication to vaccination.

The Chancellor has been asked whether requiring a certificate is allowed and logically justified in certain situations and places. This depends on specific circumstances and currently applicable conditions. People have described some situations where requiring a certificate was indeed unjustified: for instance, when it was required for provision of a healthcare service or allowing a

parent to attend a school ceremony. The Chancellor explained that healthcare services must also be available to unvaccinated people and parents cannot be refused attendance at a school ceremony or parents' meeting because a parent is not a third party and they are entitled and obliged to protect the interests of their child.

Quite a number of petitions concerned the issue whether a parent without a Covid certificate may accompany a child in a hobby group or at a sports training session. People also asked whether they are allowed to visit their next of kin in hospital or a care home if they cannot present a Covid certificate and have no money to take the PCR test. Petitioners complained that, in the event of close contact with an infected person, a healthy but unvaccinated child had to remain in isolation and could not attend school or hobby groups. Some parents actually removed their children from hobby groups and sports training in order to avoid close contact.

There are also those who consider injection of a corona vaccine a scientific experiment and have asked the Chancellor to put an end to such experiments. Science-based medicine has consistently refuted such allegations.

Adjusting the legal space

As in all other fields organised by the state, in a situation involving the emergence and spread of infectious (i.e. communicable) diseases the state also relies on laws and other legal norms. Issues of infectious diseases are regulated separately by the Infectious Diseases Prevention and Control Act (IDCPA).

After the outbreak of the corona pandemic in spring 2020, it became clear that the IDCPA in force at the time was not best suited to deal with such an unknown infectious disease. If the epidemiological situation requires extensively restricting the fundamental rights and freedoms of the whole population, all activities in this regard must comply with the Constitution and be subject to strict supervision.

Soon after the pandemic outbreak, debates also began about amending the IDCPA. The latest extensive package of amendments was completed by the Government in February 2022 and submitted to the Riigikogu for debate. The Chair of the Riigikogu Social Affairs Committee asked for

the Chancellor's opinion about the Draft Act on amending the IDCPA and amending other related Acts.

In her opinion, the Chancellor identified problems in relation to the Draft Act as well as the IDCPA as a whole.

Somewhat overlapping with this opinion, the Chancellor also had to prepare an opinion for the Supreme Court in constitutional review case No 5-22-4. This dealt with an application by Tallinn Administrative Court to declare the provisions of the IDCPA unconstitutional insofar as they enable imposing restrictions based on recovery from disease and vaccination, define the conditions for vaccination against an infectious disease and recovery from it, and oblige people to undergo health examination and diagnostics based on Government Order No 305.

In an extensive opinion, the Chancellor ascertained that the contested provisions of the Infectious Diseases Prevention and Control Act (IDCPA) contravene the Constitution since they confer on the executive overly broad, unspecified and undefined powers for restricting fundamental rights. A delegation norm is impermissible if it leaves a free hand to the executive in choosing restrictions, their purpose and their level of severity. It must be the Riigikogu in a parliamentary Act that decides in what situations and what kind of restrictions may be imposed. If a situation described in the law emerges, then it is the task of the executive to choose purposeful and proportionate restriction from among the restrictions allowed by law and apply it only where necessary and only as long as necessary.

A statutorily prescribed form for an order intended to impose generally applicable obligations on an unspecified range of persons in unspecified situations is not compatible with the Constitution. It is important to distinguish between types of legal acts issued on the basis of a delegation norm. Generally applicable mandatory behavioural guidelines aimed at regulating an unspecified number of cases must be laid down in the form of a government regulation. Regulations are published in the *Riigi Teataja* gazette and their factual grounds must be regularly reviewed. In the case of a regulation, constitutional review is assured. Orders are meant to resolve individual cases.

In the Chancellor's opinion, Tallinn Administrative Court was correct in initiating constitutional review proceedings to check the constitutionality of the provisions of the IDCPA. The lawfulness of restrictions imposed under an order is assessed by the administrative court, so that in the frame of

constitutional review of the IDCPA rules it is not necessary to analyse in detail the purposefulness and proportionality of the orders issued on the basis of these rules, i.e. assess the lawfulness of the orders themselves.

Fundamental problems with the IDCPA

The coronavirus pandemic has very clearly highlighted shortcomings in the current Act which cannot be remedied with a draft only specifying or supplementing the provisions of the Act. The shortcomings of the Act are fundamental and extensive, so that a new modern law meeting the needs of practical life needs to be prepared.

To resolve the situation related to an outbreak of disease, the need may arise to extensively restrict the fundamental rights and freedoms stipulated by the Constitution. This means that a law must be formulated so that everyone can understand how and who may restrict the fundamental rights and freedoms of individuals in the case of what threats, for what purposes and on what conditions.

The spread of infectious diseases and people catching the disease is not an extraordinary phenomenon but our everyday reality. One idea of the IDCPA is to precisely organise this reality in the best possible way.

The spread of infectious diseases and people becoming ill fluctuate constantly and, under certain conditions, this may also mean an extraordinary threat. To combat precisely these kinds of threat, the state must have the right and duty to impose restrictive rules in order to protect human health and ensure the functioning of the healthcare system.

In order to successfully combat a threat in connection with the spread of infection, the threat must be formulated in the law with sufficient clarity and justification. The current law uses the concepts of an *extremely dangerous infectious disease* and a *dangerous novel infectious disease* for this. The law also stipulates that it is precisely these infectious diseases in the case of which it may be necessary to restrict people's fundamental rights and freedoms. The problem arises in interpreting these concepts.

Under the law, an *extremely dangerous infectious disease* means a disease with a high level of infectiousness which spreads rapidly and extensively or which is serious or life-threatening. This

sentence in the law offering a uniform characterisation of extremely dangerous infectious diseases is followed by a list: the plague, cholera, yellow fever, viral haemorrhagic fevers, and tuberculosis.

We see that the list lacks several highly infectious diseases which spread rapidly and extensively. This cannot be justified because, for example, seasonal infectious diseases also possess a rather high level of infectiousness and spread rapidly and extensively. Infectious diseases mentioned in the law as extremely dangerous also spread in different ways, to different extents, with a different intensity and in different regions of the world. For instance, the yellow fever virus spreads via vectors that are specific species of mosquitoes. Thus, yellow fever does not spread directly from human to human and its main endemic regions are tropical countries in Africa and South America. Based on available information, the yellow fever virus does not spread endemically in Europe and thus Estonia, with those having the disease being first and foremost people who caught it during travel.

The list set out in the law is far from containing all infectious diseases which may be serious or life-threatening. It should also be kept in mind that most infectious diseases may run a mild, moderate, serious or extremely serious course. The likelihood of serious and extremely serious life-threatening forms of disease depends on many factors, often including individual factors such as concurrent diseases. What the likelihood should be of an infectious disease causing serious and extremely serious forms in order to be included in the list of extremely dangerous infectious diseases – is not clear from the law, nor has it been uniformly defined internationally.

Inevitably, the question arises whether the qualities uniformly characterising extremely dangerous infectious diseases under current law are defined with sufficient justification. One should also ask whether the particular selection of extremely dangerous infectious diseases in the law is simultaneously justified and also exhaustive. In part, the list contains infectious diseases which have previously internationally been considered significant in terms of combating their global spread. On the other hand, the current IDCPA was drawn up in 2003 so that the list of extremely dangerous infectious diseases has remained unchanged for almost 20 years.

Constant changes occur in the common spread of infectious diseases and their morbidity. Over time, previous knowledge about infectious diseases may also change and effective possibilities may appear for their prevention and treatment. The importance of the substantive and legal meaning of

an extremely dangerous infectious disease should be kept in mind: on this depends whether fundamental rights and freedoms can be restricted.

When coronavirus SARS-CoV-2 appeared, the concept of a dangerous novel infectious disease was introduced to the IDCPA. The law does not name any specific infectious disease as a dangerous novel infectious disease and this was also not the aim when introducing the concept. Thus, an infectious disease can be considered a dangerous novel infectious disease when it conforms to the conditions mentioned in the definition of the concept. For example, SARS-CoV-2 can be considered a dangerous novel infectious disease if it has the features of an extremely dangerous infectious disease, if it has no effective treatment or if no effective treatment for it is available or its spread may exceed hospital treatment capacity.

The additional conditions for a dangerous novel infectious disease (i.e. no effective treatment exists or is available or its spread may exceed hospital treatment capacity) also allow for a very broad interpretation and application of the concept in many situations of a different nature and different threat levels. For instance, no uniform criteria exist as to the kind of treatment results in the case of which treatment (including medication) is considered generally effective or the other way round. The effectiveness of treatment also depends to a large extent on a patient's overall condition, including concurrent diseases. Treatment of a patient's symptoms may also be successful and effective even if no medication exists against the pathogen. On the other hand, no pathogen-specific treatment exists against most viruses causing acute respiratory diseases, or even if such treatment exists its effectiveness generally remains moderate.

Thus, this is another uniformly undefined condition which varies in the case of different individuals. Hence, the importance of such a condition in designating an infectious disease as novel and dangerous remains questionable.

The desire to introduce the concept of a dangerous novel infectious disease in the law may be understood since new and changed threats related to infectious diseases cannot be predicted. And this is what makes these diseases novel and dangerous. Therefore, a new legal space needs to be created to enable action in a situation where, for example, a new infectious disease (such as Covid-19) or even a previously known but significantly mutated one (a new strain of the influenza virus) begins to spread among humans. At least initially, the actual properties, possible effects, treatment

possibilities, and so on, of a newly spreading infectious disease are unknown. Consequently, we do not know whether that infectious disease is or may develop into an extremely dangerous infectious disease. Knowledge about a novel infectious disease or one with mutated properties improves over time. Until then it may be necessary to rely on existing knowledge and risk assessments and treat the infectious disease as a special threat.

However, introducing this concept into a law requires it to be defined in even more detail. Among other things, the conditions need to be set out as to when and in what circumstances an infectious disease can be treated as novel and dangerous and when this can no longer be done.

By autumn 2022, we have reached a somewhat peculiar situation where several countries no longer deem SARS-CoV-2 as dangerous under their legal order and consider it as a seasonal viral infection. The legal situation in Estonia has remained ambiguous since the IDCPA does not lay down who – and based on what specific criteria – should provide a reasoned assessment as to whether a spreading infectious disease is still novel and dangerous.

Flexibility is understandable when defining primary concepts but flexibility cannot mean unjustified ambiguity. It is important to keep in mind once again that it depends on the interpretation of a concept whether restricting people's constitutional rights and freedoms is possible or not.

Special threats and their resolution

Coping with special threats accompanying the spread of infectious diseases begins from setting understandable and achievable objectives. These two conditions are interrelated. If objectives are unclear then it is also very difficult to achieve them. Or conversely, if objectives are not achievable then solutions, including restrictions, also become incomprehensible. Thus, in the event of the emergence of a threat related to a new infectious disease it is necessary first to identify what this threat means.

Acute respiratory viral infections, such as the flu virus and corona virus infections, may most likely cause global pandemics. Contributing to this are the effective ways in which these infections spread (airborne, droplet and contact spread) as well as the rapidly mutating properties of the pathogens. In a situation where a novel viral infection has already emerged, where it can successfully spread

from human to human, and where no sufficient immunity to it exists, the possibilities of preventing a pandemic are actually very limited.

Besides the natural abilities of such viral infections to spread, factors contributing to their global spread should also be taken into account. The world population is approximately eight billion people, more than half of whom live in urbanised areas. Intense and widespread international traffic means that an infectious disease that has begun to spread in one corner of the world may reach another corner in less than 24 hours and even before the disease was detected. The abilities of states to detect and prevent infectious diseases and limit their spread differ in the extreme. For example, to date we have been unable to eradicate even infectious diseases which can be relatively well controlled by vaccination, such as measles and polio. Risks caused by human activity which facilitate the emergence and spread of novel infectious diseases or those with mutated properties are, however, even more diverse.

The context described helps to understand how and whether at all the spread of a novel infectious disease can be contained justifiably and proportionately. In other words, what objectives can be justified and achievable. At the beginning of the pandemic of the SARS-CoV-2 viral infection, among other measures the zero-Covid policy was gaining ground aimed at completely stopping and eradicating the spread of the virus. Even though no prerequisites whatsoever exist to achieve this objective, thus making it impossible, this policy is still in effect in China. To that end, unprecedented extensive and expensive work was launched for detecting the virus and justifications were offered for extensive restrictions on fundamental rights and freedoms.

Although European countries did not officially pursue a zero policy, several restrictions looked as if they were imposed in order to achieve this objective. For example, it is clear that if the local spread of an infectious disease has been detected in all countries, then closing state borders or restricting border crossings cannot serve the desired objective. None of the countries that closed their state border or restricted border crossings was able to prevent the spread of SARS-CoV-2 or its new strains locally. This objective was not achieved by measuring people's body temperature, testing, the quarantine requirement, or checking Covid certificates. In other words, this objective is unattainable. However, the state should not set unattainable objectives at the expense of people's fundamental rights and freedoms.

A precise and up-to-date conceptual apparatus

In the context of the IDCPA and its amendment, all this is worth emphasising because the most important principles should be defined on the level of the law. For instance, the law must enable imposing only restrictions which are unavoidably necessary for achieving the objective sought. As repeatedly mentioned above, objectives must in turn be comprehensible and attainable. Each restriction, both individually and as part of all restrictions, must be logically justified and based on methodologically correctly achieved and correctly interpreted scientific results and facts. Understandably, the benefits gained from imposing restrictions must outweigh the resulting harms.

A law must by all means support avoiding special threats of infectious diseases and mitigating their consequences. For this purpose, essential concepts can be used in the law and by defining them they are assigned unequivocal meaning in both the legal and substantive sense. Terminological imprecision and lack of essential concepts leads to confusion in implementing the law and does not facilitate resolving problems.

In the field of prevention, monitoring and control of infectious diseases, several essential concepts are used. Over time, most of them have also become harmonised internationally. Unfortunately, the list of concepts in the current IDCPA in Estonia is not sufficiently exhaustive and several concepts still remain undefined. Nor are several concepts defined in the way in which they are normally used in international practice.

During the coronavirus pandemic, everyone in Estonia has heard the word *quarantine*. Those who are ill, as well as those who have been in contact with someone who is ill must remain in quarantine. Quarantine is established presumably throughout the whole country and, within the meaning of the law in force in Estonia, quarantine can also be established on provision of services.

However, such an ambiguous and fuzzy use of the concept of quarantine is unjustified and significantly differs from its professional meaning as well as how this concept is used internationally. In common international practice, quarantine means only restriction of the activities of a healthy person who may have been infected and/or segregation of that person from others in order to prevent the possible further transmission of the infection. Under the same principle, quarantine may also be imposed on animals that may be infected or on goods that may be contaminated with

pathogens. However, what is important is the uniform meaning of the concept – in the case of quarantine the possibility and suspicion exists of infection or contact with pathogens, which may or may not be subsequently confirmed.

However, restricting the activities of someone who is already ill and segregating them from others in order to prevent further spread of infection is internationally defined by the concept of *isolation*. Where necessary, this concept is also used for segregation of an infected animal or goods contaminated with a pathogen. However, the Infectious Diseases Prevention and Control Act lacks a concept to denote isolation.

This is by no means excessive diligence aimed at defining all the possible concepts in a law, because these concepts do have a substantive and legal meaning and an important fundamental distinction from one another. For instance, it should be taken into account that a quarantined person is healthy and restricting their activities and segregating them from others can be justified to the end of the incubation period. However, a person subjected to isolation is ill and they have been diagnosed. Thus, restricting their activities and segregating them from others can be justified until their recovery and end of the risk of infection.

Thus, in terms of risks of the spread of infection and the consequent severity of a restriction, these are also rather different situations.

Restrictions must arise from laws

The current IDCPA confers on government agencies sufficiently unlimited powers for combating the spread of infectious diseases. If it is known in advance what restrictions and under what conditions need to be established to combat the spread of an infectious disease then they must be laid down by law. Thus, this must be done by the Riigikogu through exercising the function of law-making assigned to it in a country governed by the rule of law.

Delegating powers to the executive by law for restriction of fundamental rights is constitutional only if in doing so a clear frame is imposed on the executive, i.e. the conditions, compliance with which is subject to judicial scrutiny. The law must also be clear and noncontradictory in allocating roles.

Distance learning and vaccination of children

An individual contacting the Chancellor asked for an explanation whether introduction of distance learning in all schools in Tallinn was lawful. In her reply, the Chancellor explained on what legal basis and who is entitled to apply distance learning in schools. Since the beginning of academic year 2020, the Chancellor has repeatedly provided similar explanations to parents, pupils as well as teachers (see the annual report for 2020/2021). The legal framework was the same at the time of replying to this petitioner, but the situation to which the rules apply had significantly changed as compared to autumn 2020.

Distance learning as a health protection measure is in principle allowed but only if its use is justified in view of the particular epidemiological situation. In this regard, a school can only proceed from its own specific situation when implementing this health protection measure, including information about the proportion of vaccinated and recovered people among pupils and teachers. Neither the school director nor the owner of the school is competent to assess the situation of the spread of the virus and the anticipated hospital burden.

The Chancellor was also asked to assess implementation of distance learning in schools in Pärnu city. The Chancellor found that, formally, Pärnu city as the owner of the schools did not adopt a legislative act by which it would have decided to apply distance learning in schools or oblige heads of schools to make such a decision. The decision on transfer to distance learning had to be made by each head of school themselves. Yet it should be taken into account that a head of school may understand an instruction given by the owner of the school as binding even though formally this is not so. The owner of the school and the Health Board provided information to heads of schools in a manner that may have inclined them to apply distance learning while at the same time not taking responsibility for justifying this.

During the reporting period, the Chancellor was often also asked whether parental consent is needed to vaccinate a child at school. People also asked whether schools may exert pressure on children to vaccinate against Covid-19.

The Chancellor explained (see e.g. vaccination of schoolchildren against Covid-19) that the same rules apply to vaccination against Covid-19 as to vaccinations in general. Vaccination is voluntary. The principle of voluntariness applies equally to adults and young people.

A patient may be examined and healthcare procedures administered to them (including vaccination) only with their consent. This means that a patient must be informed about the purpose of medical procedures as well as possible risks and consequences. Then the patient themselves can decide whether to consent or refuse.

Parental consent must be sought to vaccinate a minor patient, but the child themselves must also approve the vaccination (see paras 17 and 18 of the guidelines on child patients). However, a doctor who deems that a young person has sufficient capacity to reason must proceed from the young person's own decision. In that case, a parent may not decide on the child's vaccination.

Age may be one criterion for assessing a child's capacity to reason, but it cannot be the only criterion. A child's capacity to reason must be assessed on the basis of the specific situation and the specific child, because children reach maturity and independence at different ages. If a child comes to a doctor's appointment together with a parent or with parental approval, and the child and parent are unanimous about the issue needing to be decided, then the doctor has no reason to assess the child's ability to reason (see in more detail the guidelines).

A school nurse vaccinates children at school in line with the Minister of Social Affairs regulation, under which the consent of a parent or other legal representative is asked for vaccination.

Under the Minister of Social Affairs regulation, the school informs a parent about planned vaccination at least one week in advance and also asks for their consent. Consent or refusal is recorded in writing and is maintained among the pupil's health documents. If a pupil's vaccination is held off for some reason, the school healthcare provider proceeds from a parent's previous consent and informs them about the new time of vaccination at least one week before it takes place.

If one of the parents provides consent, a school nurse may also presume consent from the other parent. If the other parent refuses, the child cannot be vaccinated on the basis of consent by one parent.

Under current legislation, a school cannot oblige children to be vaccinated but it may provide information about organisation of vaccination and study at the school. For instance, the rules on quarantine of a pupil who was a close contact depended on whether the pupil was vaccinated or not and whether they allowed themselves to be tested for the coronavirus. When providing explanations, school staff must remain as neutral as possible. The school may not actively promote vaccination. Nor may the school allow unvaccinated pupils to be bullied at school.

Rapid test at school

Several parents asked the Chancellor about rapid testing of pupils.

The Chancellor's advisers explained that testing is not mandatory for pupils. If a child or parent does not consent to testing, the school must be notified about this. A parent's refusal may be written in free form. If for some reason a parent has not been able to notify the school about their refusal but the child does not wish to take the test then it is sufficient that the child simply does not take the test. The school cannot oblige any pupils to take a rapid test. A child who has refused a rapid test is not excluded from face-to-face tuition in a classroom.

Pupils themselves carry out a rapid test by following the instructions. At home, assistance is provided by a parent and at school by a teacher, if necessary. Self-testing with a test for the SARS-CoV-2 coronavirus causing the Covid-19 disease is not a healthcare service which should be provided by a healthcare professional. Therefore, the provisions of the Law of Obligations Act regulating provision of healthcare services are not applicable to self-testing with a rapid test.

No mandatory form has been laid down for obtaining consent for rapid testing. It is also important that both children and parents have been informed in advance about testing, and both children and parents can always refuse testing.

People and nature

In her everyday work the Chancellor primarily witnesses situations where the relationship between the state and an individual is at cross purposes. One can see confrontation of interests particularly clearly in environmental issues: people do not trust environment officials because officials impose restrictions and sometimes incomprehensible requirements. Officials, in turn, sometimes proceed from the assumption that nature needs to be protected from people and in particular from landowners. Sometimes this may indeed be necessary.

The state must point the direction and create the necessary infrastructure. For instance, in order for everyone to be able to sort waste in their homes and conveniently dispose of the sorted waste. If sorted waste is recycled and new products are manufactured from it, then this motivates people to sort waste. Currently we can see quite a lot of illusory practices in waste management, so the state's efforts in this field are not convincing. If, instead of changing the method of calculating waste volumes and sorting at the landfill gate, convenient possibilities for sorting waste had been created and plants built for waste recycling, then everyone would understand that sorting waste clearly makes sense and in this way we indeed protect nature. The state and local authorities have much room for improvement in this regard.

The state itself should also fulfil all the requirements imposed by laws and regulations. If we wish to protect bodies of water then a permit for discharge of treated effluent into a lake cannot be issued before it is clear that it would not pollute the lake. If several essential public interests clash, then in this situation, too, the state must make the necessary decisions. The solution is not to waste resources and unsettle people's nerves while state agencies keep wrangling with each other.

The state should not ward people away from nature but provide guidance on how to operate so that people act as part of nature and as contributors to nature conservation. This also makes it easier for the state to protect nature. If the state wishes semi-natural biotic communities to be maintained by grazing, then is it reasonable to rebuff a landowner who wants to erect a building for overnight stays in an area suitable for grazing. After all, an equivalent alternative would not be to organise a public tender to find a trimmer who once a year cuts taller grass and leaves it simply lying there and covering rare plants. This would be a loss for the owner but in the longer-term also for nature.

It is also strange if the state prohibits a person from clearing a windthrow on their land and using the existing firewood even if the forest owner is prepared to carry the wood out of the forest on their back in order to preserve the soil. Let fallen trees rather rot in the forest... Perhaps from the viewpoint of nature conservation, it might be reasonable to lay down a possibility by law that the owner of an immovable who obtains a permit to build on sensitive land must also comply with specific obligations, such as mowing or grazing, or refraining from a certain type of activity. If the owner fails to comply with the agreement, the building must be demolished.

In forestry, the division between different interest groups sometimes runs so deep that even scientists are considered either as friends or foes and thus unreliable. Things cannot continue like this. In this confrontation everyone will lose in the end but the biggest loser will be the natural environment for whose sake, after all, this row seems to be happening.

It seems that, in order to bring about change, trust needs to be restored. A landowner should not be considered an enemy of nature and an official should not be a repressive body. The landowner and the state must cooperate in order to protect nature. Cooperation on both sides should be sincere and mutual prejudices set aside. The state should listen to the landowner's wishes and, if possible, proceed from them. If fulfilling a landowner's wishes is not possible then this should be explained specifically and honestly. An adequate reason and incentive for prohibition cannot be a general fear that if someone is allowed to do something then definitely it should also be allowed for all subsequent applicants. After all, in each subsequent case the circumstances are different and these cases do have to be resolved according to each specific situation.

There is no reason to consider the general public as more important than a landowner even if the general public are noisy and particularly vocal on the social media. General interests have already been taken into account when formulating environmental protection requirements. Naturally, environment officials must also take general interests into account and protect them, but in weighing different and often contradictory interests it is not appropriate to prefer a vocal interest group to a landowner simply because this spares the state or an official from negative coverage in the social media.

Probably the biologist and nature conservation scientist Aveliina Helm was right when she wrote in the newspaper *Sirp* that "one possible way forward is conscious integration of nature protection in

the life and activities of each and every inhabitant – let us call this nature protection for all". This is what could actually be the state's future aspiration – protect nature everywhere if possible and together with landowners. This is what many landowners wish in their hearts.

The state should not act overbearingly in deciding how someone may live on their land. The state could be a partner by sharing the owner's concerns and joys and finding solutions that take landowners' needs into account. Confrontation does not take us forward and through confrontation it is not possible to involve landowners in environmental protection. It is important to explain convincingly why one or another activity or restriction is necessary. If a person understands that something really depends on their activity then, as a rule they are prepared to make the effort.

I very much hope that even now many environment officials act and think this way. People have no reason to complain against their activities.

Construction

Unjustified requirements

Paperwork involved in construction – plans, proceedings for design specifications, building and use and occupancy notices, and construction and occupancy permits – is often complicated both for applicants as well as agencies processing permits. Often there is a clash between the interests of building applicants, the persons affected and public interests. It is difficult to find a balance between interests, in particular in local authorities with high population density where people actively wish to develop real estate.

In some cases, a city or rural municipality has laid down their own procedure to simplify this work. This may contain requirements with the presumable aim of simplifying dealings and reducing the workload of the city. By laying down such conditions, an applicant may be required to submit an additional document or draw it up in a format suitable for the city. Unfortunately, sometimes the whole process becomes even more complicated as a result. For instance, in Tallinn, construction-related proceedings are exceedingly time-consuming, which is partly caused by (not always justified) formalities imposed by the city. The Chancellor has drawn the attention of the city authorities to this and requested changes in working arrangements.

The city may only request documents corresponding to the purpose of proceedings and the need for them must be justified. General principles of administrative procedure must be observed: proceedings must be fit for purpose, efficient, as simple and swift as possible, and excessive expense and inconvenience for the applicant must be avoided. All procedural steps arranged by the city and all requirements imposed on persons within the proceedings must be lawful, appropriate, necessary and proportionate, and proceed from the purpose. Complying with each requirement takes time and often money as well.

The principle of good administration is breached by raising unjustified requirements and creating expense.

State fee for retroactive legalisation of remodelling

The law stipulates that a state fee of 500 euros is payable for retroactive legalisation of construction works not entered in the Building Register. This exceptional procedure involves cases where a construction work was built illegally, i.e. without a permit.

Although the wording of the law is not precise, the scope of application of exceptional procedures must be interpreted narrowly. Unfortunately, Tallinn has interpreted the law expansively, i.e. also applied these proceedings in the case of any remodelling of construction works entered in the Building Register. This burdens the parties concerned, including by requiring them to pay a high state fee. At the same time, no practical need at all exists for this procedure: the law does not require it nor does it facilitate revision of Building Register data.

In a case described in a petition received by the Chancellor, carrying out proceedings for legalisation of unlawful construction works and payment of a state fee of 500 euros was requested for an air source heat pump installed in a building some time ago. Currently, it would be possible to install such a heat pump on the basis of a building notice, i.e. by following clearly more lenient requirements.

In many buildings erected a long time ago some remodelling has been carried out over time, often in good faith and without knowing that prior authorisation should have been obtained. Moreover, it is very complicated to ascertain retrospectively when and what was remodelled, and how.

The Chancellor drew the attention of the Tallinn mayor to the fact that the procedure for legalisation of illegal construction works and the accompanying punitive state fee of 500 euros must be applied only if construction works were built illegally and if illegality can be proved. The procedure for legalisation of construction works need not be applied to any remodelling work, in particular if under the current rules that particular remodelling work could be undertaken without a building permit.

Connecting to the public sewerage system in Tallinn

In some old settlement districts in Tallinn not all buildings are connected to the public sewerage system.

This is the case even if sewage piping exists in the street and connection would be possible. In that case, connection is reasonable both from the point of view of environmental protection as well as users' own convenience. This would do away with the need to treat wastewater locally, which in a densely populated area means that wastewater is collected in a leak-proof tank which is then emptied once the tank is full. Emptying is more costly for the consumer than discharging wastewater directly to the public sewerage system.

In Tallinn, an obstacle to connecting to the public sewerage system is its great cost. Even if sewage piping has been laid in the street, not always have supply points (i.e. connection points) been built for buildings along the street. This means that it is necessary to create a supply point before piping on the plot can be built. Where a consumer of the service has to pay for the supply point, the total cost of the works may prove to be markedly high – even if the city partially compensates the connection cost.

Under the law, in old settlement districts the cost of building supply points for the public sewerage system is covered by the water undertaking. This, however, presumes that a supply point has been prescribed in the development plan for the public water supply and sewerage system. In its business plan, a water undertaking relies on this plan: investments set out in the development plan are reflected in the price of the water service, so that all the clients of the water undertaking pay jointly for development of the public sewerage system. Only in new development districts must those wishing to connect to the public water supply or sewerage system themselves pay all the costs related to their connection.

The Chancellor drew the attention of Tallinn City Government to the need to revise the arrangements for connecting to the public sewerage system. Since the development plan for Tallinn public water supply and sewerage system for 2022–2023 is currently under preparation, hopefully in the near future the possibilities for private houses to connect to the public sewerage system will also improve.

Requirements for on-site wastewater treatment

During the reporting year, the Chancellor dealt with on-site wastewater treatment requirements established by local authorities. We asked Vinni rural municipality to amend the municipality's rules on on-site wastewater treatment so that they comply with the law. The regulation contained several provisions incompatible with the law and which could not have been observed without causing a conflict with the law. Vinni rural municipality abolished the regulation and enacted a new regulation in revised form.

Restrictions on property in a comprehensive plan

The Chancellor was asked to explain how restrictions on property imposed by a comprehensive plan are compensated. The petitioner was a local authority which had to lay down a route for a road in its comprehensive plan in order to comply with state-imposed requirements.

Due to restrictions on property arising from the comprehensive plan, the landowner can no longer unrestrictedly use the land remaining under the route for the road – first and foremost, they cannot erect construction works on that land. At the same time, it is not known when – indeed, whether at all – the road on that land will be built, while use of the property is nevertheless restricted for a long time. If the road is built then the land under the road will be expropriated but until then the owner must tolerate the restriction.

Since the same issue may arise in many similar cases, the Chancellor clarified the possibilities for compensation of damage under current legislation and case-law. A restriction on property – unless it can be treated as expropriation – does not always involve the right to compensation for damage caused by the restriction. Nor must the expense of compensation for damage be borne by the local authority alone if the restriction is imposed proceeding from state interests and the local authority has no possibility to avoid imposing the restriction.

Hunting

During the reporting year, the Chancellor received several complaints about the organisation of hunting. Most of these petitions concerned permits for the rights to use hunting districts, which grant a hunting society the right to hunt in a particular area.

Grant and extension of permits

The current Hunting Act entered into force on 1 June 2013 and lays down that presently valid permits for the right to use hunting districts remain in force for ten years, i.e. to 31 May 2023, and that new permits are to be issued in line with the requirements set out in the law.

The problem arose from the fact that the Environmental Board has already started extending permits for the right to use hunting districts but in doing so has failed to comply with the requirements of the law. For instance, when extending a permit the Board has failed to ascertain whether any other hunting society in Estonia might also be interested in using the particular hunting district. Above all, this endangers fair competition.

It has also been found that different interest groups have interpreted the Hunting Act differently, proceeding primarily from which solution the respective party likes best. Different interpretations have led to conflicts over issuance and extension of permits, which has led to the need for explanation from the Chancellor.

It is clear that from 1 June 2023 permits for hunting districts can be issued under the current Hunting Act and the previously effective law can no longer be relied on. The Chancellor asked the Ministry of the Environment and the Environmental Board in their administrative practice to respect the law.

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

The right to use a hunting district constitutes a limited public resource. The right of use confers on the user of a hunting district a possibility to hunt game living in that district, whereas a hunting society may also allocate hunting permits for game hunting by proceeding from its economic interests. This means, for example, that without consent of the user of a hunting district and without fulfilling the conditions a landowner who is a hunter cannot hunt large game on their own land. In

view of the exclusive rights granted to the user of a hunting district, granting the use of a hunting district must be based on law, be transparent, and predictable for persons interested in use, i.e. the executive cannot act arbitrarily. Otherwise, the principle of legality is not respected, persons are not treated equally, fair competition is endangered, and the rights to self-realisation and protection of property are also restricted.

Upon the expiry of the permits issued on the basis of transition provisions, the Environmental Board must ascertain whether any other hunting society in Estonia is also interested in using the particular hunting district. The law enables hunting societies to agree on the joint right of use of a hunting district. If no agreement is reached, then in line with the wording and spirit of the Hunting Act the Environmental Board must grant a permit to the hunting society which has the strongest support from the landowners in the particular hunting district. In doing so, the assessment by the State Forest Management Centre as the administrator of state hunting areas must be taken into account. The State Forest Management Centre weighs the feasibility of granting the use of its immovables for hunting purposes.

When granting the use of state-owned hunting areas, the rights of the state as the landowner as well as the principles for administration of state assets must be kept in mind – in particular that transactions with immovables owned by the state should comply with legislation, be transparent and verifiable.

One of the aims of the Hunting Act is to improve cooperation between landowners and hunters and encourage them to reach agreement with each other. This is the underlying purpose of the majority of rules in the Hunting Act, such as provisions regulating the use of an immovable, granting the right of use of a hunting district, activities of the hunting council, and prevention and compensation of game damage.

The aim of the law might not be achieved if the working arrangements established by the Environmental Board enable overlooking the requirement of consensus between private landowners and hunters in extending current permits for use of hunting districts.

When the Environmental Board receives an application for extension of a permit issued under the current law, then it must ascertain whether the current user of the hunting district has complied with all the requirements laid down by law.

The Hunting Act states that an application for extension of the permit is to be submitted at the earliest six months before the expiry of the permit. The matter is that in processing an application for extension of the permit the Environmental Board must assess the activities of the user of the hunting district during the whole period of validity of the current permit (i.e. 9 years and 6 months). If the executive begins to examine extension applications on its own initiative significantly earlier (even a couple of years earlier) than the deadline prescribed by law, then the aim set by the Riigikogu will not be fulfilled.

The aims set by the Riigikogu might also not be fulfilled if the Environmental Board extends current permits but fails to verify whether a user has fulfilled the statutory requirements or not. The purpose of extending permits is to continue with those users of hunting districts who operate in compliance with the law and have observed all the statutory duties and objectives. Thus, the Environmental Board must monitor compliance with the statutory requirements under the Hunting Act in the course of state supervision (§ 47 Hunting Act) and, in extending permits, it must also proceed from the investigative principle applicable under administrative procedure. If the state (e.g. the Environmental Board) knows that a hunting society applying for extension of the permit has failed to comply with the monitoring requirement, then the Environmental Board must also take this into account in resolving the application for extension. In line with the investigative principle, the Environmental Board must ascertain all the essential facts when resolving an application.

Of course, only the administrative court can decide on each individual case of extending the right to use a hunting district or refusal to issue a permit for the right to use a hunting district.

Hunting supervision

The Chancellor was asked to assess whether the Environmental Board had acted lawfully when monitoring radio communication between hunters in the course of hunting supervision.

While carrying out hunting supervision, the Environmental Board did not transmit messages through radio frequencies, so that hunters using radio communication did not generally know that officials were listening to their conversations and identified their location based on this. Representatives of the Environmental Board affirmed that their aim is not communication but primarily identifying communication between hunt participants. However, in that case it is not plausible that

Environmental Board officials cannot intercept the content of messages transmitted or understand that content.

It is the state's duty to detect and combat violations of the Hunting Act and the Environmental Board is entitled to carry out supervision for this purpose, but only by using legal measures for this. When exercising state supervision, the Environmental Board may use special measures for state supervision laid down by the Law Enforcement Act (Hunting Act § 47^1), but the special measures set out in the law do not include the possibility of radiopositioning, monitoring radio communications, or otherwise restricting the confidentiality of radio communication. Thus, the Environmental Board has no legal basis to identify the location of hunt participants' communication devices; moreover, monitoring radio communications may result in violating the confidentiality of messages.

And covert interception of radio communications is not allowed at all: under § 43 of the Constitution, audio interception is allowed only by court authorisation to combat a criminal offence or to ascertain the truth in criminal proceedings.

Under § 43 of the Constitution, everyone has the right to confidentiality of messages sent or received by them through commonly used means of communication, including via radio transmitters (see § 22 on radiocommunication secrecy in the Electronic Communications Act). Confidentiality of messages may only be restricted by court authorisation to combat a criminal offence or to ascertain the truth in criminal proceedings, in the cases and under the procedure laid down by law. Confidentiality of messages protects messages in the broader sense (words, signs, as well as sounds).

When carrying out its tasks, the Environmental Board must comply with the Constitution and laws (§ 3 Constitution) and ensure protection of the fundamental rights and freedoms of individuals (§§ 11 and 14 Constitution). A clear legal basis must exist to restrict fundamental rights.

The Chancellor asked the Environmental Board to stop unlawful monitoring of radio communications between hunt participants, but the Environmental Board did not agree with the recommendation and requested the Prosecutor General's Office to assess the recommendation.

The Prosecutor General's Office agreed with the Chancellor's position that in certain cases the activities of the Environmental Board may amount to illegal surveillance. Similarly to the Chancellor, the Prosecutor General's Office also recommended that if Environmental Board officials join the radio

communication between hunters then they should notify the hunters about it. As an alternative, the Prosecutor General's Office suggested the possibility to supplement the Law Enforcement Act with a relevant special measure and, under the Environmental Supervision Act, authorise the Environmental Board to apply the particular special measure.

Climate

During the reporting year, for the first time the Chancellor received a petition concerning fulfilment of the climate neutrality objective. The petitioner asked for an assessment of whether Estonia's current legal space – where duties aimed at achieving climate neutrality are not laid down by law but are instead written into a coalition agreement or development plan – is compatible with the Constitution.

Climate concerns all areas of life and thus everyone. A country's climate neutrality refers to the status where that country emits just the amount of greenhouse gases that the ecosystem is currently able to absorb. Everyone should contribute to achieving this objective. This alone makes it important that the duties necessary to achieve climate neutrality should be written down so that they are sufficiently clear and comprehensible for everyone. If not, we will be in a situation where everyone acts on their own and no integrated approach exists. While probably not achieving the result in this way, we would undoubtedly be expending a lot in terms of resources.

When resolving the climate petition, the Chancellor met with several parties involved and also discussed concerns related to social justice, entrepreneurship, energy, environmental protection, and several other topics. It became clear that the parties wanted security and a clear frame for action. It is much more complicated to answer the question who should do or restrict what in order to achieve the objective. Even the state does not seem to have an overarching view of this.

Changes related to consumption, transport and energy consumption are inevitable since by continuing in the same way it is not possible to reach a different result. Whether these changes are painful or not depends on the particular individual and their preferences.

When moving towards climate neutrality, some companies and fields must unfortunately also suffer damage, with many companies forced to close down their activities. Probably those disappearing from the market are producers for whose goods there is actually no vital need. This means that

climate neutrality will also be unpleasant for many. Yet it would be good if state officials or politicians, in fear of this unpleasant news, would not refrain from discussing painful issues with people. Since climate concerns us all, it is necessary that everyone should be aware of the objective as well as the steps needed to achieve this and the problems inherent therein. Changes as significant as this can only be implemented in society if a social agreement on this – or at least a common and understandable information space – exists.

Climate issues are seen as more relevant by young people who understandably see climate change as part of their lives. Parents also care about their children's future. Thus, people are prepared to make more effort for the sake of climate neutrality. In the future, the state will need a specific plan as to who should do what. All information about this should be presented clearly, matter-of-factly and without too much emotion, and in a logically reasoned manner.

International cooperation project on climate justice

During the last reporting period, the Chancellor's Office joined the "Let's Talk about Climate Justice!" project of the European Network of Ombudspersons for Children (ENOC). Children and young people participating in the project can have a say in debates on issues of the rights of children and young people and climate justice.

Twelve young people from Estonia aged 13– 16 participated in the project. Hanna Gerta Alamets, a member of the Youth Environment Council, explained to young people what climate justice means. Fashion designer Reet Aus showed how she creates and produces new clothes out of textile leftovers from the clothing industry. Young green activist Johanna Maria Tõugu spoke about how young people can act in the name of climate justice. At the Mondo non-profit association, the card game climate school was played together with representative of the youth movement Fridays for Future Eesti. Finally, young people visited the combined heat and power plant of the Utilitas energy group in order to learn about renewables and bioenergy.

Based on these meetings, young people offered their recommendations about the rights of children and young people and climate justice. They emphasised that climate issues should be better reflected in curricula, so that children and young people could better understand climate change and its effect on the future of children and young people and so that they would learn to take responsibility. In

the opinion of young people, support should be provided to schools in order to offer more climate-friendly school food (for instance one vegetarian food day organised every week) and less school food would be wasted. Young people also found that, in the name of climate justice, several movements and initiatives need more opportunities for cooperation so as to enable their activities to exert a stronger impact (e.g. a Eurovision of green ideas).

With the help of an instructor, a graffiti and Instagram feed will be prepared. Two young people attended the meeting of ENOC youth counsellors in Bilbao in order to present recommendations by young people in Estonia. By taking into account opinions from young people from several countries, European Ombudspersons for Children prepare proposals for international organisations and decision-makers in their own countries.

Dams

The Chancellor has investigated the possibility of "cohabitation" of cultural resources and nature conservation since as early as 2015 when she submitted to the Riigikogu a proposal on amending the Water Act. The Riigikogu introduced an amendment to the Act that gives the Environmental Board the right and option to consider whether building a fish pass to a dam should be required. If essential cultural values exist at the dam with which a fish pass would be incompatible, then it may be decided not to build it.

For instance, the law allows a derogation in order to preserve a historic watermill and its neighbourhood. Unfortunately, environment officials have not deemed it possible to apply this derogation. Rather, they have chosen the tactics of procedural attrition of persons using the dam. Officials request studies and analyses as well as supplements to and repeated amendment of documents already drawn up. Such practice contravenes the principle of good administration. Parties to proceedings have also repeatedly had to have recourse to the court in order to protect their rights.

During the past seven years, persons involved with several dams and presenting different views have repeatedly written to the Chancellor and expressed dissatisfaction about the state's activities. Users of dams complain against the state because officials request essentially analyses and documents that should prove that using a dam under current conditions is impossible. Understandably, users of a dam are not willing to pay for drawing up such documents or participate in drawing them up.

Fortunately, under court pressure the state itself has begun to analyse the status of historic dams and also bears the relevant expense. Thus, preconditions exist for the state to obtain the data necessary for decision-making. On the other hand, interest groups and also some officials representing that mentality have found that in the event of a clash between several essential public interests the most important one is environmental protection and the rest should be set aside.

In such a situation a deadlock easily develops. Environmental and cultural resources both need protection and naturally an official usually feels their own field to be closer to their heart. So, it seems to be futile to hope that where an official is faced with several essential public interests – one of which concerns their field of activity and the remainder the activity of some other agency – then a decision is made which equally values all the essential public interests and tries to find a compromise between them. Rather, it tends to be the case that for a conservationist the most important value is nature protection while a heritage protector considers heritage protection to be the overriding goal.

In these situations, too, the state must resolve the situation without significant delay. Under § 49(2) of the Government of the Republic Act, such issues must be submitted to the Government for resolution. It is of course true that the Government might not resolve the issue so that all the agencies concerned obtain complete protection of interests within their area of administration. It may happen that the Government prefers nature to heritage protection, or vice versa. Or that both nature and heritage must somewhat yield to an entirely different public interest. This is inevitable but at least the issue is resolved and life goes on.

Instead of wrangling between agencies, officials can substantively contribute to their field and protect it where no clash exists with other equally essential interests. The approach in resolving deadlocks should be a little wider: in one place there may indeed be fewer fish than expected but, on the other hand, a historic working watermill is preserved. In another place, again, the habitat for fish improved while a concession was made in terms of heritage protection. A result is always better than endless uncertainty.

Waste

Sorting of municipal waste

The Environmental Board decided that landfills must begin sorting municipal waste. This would shift the main responsibility for waste sorting from waste producers, collectors and waste transport operators to landfillers. In the Chancellor's opinion, there is not much merit in such reorganisation of responsibility. A landfill may indeed begin sorting mixed waste only once it has been transported to its gate but due to the poor quality of the resulting material eventually it will still have to be landfilled.

Problems with new administrative practice

The Chancellor informed the Environmental Board of her opinion that such reorganisation of work and responsibility does not fulfil its objective in the best constitutional manner. That is, Estonia must increase the volume of materials recovered from waste. If Estonia fails to achieve this objective, then – in addition to environmental damage – the state may also be faced with a fine imposed by the European Union.

The Chancellor drew attention to the fact that the 2019 and 2020 nationwide survey on sorting in Estonia and the 2021 National Audit Office report reveal that the poor state of affairs in waste recycling is not news for the state. Despite this, state supervision over the composition of landfilled waste has not improved or is not carried out at all. No effective measures exist to make local authorities comply with their duties and enable people to sort waste at home and conveniently hand it over to the waste transport operator. People's trust is betrayed and their right to good administration violated if they have made the effort to sort waste and duly paid for waste transport but the sorted waste still gets mixed in the process of transport and, instead of recycling, the material suitable for this ends up in a landfill.

The waste treatment chain is complicated and comprises several interlinked and mutually dependent segments: manufacturers, households (i.e. waster producers), transporters, sorting line operators, landfills, recycling organisations, and others. The activities of each participant in waste handling affect the activities of other handlers. The more households sort waste separately, the less follow-up sorting of waste is needed and the higher the likelihood that recycled materials are of good quality.

For several reasons, imposing additional duties on landfills might not be an appropriate solution for achieving the target numbers under the framework directive and the objectives under the Landfill Directive. One reason is that a landfill is the last chain in waste handling where mistakes made in the previous stages of handling can no longer be remedied. The problem is also that the Environmental Board wants to impose the duty on landfills without a sufficient transition period and in a situation where not enough measures have been taken to improve separate sorting and collection of waste in households.

No convincing impact assessment is available to prove that sorting waste at a landfill directly increases the volume of good-quality recovered material. Therefore, we cannot be certain of the necessity for the measure proposed by the Environmental Board. On that basis, imposing on landfills such a duty of follow-up sorting of waste might not be proportionate.

As long as no effective measures exist to improve separate collection of waste in households, narrowly imposing an additional burden on landfills breaches the principle of waste hierarchy. In line with this principle, all parties concerned must make the effort for the sake of waste reduction, recovery of existing waste and nature protection.

What next?

The Environmental Board reacted to the Chancellor's observations by granting a transition period to landfills. Landfills maintain environmental permits related to the requirement of follow-up sorting while the conditions of these requirements will be relaxed. The Environmental Board has also promised to refrain from fining landfills if they implement measures to bring their activities into compliance with the new requirements.

Since the relaxation offered by the Environmental Board is not based on an administrative or legislative act, the risk of the unforeseen remains.

As we know, Estonia lacks an economic plan and a legal framework to force local authorities to take better care of waste sorting and waste disposal. However, creating that plan and framework fall within the remit and tasks of the state. Attention to the problem was also drawn by the World Bank, which, at the request of the European Commission, analysed waste management in Estonia.

Protection of small lakes

The first impression may be that norms laid down by the European Union and Estonia ensure comprehensive protection of water bodies. So, it may be an unexpected revelation that small water bodies are unprotected against certain types of pollution and that certain pollutants may be discharged into water for which no limit values have been established.

Legal terminology related to water is complicated. Unfortunately, in the following paragraphs of the report we cannot completely avoid these terms since they are also used in the Water Act.

If a lake has not been included in a body of surface water then more relaxed rules apply to it than to lakes included in a body of surface water. Inclusion in a body of surface water means that the status of a water body is constantly monitored under the European Union framework directive and the status of the water body may not deteriorate.

Most water bodies in Estonia are not constantly monitored. Nor is the status of water bodies regularly monitored by the Environmental Board, so that no complete overview is available as to how clean or polluted are small lakes, including those where people like to go swimming.

In the case of Vana-Koiola lake, all these problems were clearly revealed. Some families live on the banks of this lake and the municipal care home is also there. Treated effluent from the care home is discharged into the lake but the lake is used by local people for swimming. Since the status of the lake has visibly deteriorated, a local resident asked the Chancellor to investigate whether discharging the care home's treated effluent into such a small lake is legal.

The investigation revealed that no one has any overview of the status of the lake. The state has granted a permit to the care home to discharge water into the lake but had completely failed to ascertain before doing so whether the lake's status would actually withstand such pollution. Since the volume of treated effluent is small, then in such cases the permit does not need to establish limit values for total phosphorus and total nitrogen content in the effluent. Both substances contribute to a water body's overgrowth.

Vana-Koiola lake is not included in a body of surface water. Under § 32(1) of the Water Act, the good state of those water bodies not included in a body of surface water must also be maintained.

The status of water bodies not included in bodies of surface water is good if the quality standards established under § 76(1) of the Water Act are not exceeded in water samples, and if the water body complies with the values of quality indicators established under § 61(4) of the Act. Thus, studies have to be carried out on compliance with the criteria.

In the course of operational monitoring by the Environmental Board, samples from the lake were taken on 28 September 2017 and 16 June 2021. Monitoring of the recipient water body was carried out in 2017 after issue of a permit for special use of water, so that its results could no longer affect the decision on issue of the permit. The results show that the status of the lake in 2021 was moderate (pH 7.9 and total nitrogen 0.71 mg/l). The indicator for total phosphorus 0.046 mg/l even refers to the poor status of water. Comparison of the results of the 2021 monitoring with the single monitoring carried out in 2017 reveals that even in 2017 the indicator for total nitrogen was 0.79 mg/l, i.e. the status of the lake was moderate. The indicator for total phosphorus was somewhat better in 2017. At that time, the indicator for total phosphorus 0.032 mg/l also corresponded to the status class "moderate", which is better by one quality class than in 2021.

Thus, during recent years the total phosphorus in the lake water has increased. Naturally, taking occasional samples is not enough to assess the overall status of the lake. However, based on the data collected, it could be seen that prior to issuing the water permit the state had failed to ascertain the status of the lake, and discharge of treated effluent to the lake has definitely not improved the status of the lake over the years.

A closer look at the results of analysis of the samples reveals that on several occasions the total phosphorus was high or very high (especially 2017–2019) and this was so even when other indicators complied with the requirements of the permit. Since no limit value has been set in the environmental permit for total phosphorus, the activities of the user of the treatment plant formally look as if meeting all the requirements. Despite this, the indicators for total phosphorus cited are still high. It is also significant that, based on the study carried out in 2021, the content of total nitrogen and total phosphorus in the lake indicates moderate or poor status for Vana-Koiola lake. Thus, one cannot ignore the concentration of pollutants not regulated by the permit in the treated effluent discharged into the lake.

The Chancellor asked Põlva rural municipality and the Environmental Board to cooperate and arrange the necessary studies to be able to assess the status of the water body and the reasons for deterioration of status. The Environmental Board needs data about the status of the lake in order to decide on the need to amend the environmental permit. More broadly, both Põlva rural municipality and the Environmental Board should be interested in the state and the public having relevant information about the status of the lake and in taking all necessary measures to improve the status of the lake.

In summer 2022, it was known that Põlva rural municipality will commission an expert assessment to ascertain the status of the lake, and the Environmental Board has kept an eye on the functioning of the care home's treatment plant during the last year. Based on available information, samples taken during this period complied with the requirements.

Children and young people

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

Since 2011, in Estonia, the function of the independent ombudsman for children is performed by the Chancellor of Justice who ensures that all decisions concerning children respect the rights of children and proceed from the best interests of the child.

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

The law presumes agreement between parents on matters concerning their child. However, no law or state coercion can mend human relationships. Yet it is in a child's interests that separated parents should try to find consensus on matters related to their child's living arrangements, maintenance and their contact with the child, and should make a joint effort for the sake of the child's well-being. In the absence of agreement, a dispute is resolved by the court, which must take account of the particular circumstances in its judgment and reach a solution that is in the best interests of the child. Recourse to the court should be a measure of last resort.

Reaching agreement between parents is supported by the national family mediation system, which became operational on 1 September 2022. The Chancellor had for several years been drawing attention to the necessity for such a system. Parents are offered a possibility to reach agreement on a child's living arrangements with the help of an impartial specialist both extra-judicially as well as at the initial stage of court proceedings.

Similarly to previous reporting periods, the Chancellor received a considerable number of letters about problems related to activities of kindergartens and schools. Several questions recur from year to year: for instance, people ask how quickly should a family get a kindergarten place, and parents are also interested in the conditions of the childcare service offered in substitution for a kindergarten

place. The Chancellor also checked regulations concerning admission to a kindergarten and found several shortcomings.

The Chancellor had to explain repeatedly that children with special needs enjoy the same right to attend kindergarten as other children. A suitable environment for their development must be created and necessary support provided, be it in the form of a support person, support services or other assistance. The Chancellor asked Tallinn city to revise the organisation of the support person service so that children in need of assistance actually do receive assistance. Hopefully, other local authorities also find these recommendations useful.

Very many petitions concerned the organisation of study under conditions of combating the spread of the coronavirus. For example, people asked about the lawfulness of introducing distance learning in schools, rules on participation in study and restrictions on organising school events. Numerous questions also concerned rapid testing of children and vaccination against Covid-19. Parents wanted to know who must provide consent for testing a child, what are the consequences of refusing testing, can a child themselves consent to their own vaccination, in what cases is consent provided by a parent, and what if parents' opinions on this diverge, and whether a school may urge children to be vaccinated.

In one way or another, several petitions concerned the relationship between a child and the state, for instance a child's data in national databases. These issues are not purely legal or technical but affect the rights of the child protected under the Convention, including a child's rights to social security and the right to have the child registered and given a name immediately after birth.

The Chancellor was asked to explain how to enter a child's data in the population register if the child was born at home and has no medical birth certificate issued by a maternity hospital or a midwife with training in giving birth at home. A temporary solution to the problem is offered by case-law (e.g. Tallinn Administrative Court judgment in case No 3-21-2840), but a systematic review is also needed of legislative provisions concerning registration of a child's birth.

As a result of the Chancellor's intervention, agencies also found a solution to two situations where a person taking care of the child was not the child's legal representative according to the population register, so that they were deprived of family benefits.

A happy development is that at the Chancellor's initiative the practice of searching children coming for a visit in prison is about to change. The Chancellor has repeatedly explained to prisons that children may not be forced to undergo a strip search. The court agreed with the Chancellor and considered such a measure to be unlawful (Tallinn Court of Appeal judgment in case No 3-21161). Unfortunately, changing the practice may still take time.

Under the leadership of the Chancellor's Office, preparations began for drawing up a children's report for the UN Committee on the Rights of the Child. With this report, in 2023 children and young people will submit an overview to the Committee about the situation of the rights of the child in Estonia. The children's report will be drawn up by ambassadors for the rights of the child of the Estonian Union for Child Welfare, assisted by advisers from the Children's and Youth Rights Department of the Chancellor's Office and staff of the Union for Child Welfare.

Parental care

Often the Chancellor is contacted by separated parents who are unable to reach agreement on matters related to contact with the child. To the majority of them, the Chancellor has recommended the national family mediation service. Parents who have failed to reach agreement are offered an explanation about the possibilities for recourse to the court.

Some parents have complained that the other parent's behaviour has worsened their relationship with the child and, for this reason, they have been unable to meet with the child for a long time. A child's alienation from a parent is a problem to which increasing attention is being paid and solutions sought both in Estonia and globally.

This spring the conference "Et lapsele jääksid vanemad" (Letting the child keep the parents) took place in the Chancellor's Office with participation of the globally recognised child rights expert Edward Kruk who also met with the Chancellor's advisers. At the same conference, the Chancellor spoke about concerns that people raise when contacting her.

Refusal to be in contact with a sick child

The Chancellor has also been asked whether a parent living separately from the child is entitled to refuse a meeting with the child set under the access arrangements if the child has been in close contact with a Covid-19 infected person.

The law does not prescribe any specific approach for contact with a child but in implementing access arrangements parents must take into consideration recommendations given to people in Estonia and applicable restrictions. If under applicable restrictions a child is prohibited from leaving their home, an attempt should be made to find other options for contact, such as by telephone or via a video call. Once the self-isolation obligation ends, an attempt should be made to return to the child's previous living arrangements.

Access to data in the e-school

The Chancellor was contacted by a mother who was annoyed that the children's father had access to the e-school environment. The justification given by the mother was that in educational issues she had the sole right of custody.

The Chancellor found that the right granted by the court to decide issues relating to the child's education does not mean that the other parent may be denied information about how their child is doing at school. A parent with a limited right of custody needs information about the child's life and situation, among other things, in order to enable meaningful contact with the child.

A parent's rights are restricted only to the extent and with regard to issues determined by the court. If a court order is not unequivocally clear, its content can be explained by the court. In the instant case, the rural municipality government and the school did discuss the situation with the judge before giving the father access to the child's data in e-school.

A child moving abroad

The Chancellor was asked whether one of the parents may move abroad with the child.

The Chancellor's advisers explained that parents have equal rights and duties in respect of their children. A child is entitled to personal contact with both parents, and the parents have the duty and right to be in personal contact with the child. Neither of the parents enjoying a joint right of custody

can decide on a permanent move abroad with the child. Determining a child's habitual residence is part of a parent's right of physical custody and parents enjoying the joint right of custody must decide on it together.

If parents fail to reach consensus on determining a child's residence, both parents may ask the court to decide. However, if a parent still takes a child to live abroad without the other parent's consent then the other parent may, under the Hague Convention on Civil Aspects of International Child Abduction, request the child's return by reference to the child's illegal removal.

Alternative care of a child staying abroad

The Chancellor was contacted by a person wishing to bring to live with them in Estonia relatives living in a substitute home abroad but failed to get authorisation for this from the foreign authorities.

The Chancellor's advisers explained that in the event of moving to live abroad everyone must take into account the fact that all that country's legislation will apply to them and disputes will be resolved in line with the procedures applicable in that country. A person's country of origin cannot intervene in the activities of foreign officials or administration of justice there. Estonian officials can only provide assistance and explanations.

In Estonia, international child protection cases are dealt with by the child protection department of the Social Insurance Board, which can provide advice on how to act in the event of problems with cross-border custody and guardianship and where to obtain legal assistance in such cases.

Infants in a safe house

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

Care for a child outside their birth family is called alternative care. At first, a child separated from their birth family may end up in a safe house. The Chancellor has found that a child should stay in a safe house as briefly as possible and infants should not be placed in a safe house at all.

Unfortunately, it still happens that children, including small children, have to live in a safe house for a long time. According to information for 2021 from the Ministry of Social Affairs, 233 children stayed in a safe house for over a month and 60 of them were under seven years old. Four infants lived in a safe house for longer than six months.

The Chancellor received information about a child who had been brought to a safe house at the age of one month and lived there as long as one year and seven months. The Chancellor passed on the information to the Social Insurance Board, which found several shortcomings in the activities of Tallinn Lasnamäe District Administration. The Social Insurance Board also reminded the district administration that a safe house can only be a child's temporary place of stay.

Hopefully, in the future similar problems can be prevented by the new organisation of the child safe house service, which the Social Insurance Board is currently preparing.

Children of prisoners

In recent years, the Chancellor has paid much attention to the possibility for convicted and remand prisoners to be in contact with their family and next of kin. In a summary of inspection visits to Viru and Tallinn prisons, the Chancellor emphasised that convicted and remand prisoners should also be able to communicate with their family via a video link. The Ministry of Justice drew up the relevant Draft Act.

The Chancellor asked the Ministry of Justice to also review those provisions which may impose unjustified obstacles to contact with family and next of kin. For instance, serious consideration should be given to whether it is justified to charge a fee for using rooms for long-term visits.

The Chancellor reminded Tartu Prison that prison staff must be able to establish good contact with prisoners' next of kin, in particular children, and that children's needs and interests should be taken into account when setting conditions for visits. During short-term visits, family members should not be separated from a prisoner by a glass partition, and small children should be able to take along a favourite toy to a visit.

For a long time, the Chancellor has been concerned about how a search of family members arriving for a visit is arranged. She has repeatedly explained to prisons that children coming for a visit may

not be forced to undergo a strip search. Tallinn Court of Appeal agreed with the Chancellor by holding (in case No 3-21-161) that this procedure was unlawful.

Unfortunately, Tallinn Prison has continued its unlawful activity even after the court judgment entered into effect.

Kindergarten and school

Preschool education

Several parents have contacted the Chancellor with the concern that a local authority has not ensured a kindergarten place although under the law this is the duty of a local authority. Under the Preschool Childcare Institutions Act, a rural municipality or city must provide a kindergarten place to every child at least one-and-a-half years old. A rural municipality or city has complied with its duty if it gives a child a kindergarten place within a reasonable time. In line with the case-law, in general a reasonable time is two months from the moment when the family applied for a kindergarten place.

Parents may not be placed in a forced situation where they have to find a place for their child in childcare because the local authority failed to offer them a kindergarten place. Under the law, a rural municipality or city may replace a kindergarten place for a child aged one-and-a-half to three years old with a place in childcare only when a parent agrees to it. If a local authority has failed to provide a kindergarten place on time and for this reason the family has incurred additional expenses (e.g. paid a higher childcare fee in comparison to the fee for the municipal kindergarten) then the local authority must compensate these expenses to the family.

The Chancellor explained the parents their rights and how to protect them in court.

Sometimes disputes arise from the fact that a family is offered a place at a kindergarten located too far from the child's home. The law does not definitely entitle a family to a place in a kindergarten of their choice, for example one located closest to their residence. However, a local authority must ensure a place in a kindergarten of its service district, i.e. a place should be offered in a kindergarten within the particular local authority's boundaries. Nevertheless, the local authority must bear in mind that the kindergarten service should be accessible to the family.

When resolving people's complaints, on two occasions the Chancellor also noticed problems in local authority legislation. In one case, the Chancellor found that Harku Rural Municipality Government regulation of 30 December 2015 on "The procedure for admission to and exclusion from preschool childcare institutions in Harku rural municipality" contravened the Constitution. The regulation enabled the rural municipality government, with parental consent, to replace a kindergarten place for a child aged one-and-a-half to three years old with a place in childcare if the municipality government could not offer the family a place in a kindergarten. This deprived a parent of the statutory possibility to choose between a kindergarten and childcare. The Chancellor asked the rural municipality to inform her how the municipality intended to comply with the proposal The rural municipality amended the regulation in line with the Chancellor's proposal.

In another case, the Chancellor found a conflict with the law in Haljala Rural Municipality regulation of 19 July 2018 on "The procedure for admission to and exclusion from preschool childcare institutions in Haljala rural municipality". The regulation contravened the law by imposing more extensive restrictions on obtaining a kindergarten place than laid down by law. Under the law, a child of kindergarten age is entitled to a place in a kindergarten if their parents so wish.

Ensuring kindergarten places to all children of kindergarten age within a reasonable time may indeed often be complicated but, in the interests of children and parents, a local authority must resolve the problem. After all, a rural municipality in general knows the number of children of kindergarten age. The Chancellor proposed to the rural municipality to bring the regulation into conformity with the law and the Constitution. The rural municipality amended the regulation in line with the Chancellor's proposal.

Going home alone from a kindergarten

A parent asked the Chancellor whether a kindergarten may impose its own requirements when a parent has applied to the kindergarten to allow their child to go home independently on certain weekdays and be home alone for a few hours.

According to the parental right of custody, a parent decides on the child's living arrangements while also having to consider whether the solution is safe for the child and in the child's best interests. If a parent finds that their pre-school-aged child is sufficiently independent and the home is near the kindergarten in a street with low traffic, so that the child could go home from the kindergarten on

their own, then allowing such an exceptional solution cannot be ruled out. However, this solution should certainly also be discussed with the kindergarten, which can advise the parent on these matters.

Although primary responsibility for a child lies with the parent, the kindergarten is also responsible for the child's life and health and, more broadly, for the child's well-being. Kindergarten staff must intervene if they see that a parent's decision clearly contradicts the child's best interests. If the kindergarten believes that it is dangerous to allow the child to go home alone from the kindergarten then the kindergarten may not let the child go home alone.

Since it is not possible to exhaustively regulate all life situations in legislation, such issues must be resolved by taking account of specific circumstances and the child's maturity.

General education

Closing a school building

The Chancellor was asked whether Lääne-Harju Rural Municipality Government complied with the principle of good administration by discontinuing instruction in the Lehola school building of Laulasmaa School. In addition, the petitioner wanted to know whether children and their parents are entitled to have a say in the matter of changing the place of instruction, similarly to having the right to a say in the case of a school reorganisation. The Chancellor found that Lääne-Harju rural municipality did not err against the principle of good administration when preparing to discontinue instruction in the Lehola school building.

The Chancellor was also contacted by parents of pupils at Narva Soldino Upper Secondary School since they were dissatisfied with the plan for reorganising the school. The Chancellor explained to the parents that the draft education development plan drawn up by Narva City Government has been introduced to the public and everyone interested has been able to submit written proposals to it. By the time of replying to the petition, no decision had been adopted on the reorganisation of Narva Soldino Upper Secondary School. Accordingly, no parental or children's rights had been violated in this connection.

Organisation of school transport

A local authority has the duty to organise a child's transport to and back from the school assigned to the child based on the child's residence. Transport must be safe and the child's age must be taken into account in organising it. The child must be able to reach the school on time while not being forced to hurry too much or spend excessive time on public transport. The child must also be able get back home within a reasonable time after the school day.

When planning a child's school route, consideration should be given to how long they have to walk, whether the route to a bus stop or school is safe and whether the bus stop has a shelter offering cover from inclement weather.

Where necessary, a local authority must consider using individualised solutions. One option is to propose to a parent that the parent takes the child to school and back home on a contractual basis. That is, the parent enters into a contractual relationship with the rural municipality as a service provider and not as a parent. A local authority has failed to arrange transport if a parent themselves is forced to take the child to school (see the Chancellor's recommendations to Antsla Rural Municipality Government and Kehtna Rural Municipality Government).

The right to education of a child staying in the country without a legal basis

The Chancellor was described a situation where the Police and Border Guard Board (PBGB) prohibited a child staying in Estonia without a legal basis from attending school and took the child back home after it had reached the school.

The Chancellor found that by doing so the PBGB had violated the law and the child's rights. The PBGB is not competent to assess whether a child is entitled to attend school.

Every school-aged child in Estonia is entitled to education. The Chancellor also explained to the child's mother issues related to both her own and the child's legal status.

Organisation of instruction at school

Distance learning

The Chancellor was asked to assess whether transfer of all schools in Tallinn to distance learning was lawful.

The Chancellor replied that since the beginning of academic year 2020 she has repeatedly explained to parents, pupils as well as teachers on what legal grounds and who is entitled to apply distance learning in schools (see the annual report for 2020/2021). The problem was that in 2021 the legal framework was the same as in 2020 but the situation to which the rules applied had significantly changed as compared to autumn 2020.

Distance learning as a health protection measure is allowed in principle, but only if its use is justified by the actual (epidemiological) situation. Accordingly, a school can only proceed from its own specific situation when implementing distance learning, including information about the proportion of those vaccinated against Covid-19 and those recovered among pupils and teachers. Neither the school director nor the owner of the school is competent to assess the spread of the virus and the anticipated hospital burden arising from this.

The Chancellor was also asked to assess implementation of distance learning in schools in Pärnu city. The Chancellor found that, formally, Pärnu city as the owner of the schools did not adopt a legislative act requiring schools to apply distance learning. The decision on transfer to distance learning had to be made by each head of school themselves. Yet it should be kept in mind that a head of school may take an instruction given by the owner of the school as obligatory even though formally this is not so. The owner of the school and the Health Board informed heads of schools in a manner that may have inclined them to apply distance learning while at the same time not taking responsibility for this.

Rapid testing of pupils at school

The Chancellor was often asked about rapid testing of pupils.

The Chancellor's advisers explained that no pupil can be obliged to do a rapid coronavirus test. If a child or parent does not consent to testing, the school must be notified about this. A parent's application for refusal may be written in free form. If for some reason a parent has not been able to notify the school about their refusal but the child does not wish to take a rapid test at school then it is sufficient that the child simply does not take the test. The child cannot be sent home because of refusing the test.

Pupils themselves carry out a rapid test by following the instructions. At home, assistance is provided by a parent and at school by a teacher, if necessary. Self-testing with a rapid test is not a healthcare service which should be provided by a healthcare professional. Therefore, the provisions of the Law of Obligations Act regulating provision of healthcare services are not applicable to self-testing.

No mandatory form has been laid down for obtaining consent for rapid testing. It is important that both children and parents have been informed in advance about testing, and both children and parents can always refuse testing.

Choice of curriculum

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

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

Organisation of tests

The Chancellor was asked about rules on organising tests at school.

It is clear that a pupils' study load must correspond to their age and capabilities, and testing may occur up to three times a week. Rules on organising tests have been established with a view to leaving pupils sufficient time for rest and hobbies. Pupils must also be enabled to acquire the necessary knowledge and skills in the best possible way. If the study load exceeds the admissible threshold, then a child may start lagging behind and it may also have a negative effect on their mental health.

The Chancellor explained that in planning tests teachers must also keep in mind the statutory requirements. A test is defined as a written paper to check study results at the end of a quarter of a

school year or upon completion of a course. It is inadmissible to have pupils take more than three papers a week which in substance correspond to a test.

Home schooling at parental request

Parents contacting the Chancellor expressed dissatisfaction with the organisation of their child's home schooling.

It is clear that home schooling is implemented in accordance with an individual curriculum, and responsibility for home schooling lies with the parent. An individual curriculum must set out the necessary learning outcomes and agreements as well as when and how the school checks them (see the Chancellor's opinion).

Implementing home schooling may not endanger a child's right to education and when considering a parent's application for home schooling the teachers' council must primarily assess whether the parent is capable of properly organising provision of education. If according to the school's assessment a pupil might not acquire the necessary knowledge and skills through home schooling, then no home schooling may be applied.

Basic school graduation conditions

The Association of Estonian Language Teachers asked the Chancellor to assess a proposal by the Ministry of Education and Research under which graduating from the basic school would no longer depend on the results achieved at the final examination.

The Chancellor explained that a pupil's development and academic progress can be assessed on the basis of various assessment systems. Under the Basic Schools and Upper Secondary Schools Act, the conditions for graduating from the basic school are established by the Government in the national curriculum. The Riigikogu has not laid down a threshold for passing basic school final examinations. Laying down that threshold is an education policy choice (see the Chancellor's opinion).

For a child at the age of compulsory school attendance, acquiring basic education is both a right and duty. Good education is supported by good teachers, and schools must be able to use appropriate teaching aids and methods and the school environment must be safe for pupils. Under these conditions, it is possible to offer young people knowledge and skills with the help of which they can

continue acquiring general or vocational education as well as otherwise participate in society in line with their age and capabilities.

Ensuring well-being

The right of a parent to participate in school events

Several parents expressed dissatisfaction that schools prohibited them from participating in events intended for parents, justifying this by the need to combat the spread of the coronavirus.

Measures for combating the epidemic spread of infectious diseases are established either by the Government of the Republic or the Health Board. Despite the spread of the coronavirus, in the academic year 2021/2022 the state did not consider it necessary to restrict parents' participation in events intended for them.

The Chancellor reminded the schools that measures for protecting the health of pupils and staff must be established by internal school rules, and when establishing the requirements the school must also bear in mind the rights of parents. A parent is not a third party in relation to a school since it is in the child's interests that the school and parent cooperate. Thus, a parent cannot be sidelined from school activities.

A parent is entitled to receive information and explanations about organisation of school life and the rights and duties of pupils. A parent is also entitled to attend a parents' meeting. Direct participation is not replaceable by subsequent publication of the minutes or an e-mail sent by a teacher. When organising the first year's school ceremony, the school must also keep in mind that allowing a parent to a festive event is mostly in the child's interests. When planning a school ceremony or a parents' meeting, the school may consider applying precautionary measures which are less restrictive on parents.

School bullying

The Chancellor was informed that Russia's military aggression against Ukraine has caused such considerable tensions at school that they have even led to bullying based on children's ethnicity and views.

In her reply, the Chancellor had to note that unfortunately this was not the only signal to this effect. She explained to the petitioner that, in cooperation with the Ministry of Education and Research, schools and teachers an attempt is being made to resolve such cases as swiftly as possible and prevent them in the future. The Chancellor also explained in more detail how to behave in these situations and where to find help.

Another petition also concerned school bullying. A parent asked whether activities in the classroom may be recorded, for example, by a camera or other device with the aim of proving or preventing inappropriate conduct by a teacher. The Chancellor explained that even though parents have a relatively free hand in raising and guiding their child, parents in their activities must always respect the child's rights. Monitoring and recording a child's every word would violate their right to privacy and amount to misuse of power. Moreover, this may also amount to private surveillance of a teacher, which is prohibited and punishable.

In order to prevent situations endangering the safety of pupils and school staff, or to respond to such situations, surveillance devices may only be used by the school itself. At the same time, the school is not allowed to monitor lessons in the classroom and parents cannot request this from the school nor can they consent to this (see the guidelines from the Data Protection Inspectorate on the use of cameras, paras 11 and 13).

Children and health

Article 24 of the UN Convention on the Rights of the Child lays down the right of the child to health. This means not only that a child is entitled to medical treatment and healthcare services but also the child's right to grow in an environment conducive to their development in the best possible way. Thus, the right to health includes a child's physical, emotional and social well-being.

The state must ensure that children's living environment is healthy and safe, so as to be able to avoid illness, injuries and death. At the same time, neither the state, doctors or anyone else can ensure good health to someone who themselves fails to take care of their health. Both children and adults must look after their health.

The Convention on the Rights of the Child links the child's rights to their capacity to reason. The older a child and the better their capacity to reason, the more right they have to take independent

decisions and direct their life. Naturally, a child cannot be required to take full responsibility for their health. The primary responsibility for ensuring a child's rights and well-being lies with the parent. Therefore, it is important that a parent supports the child in making responsible and conscious choices. The law requires a parent or an adult raising the child to discuss with the child issues concerning their care and education while taking account of the child's age and maturity, and explain to the child how they can look after their health so as to reduce and prevent risks.

If a child's behaviour harms their health, they are deemed to be a child in need or in danger and adults have the duty to intervene to help the child. In extreme cases where a child's behaviour endangers their own health, and this danger cannot be eliminated by any other measure, the child can be taken to a closed childcare institution.

Consent for a child's vaccination

During the reporting year, the Chancellor was asked on several occasions whether parental consent is required to vaccinate a child at school. People also asked whether schools may exert pressure on children to consent to be vaccinated against Covid-19.

The Chancellor explained that the same rules apply to vaccination against Covid-19 as to other vaccinations. Vaccination is voluntary both for adults and children.

A patient may be examined and healthcare procedures administered to them (including vaccination) only with their consent. This means that a patient must be informed about the purpose of medical procedures as well as possible risks and consequences. Then the patient themselves can decide whether to provide consent or refuse.

Parental consent must be sought to vaccinate a minor patient, but the child themselves must also approve the vaccination (see paras 17 and 18 of the guidelines on child patients). However, a doctor who deems that a young person has sufficient capacity to reason must proceed from the young person's own decision. In that case, a parent may not decide on the child's vaccination.

The Chancellor has been asked how a young person's capacity to reason is assessed. A child's capacity to reason must be assessed similarly to an adult's capacity to reason. A patient with the right to decide and having the capacity to reason understands the nature of their illness and the choices they are faced with. They understand the information provided to them and are capable of

drawing conclusions from this. A patient must also be able to come to a decision based on the information received and their own value judgements, and notify the healthcare professional about it. The greater the risks entailed in a decision, the greater the capacity to reason presumed for making the decision.

Age may be one criterion for assessing a child's capacity to reason, but it cannot be the only criterion. A child's capacity to reason must be assessed on the basis of the specific situation and the specific child, because children reach maturity and independence at different ages. If a child comes to a doctor's appointment together with a parent or with parental approval, and both child and parent are unanimous about the issue needing to be decided, then the doctor has no reason to assess the child's ability to reason (see in more detail the guidelines).

A school nurse vaccinates children at school in line with the Minister of Social Affairs regulation, under which the consent of a parent or other legal representative is asked for vaccination.

Under the Minister of Social Affairs regulation, the school informs a parent about planned vaccination at least one week in advance and also asks for their consent. Consent or refusal is recorded in writing and is maintained among the pupil's health documents. If a pupil's vaccination is held off for some reason, the school healthcare provider proceeds from a parent's previous consent and informs them about the new time for vaccination at least one week before it takes place.

If one of the parents consents, a school nurse may also presume consent from the other parent. If the other parent refuses, the child cannot be vaccinated on the basis of consent by one parent.

Under current legislation, a school cannot oblige children to be vaccinated but it may provide information about organisation of vaccination and study at the school. For instance, the rules on quarantine for a pupil who was a close contact depended on whether the pupil was vaccinated or not and whether they allowed themselves to be tested for the coronavirus. When offering explanations, school staff must remain as neutral as possible. The school may not actively promote vaccination. Nor may the school allow unvaccinated pupils to be bullied at school.

Explaining vaccination-related issues to a child

A parent enquired whether a doctor explains to a child the issues related to a vaccine against Covid-19. A doctor is competent to provide information to a child and their parents by proceeding from the best available knowledge.

Both at school, at a general practitioner's appointment as well as elsewhere a healthcare professional must take into consideration the principles of child-friendly healthcare, regardless of who provides consent for the child's vaccination. A child is entitled to participate in decision-making concerning their health and medical treatment, even if consent is provided by a parent.

Liability for complications due to vaccination

A parent asked the Chancellor who is liable for complications arising as a result of vaccination. Under the Law of Obligations Act, healthcare services must at the very least conform to the general level of medical science. If necessary, a patient must be referred to a specialist doctor. In the case of vaccination, its temporary and long-term contraindications must be identified.

Pharmacovigiliance is carried out by the State Agency of Medicines. In order to enable the State Agency of Medicines to have sufficient information to perform its task, the law lays down the procedure for notifying side effects of medicines to the State Agency of Medicines. Under this procedure, the State Agency of Medicines also receives information about side effects through the doctor or nurse organising vaccination. The State Agency of Medicines, in turn, must notify the Health Board about the side effects of vaccines (see the Medicinal Products Act). Information about the side effects of medicines (including Covid-19-vaccines) is available on the website of the State Agency of Medicines.

At the time when the parent sent their petition, Estonia had as yet no available vaccine insurance system which also enables claims for compensation of damage arising from vaccination against Covid-19. The vaccine insurance system was created in spring 2022.

Children and healthy diet

The Chancellor was asked to specify which legislation imposes on children the duty to eat healthily and how children's rights are linked to these duties. The Chancellor's advisers explained that a child's

duty to maintain their health is not a legal duty. No international instrument contains the duty in this form.

Human rights instruments mostly set out people's rights and freedoms but not duties. However, these rights and freedoms are not unlimited and duties can be viewed primarily through responsible exercise of rights.

Sale of energy drinks to children

The Chancellor was contacted by a parent with a concern that children can buy energy drinks from vending machines. The Chancellor explained that the sale of energy drinks to minors is not prohibited under Estonian law. Nevertheless, several companies have followed the best practice on marketing energy drinks under which they have refused to sell energy drinks to minors. Not all kiosks, small shops and other similar places have taken up the practice, so that vending machines are not necessarily the only place where children can buy energy drinks. However, everyone can call on energy drink sellers to follow the best practice.

Children with special needs

Under the law, all children in Estonia who are one-and-a-half to seven years old must receive a kindergarten place. This includes children with health problems for whose assistance a kindergarten must offer various support services. Unfortunately, the actual situation is different.

For instance, the Chancellor was contacted by a parent whose child with diabetes could not attend kindergarten equally with others. Although all problems were resolved over time, the Chancellor analysed the kindergarten's activity during the two previous school years and found that the kindergarten had failed to ensure the child a possibility to use the kindergarten place in line with statutory requirements. For a long period, the child could only attend kindergarten half a day at a time, and on several occasions the kindergarten asked that the child be left at home because the group teachers who were used to dealing with the child were not at work that day.

Since the family had on several occasions contacted the Tallinn Education Department for assistance, the Chancellor also analysed the lawfulness of the Department's activities. In the Chancellor's assessment, the activities of the Tallinn Education Department were not sufficiently productive in

order to enable the child with a diabetes diagnosis to continue attending the kindergarten without impediments and in a manner appropriate to the child. For instance, the Department failed to assess whether the kindergarten's activity complied with legislation. Nor did the Department try to resolve the situation when kindergarten teachers needed additional assistance to support the child but the city district administration refused to assign a support person to the child. The Department violated the principle of good administration when it failed to answer the parent's questions. The Chancellor recommended that Tallinn Education Department should avoid such mistakes in the future.

The Chancellor was also asked for assistance by a parent where a kindergarten had refused to admit their children with special needs unless accompanied by a support person. The parent was concerned that the kindergarten had also partially failed to comply with the recommendations given by the external advisory team of the Education and Youth Authority (Rajaleidja) under which the assistance of a special educator and a speech therapist was prescribed for the children.

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

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

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

the organisation of the support person service so that children in need of assistance actually do receive assistance.

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

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

The Chancellor also investigated a case where a police patrol had to take a girl suffering from mental health problems to a psychiatric hospital but in doing so repeatedly used forcible means of restraint.

In view of the specific situation, the Chancellor did not consider the conduct of the police patrol clearly excessive. However, the Chancellor found that the need for repeated use of direct coercion or special equipment could be reduced if health, social and law enforcement authorities cooperated more closely. In the event of exceptional cases, it would be reasonable if the police discussed the situation with the attending doctor of the person in need of assistance. The doctor can advise how the police could calm the person down so as to minimise interference with that person's rights. It would also be of assistance if representatives of the Police and Border Guard Board were to attend meetings of social work and health specialists.

Inspection visits

During this reporting year, the Chancellor inspected the activities of the Valgejõe Study Centre of Maarjamaa Education College (*Maarjamaa Hariduskolleegium*). Maarjamaa Education College operates at two study centres. The Chancellor visited the Emajõe Study Centre during the previous reporting year.

Maarjamaa Education College is an institution intended for living and study by young people referred to a closed childcare institution under court order so as to enable their all-round development and successful coping with support from the childcare institution without harming themselves and others.

Both study centres use modern premises. Staff at the Valgejõe Study Centre of Maarjamaa Education College have been able to establish a good relationship with the children at the centre. The children were particularly satisfied with the psychologist.

The Chancellor asked the centre to ensure that young people studying there would receive the necessary therapy and support from a psychologist speaking their mother tongue, and that assistance from a psychologist is offered as soon as possible after a young person's arrival at the centre. A careful approach is needed in cases where, for reasons of security, a pupil has been placed either in a seclusion room or for a longer period accommodated separately from other young people. For a young person separated from others for a long time, the study centre must have prepared a medical treatment and rehabilitation plan to help them blend into the company of other young people as quickly as possible.

Young people considered it very important that they had been able to use their mobile phones at the centre, especially when direct meetings with the family were restricted (e.g. because of the spread of the coronavirus). The Chancellor appealed to the staff at the centre that the rules for use of the telephone and contact with the family must be clear and fixed and must be complied with. The minimum time allowed for using the phone may not be reduced for the purpose of influencing a pupil, and home visits may not be restricted.

A child's data in registers

During the reporting year, the Chancellor also had to deal with issues concerning a child's personal data.

The Chancellor was asked for assistance by a parent who had been deprived of family benefits because, according to the population register data, they had no right of custody in respect of their child. At the request of the rural municipality, the court had restricted the parent's right of custody by way of interim protection and assigned a temporary guardian to the child for the duration of judicial proceedings. However, the municipality failed to initiate the main judicial proceedings for reaching a decision on the merits, nor did the municipality inform the court about the change of circumstances. Therefore, after expiry of the deadline for interim protection set by the court order, confusion arose as to who had the right of custody of the child.

After the Chancellor's intervention, the authorities reached consensus regarding the interpretation of laws: once the interim protection order restricting a parent's right of custody loses validity due to expiry, and no final order has been made, the parent's right of custody resumes. The Chancellor noted that if a municipality wishes to have recourse to the court to restrict a parent's rights, then they must comply with all the statutory principles.

Another case also concerned a situation where confusion reigned about a child's legal representative and recipient of family benefits. By way of interim protection, the court had appointed temporary guardians for the child for half a year but during this period had not managed to make the court order in the main case. For two and a half months the guardians were deprived of parental benefit and allowance for a child under guardianship, even though they took care of the child during the entire court proceedings and by court order terminating the judicial proceedings the court also appointed them as the child's guardians.

The Chancellor's advisers helped the Social Insurance Board to find a solution to the unfair situation, enabling retroactive payment of parental benefit to the guardians for the period remaining between the interim protection order and the final court order. However, retroactive payment of the allowance for a child under guardianship could not be paid. In addition, the Chancellor drew the attention of

the chair of the court to the fact that a delay in appointing a guardian may deprive the guardian of allowances or benefits.

The Chancellor was asked for assistance in identifying a father. The child was born while the father was on a foreign mission, so that he could not officially accept his paternity here on site. However, the child's parents wanted their child not to be registered as the child of a single parent in birth documents. With the help of the Ministry of the Interior and the office of Tallinn notaries Erki Põdra and Kätlin Aun-Janisk we managed to help this family by using remote identity verification.

The Chancellor was contacted by several parents who could not register in the population register their child born at home. The impediment was that parents and local authorities and the ministry were of different minds as to the required medical certificate under which a child's data can be entered in the register. The Chancellor explained to the parents the possibilities for protecting their rights through extra-judicial challenge as well as judicial proceedings.

By now, a court judgment has entered into effect by which the court stated that a local authority must examine an application for registration of the birth of a child born at home even if the parents have no medical birth certificate from the maternity hospital (Tallinn Administrative Court judgment in case No 3-21-2840). The court also noted that norms concerning registration of a birth should be revised because the primary purpose of the restrictions should be to ensure the accuracy of the data. Families who have decided to opt for an unassisted home birth cannot be "punished" for this with unnecessarily complicated bureaucracy.

Problems also arose in connection with registration of a child's residence data. The Chancellor was contacted by a mother who submitted a notice of residence for herself and her two children in the electronic population register but failed to register her own and both her children's new residence. The impediment was the technical solution which does not enable the e-population register to transfer a child's notice of residence to the local authority if the other parent has failed to consent through the e-population register. The system automatically cancels the application after 30 days but the person submitting the notice of residence is not notified of this. This leaves the person with the mistaken impression that the local authority has received the notice and is dealing with it.

The Chancellor recommended that the technical solution for the e-population register should be changed so that, regardless of shortcomings in the notice, the notice of residence posted by a person

still reaches the local authority. In addition, the Chancellor recommended carrying out a comprehensive analysis of the whole procedure for submission of a notice of residence and deciding on it - in particular the part concerning submission of notices of residence that contain shortcomings.

Prevention and promotion

Another of the Chancellor's tasks is awareness-raising of the rights of children. As Ombudsman for Children, the Chancellor prepares 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.

International cooperation project on climate justice

During the last reporting period, the Chancellor's Office joined the "Let's Talk Young, Let's Talk About Climate Justice!" project of the European Network of Ombudspersons for Children (ENOC). Children and young people participating in the project can have a say in debates on issues of the rights of children and young people and climate justice.

Twelve young people from Estonia aged 13– 16 participated in the project. Hanna Gerta Alamets, a member of the Youth Environment Council, explained to young people what climate justice means. Fashion designer Reet Aus showed how she creates and produces new clothes out of textile leftovers from the clothing industry. Young green activist Johanna Maria Tõugu spoke about how young people can act in the name of climate justice. At the Mondo non-profit association, the card game climate school was played together with representative of the youth movement Fridays for Future Eesti. Finally, young people visited the combined heat and power plant of the Utilitas energy group in order to learn about renewables and bioenergy.

Based on these meetings, young people offered their recommendations about the rights of children and young people and climate justice. They emphasised that climate issues should be better reflected in curricula, so that children and young people could better understand climate change and its effect on the future of children and young people and so that they would learn to take responsibility. In the opinion of young people, support should be provided to schools in order to offer more climate-friendly school food (for instance one vegetarian food day organised every week) and less school

food would be wasted. Young people also found that, in the name of climate justice, several movements and initiatives need more opportunities for cooperation so as to enable their activities to exert a stronger impact (e.g. a Eurovision of green ideas).

With the help of an instructor, a graffiti and Instagram feed will be prepared. Two young people attended the meeting of ENOC youth counsellors in Bilbao in order to present recommendations by young people in Estonia. By taking into account opinions from young people from several countries, European Ombudspersons for Children prepare proposals for international organisations and decision-makers in their own countries.

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

By acceding to the UN Convention on the Rights of the Child in 1991, Estonia assumed the obligation to ensure the rights of the child for all children in Estonia. Implementation of the Convention is monitored by the Committee on the Rights of the Child to which countries must submit regular reports about the situation of the rights of children. Based on these reports, the Committee assesses how the rights of children are guaranteed and makes recommendations to the country for improving the situation.

In 2023, the Committee on the Rights of the Child will once again expect a report on the situation of children's rights in Estonia. Apart from the government, the Chancellor of Justice will also prepare an overview of the situation of children's rights. On the initiative of and with support from the Chancellor, this time children and young people themselves will also submit an overview to the Committee on the Rights of the Child about how children in Estonia live and what else needs to be done for children.

The children's report will be drawn up by ambassadors for the rights of the child of the Estonian Union for Child Welfare. The working group comprises seven ambassadors for the rights of the child. They organise meetings with children in different places in Estonia and gather children's ideas. Subsequently, the working group will prepare an overview of the situation of the rights of children in Estonia based on ideas and opinions expressed by children and young people.

Under the guidance of the Chancellor's advisers and staff of the Union for Child Welfare, children themselves can decide how they gather ideas from other children and present them to the

Committee. The children's report to the Committee on the Rights of the Child will be drawn up in 2023. The Chancellor's adviser Andra Reinomägi has written in more detail about preparing the children's report in the webzine "Märka Last".

Prevention of ill-treatment in sport and hobby activities

The Chancellor received letters from several parents who were dissatisfied with the way a trainer (or instructor) treated their child.

It is clear that no justification whatsoever can exist for ill-treatment of children, regardless of where or in what form it occurs. At the same time, in sport or hobby activities it is not always easy to recognise ill-treatment.

Based on the definition of ill-treatment under the Child Protection Act, treatment of a child in any manner which endangers their mental, emotional or physical health can be considered ill-treatment. While everyone can imagine what physical ill-treatment is, recognising mental ill-treatment and differentiating it from instruction or training requiring effort is more complicated. The code of conduct for sports staff contains examples as to what a trainer or instructor may do or should not do. According to the code, mental ill-treatment includes, for example, humiliation and mockery. Constant criticism or total lack of feedback can have an equally negative effect on a child. Mental ill-treatment causes a state of tension which may lead to serious or irreversible harm to a child's emotional development (in more detail, see the code).

Possible risks can be recognised and prevented by an age-appropriate conversation between parent and child about the nature of ill-treatment. Ill-treatment can also be prevented if sports clubs, parents and children discuss the ethical basis for activities. It is beneficial for everyone involved if prior discussion has taken place and rules have been defined as clearly as possible as to what is allowed and what not in a specific sporting activity and how to behave in ambiguous situations.

A parent could also previously check the background of the people with whom the child has contact in the course of sporting or hobby activities. Under the Child Protection Act, a person who has been punished for certain criminal offences (e.g. physical abuse and sexual offences against a child) may not work with children. The criminal record of a person dealing with children must be checked by their employer, but a parent can also check in the criminal records database (as of 1 October 2022

this is for free) whether their child's trainer or instructor may have a criminal record. A parent may also check whether a trainer or instructor has acquired the profession of trainer or other specialist. This information is available from the register of professions, and about trainers also from the sports register. A professional qualifications certificate does not turn a trainer or an instructor into an ideal person but assures that the person's knowledge, skills, experience and attitude necessary for work have been verified.

If a child tries to signal that something has happened to them, it is necessary to listen to the child carefully, believe them and acknowledge them for sharing their concern. An adult must clearly tell the child that they are seeking help. This means the need to contact people who are able to offer the child professional assistance. First of all, it is possible to consult with specialists on the child helpline (116 111).

A parent may not keep information about possible ill-treatment to themselves. The police must be notified in the event of suspicion that a criminal or misdemeanour offence has been committed in respect of a child. A possible case of ill-treatment must also be notified to the sports club. It is reasonable that a parent should first contact the trainer or their employer to discuss complaints rather than turning to the (social) media.

Sports clubs should take seriously all reports about ill-treatment. Recognition is due to all the organisations that have prepared a procedure for dealing with cases of ill-treatment and also follow it in practice. If necessary, a sports federation or also the Olympic Committee or a foundation responsible for sports ethics can assist. Everyone must stand up for safe sport.

Often, a child and parent are hobbled by fear that public expression of any suspicion would terminate a young person's cooperation with a recognised trainer or a good sports club. However, to spare children and avoid even bigger possible traumas in the future, it is necessary to voice any such suspicions.

Contractual disputes may also arise in connection with cases of ill-treatment, for instance if a parent wishes to terminate a contract and stop paying for training sessions. Mostly these contracts involve a private law relationship between a child's adult representative and an undertaking focused on sports. If possible, disputes should be resolved by agreement. However, both parties may always also have recourse to the court to protect their rights.

Sport – especially competitive sports – presents demands on everyone involved. Success comes through effort. A child, parent and trainer must together set the aims for engaging in sport. In doing so, it must be clear whether a child attends training because of the joy of movement and spending free time or whether the objective is to succeed and achieve results. Efforts must be made and time is required accordingly. A trainer must justify the trust of a child and parent, be demanding and persistent, while also being honest and, if necessary, direct. Good trainers do not shout or hit, they are able to motivate young people differently: safely and without ruining the joy of sport, maybe sometimes even using humour.

Information materials, training and events

The Chancellor's Office tries to contribute to promoting the field of child protection by organising training sessions for specialists.

Over the years, the Chancellor's advisers have prepared a variety of video and printed materials introducing the rights of the child. Among other things, police officers and prosecutors have been offered training events on child-friendly proceedings and guidelines for parents have been drawn up offering an overview of the rights of the child on first contact with the police.

Training events and information material on these topics are still necessary because unfortunately it still happens that a child's rights and interests are not taken into account. For instance, the Chancellor was informed of a case where a police officer interviewed the victim – a child attending elementary school – to verify suspicion of domestic violence but failed to notify the child's parents of the interview. Where a child and parents may have conflicting interests, the police are entitled not to involve parents but in that case a state legal aid representative must be appointed for the child. This was not done. Nor were the parents informed of the fact that criminal proceedings had been terminated and there was no longer a reason to presume a conflict between the interests of the child and the parents. The parents were informed about the termination of criminal proceedings only after the Chancellor's enquiry.

The Chancellor's Office updated the information materials on the "Rights of the child" which provide a compact overview of the rights of the child and offer guidance about where children and adults can seek assistance in case of problems. The publication employs simple language to introduce the

Convention on the Rights of the Child as well as the main principles that protect children in our society. The information materials could serve as a useful aid for teachers wishing to speak with children about their rights and duties.

From 25 to 29 April 2022, we celebrated the international week to end corporal punishment of children. On the Facebook page of the Ombudsman for Children, we published information about the consequences of corporal punishment of children and explained that limits on a child's behaviour can be set without resorting to violence. We also shared information about where to get advice and support with educational issues.

The Chancellor's advisers helped to organise the ISPCAN (International Society for the Prevention of Child Abuse and Neglect) European Congress in Tallinn. The IPSCAN congress –held for the first time in the Baltic countries – attracted more than 300 participants. In their presentations, recognised scientists from their respective fields focused on mental health, sexual and other ill-treatment of children, domestic violence, problems of children in closed institutions, protection of children whose parents are in prison and suffer from addiction, cross-border cooperation, and use of digital services.

In her opening address to the congress, the Chancellor expressed pleasure that a youth forum was also held on the margins of the congress, enabling children and young people also to take part in the event. Young people found that expressing an opinion should be something habitual for children, and they should also be taught how to express an opinion and engage in debate so as to be better able to be involved in policy-making.

Presentations offered many new ideas about how to ensure children's well-being in Estonia. The discussion also focused on how healthcare professionals can use proven and effective techniques for recognising and notifying ill-treatment of children, or how to identify children's risk of suicide.

At the congress, a Chancellor's adviser introduced the indicators for the rights of the child. The indicators can be found on the homepage of the Chancellor of Justice.

Under the leadership of the Chancellor's Office, a training event took place for Estonian probation supervision officers, prison officers and child protection workers on "Children of parents in prison: their rights and needs". The training was carried out by the head of the network Children of Prisoners Europe, Liz Ayre, and the project manager of the Probacja Foundation, Ewelina Startek. The training

was carried out in cooperation with the Ministry of Justice and the 2014–2021 European Economic Area and Norway grants programme under the heading "Local development and poverty reduction" (a project on creating a system for special treatment of juveniles).

On 5 May 2022, the Chancellor of Justice and the Chancellor's children's and youth rights advisers met with youth workers. The discussion focused on difficulties that young people must cope with, and gratitude was expressed to youth workers who in the frame of the Youth Prop Up (*Noorte Tugila*) programme have helped to motivate Estonian young people to study, work and cope in life.

On 3 June 2022, the Chancellor's advisers Andres Aru and Kristi Paron spoke on the Kuku Raadio live radio programme "Kahe vahel" about education, the mental health of children and young people, and other issues related to the well-being of children.

In the journal *Juridica* the Chancellor's adviser Kristi Paron wrote about child participation in decision-making concerning them and, more specifically, about how to assess the child's maturity and give due weight to the child's views.

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

This year, too, the children's and youth film festival 'Just Film', held as part of the Black Nights Film Festival (PÖFF), included a programme on the rights of the child, prepared in cooperation between Just Film, the Chancellor of Justice, the Ministry of Justice, the Social Insurance Board, and the Union for Child Welfare.

For the second consecutive year, children and young people were also involved in selecting films. The programme on the rights of children featured for the ninth time so far. Screening of selected films was followed by debates with experts and well-known personalities discussing the films together with viewers. To increase the interest of young people with Russian mother tongue, more and more films in the programme have also been translated into Russian.

This year, it was possible to watch the films at cinemas in both Tallinn and Tartu. As a lead-in to films, video clips were shown in which children and young people themselves introduced the rights and duties arising from the Convention on the Rights of the Child. After the end of the main festival, several films were available for viewing at the PÖFF web cinema. A total of 2128 cinema lovers went to see the films within the special programme on the rights of children.

Merit awards event "Lastega ja lastele"

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

The merit awards event „Lastega ja lastele" (With and For Children), which was brought to life by organisations championing the interests of children, was held for the ninth time in 2022. At the family day in Kadriorg, the President of the Republic and the Chancellor of Justice acknowledged those who have significantly contributed to the well-being of children through their new initiatives or long-term activities. This year's merit awards event was also intended to support children with cancer in Estonia and Ukraine. A television programme was also made featuring this year's merit awards event and the family day, screened on 1 June, the International Day for Protection of Children, on the public *ETV* channel.

Children and local governments

Children and young people are entitled to their say in organising local life. People aged 16 or older are entitled to vote in municipal council elections. Children and young people can participate in youth councils, and pupils' representative bodies in schools look after pupils' interests.

However, many children and young people do not belong to representative organisations and their voice does not reach decision-makers. The reasons may be that no one asks for their opinion, they are considered too young, they live too far from the centre, are not sufficiently proficient in Estonian, or are hindered by a health problem. The Chancellor already drew attention to the limited opportunities for children to participate in the society in her report where she gave an overview of implementation of the UN Convention on the Rights of the Child. The data from the 2018 survey on children's rights and parenthood also reveal that children lack sufficient possibilities to participate in the community.

Adults must ensure that the needs and opinions of all children are taken into account in decision-making concerning local life. Participation creates social cohesion in a community, binds generations, makes the voice of children heard, and through this creates a more satisfactory living environment for everyone. With that in mind, the Chancellor called on participants in local elections to keep in

mind the interests of all children and young people. Children and young people are the best experts about their own needs!

The voice of young people in local elections

Before the 2021 municipal council elections, the Chancellor's Office called on children to gather observations about the place where they live. They were asked to photograph places that are child-friendly, where children's needs have been taken into account, and where children feel comfortable. At the same time, examples of child-unfriendly or outright dangerous places were also expected. An overview with children's observations was sent for information to all city and rural municipality governments. In the course of the project, video material "Laste ja noorte hääl kohaliku elu korraldamisel" (The voice of children and young people in organising local life) was also prepared. The Chancellor's Office organised the project in cooperation with the Estonian Union for Child Welfare and the Estonian Centre for Applied Anthropology.

Political campaigning at school

On the initiative of the Estonian National Youth Council and with support from the Ministry of Education and Research and the Office of the Chancellor of Justice, agreements on guidelines for schools during elections were updated in spring 2021. Guidelines include principles on how to speak about elections honestly and freely and 'in a cool manner' at school, while remaining politically impartial.

Respecting the principles is more generally a matter of political culture. Candidates are not as such prohibited from introducing their political objectives and election promises in educational institutions. Organising pre-election events in schools is also allowed, but in doing so equal treatment of all candidates must be ensured. Everyone can draw the attention of the head or owner of a school to violations of the impartiality principle and ask for inappropriate behaviour to be rectified.

Before the elections, the Chancellor was contacted by several people who believed that some schools had failed to observe these principles. For instance, the director of Narva Language Lyceum sent an appeal to parents to support her candidacy at the elections. In doing so, she asked pupils to deliver the letters to their homes and in return gave pupils chocolate. Since neither the head nor the owner

of the school found anything inappropriate in this situation, the Chancellor recommended informing the Ministry of Education and Research as the Ministry supervises the lawfulness of the activities of schools and owners of schools.

The Chancellor was also informed about election advertising posted in the grounds of Sinimäe Basic School. The Chancellor explained that, as a rule, advertising on school premises is prohibited. The only advertising allowed concerns children's behaviour, events, hobby education or study opportunities. Advertising for adults is also allowed at schools during the period when no instruction is taking place. Compliance with the requirements of the Advertising Act is supervised by the Consumer Protection and Technical Regulatory Authority.

Youth council members on rural municipal and city council committees

It is extremely welcome if young people are actively involved in deciding local matters. For example, in Toila members of the youth council participate in the work of standing committees of the rural municipal council. In order not to err against the statutory requirements when involving young people, the rural municipality contacted the Chancellor for an explanation. A representative of Toila Rural Municipality Government asked whether minors representing the youth council may participate in the work of standing committees of the municipal council and whether they have to present parental consent for this.

The Chancellor's adviser explained that the rural municipality itself may decide whether to involve representatives of the youth council in the work of municipal council committees. The committees as well as the youth council perform an advisory function but they do not enact legislation. The laws do not preclude a youth council from advising a rural municipal council, inter alia, via its representatives who belong to municipal council committees.

The law does not explicitly regulate the issue of parental consent, but in the interests of legal clarity the Riigikogu may do this. However, it may be concluded from legislation that young people who are minors do not need to present parental consent to participate in the work of the youth council. Accordingly, members of the youth council who are minors also do not need to present parental consent to participate in the work of a rural municipal or city council committee.

Education and work

The Chancellor receives many petitions from parents complaining that not enough kindergarten places are available for children of creche age in larger cities and surrounding rural municipalities. If a family fails to get a kindergarten place, this violates the child's right to pre-school education and also impedes a parent from going to work.

Exclusion from the labour market, in turn, leads to social problems.

The state should understand that even though the law requires a local authority to ensure a kindergarten place, all in all the shortage of kindergarten places is not just the problem of occasional families or merely local authorities. Under the Constitution, education falls under state supervision. If a local authority is unable to comply with the law and regularly leaves parents in trouble, the state must initiate supervision. For example, a coercive penalty payment can be imposed on non-compliant local authorities.

Under the law, all children at the age of one-and-a-half to seven years must receive a kindergarten place. No distinction is made with regard to children with poorer health or those needing additional support at a kindergarten. Although legislation and sectoral development plans have deemed it important that a child's special need is noticed at an early stage and the child is quickly offered effective assistance, unfortunately the actual situation is often different. It still happens that a parent must battle to obtain a support service or a place in an adaptation or special group for their child. Sometimes social and educational services even within the same local authority are unable to cooperate in finding the best solution for a child. They fail to see the complete picture or the benefit later arising for society from offering the necessary support to a child as early as at a kindergarten.

Tensions are always caused by closing down or merging schools or places where they operate. If schools are closed down or merged, so that a child will have to start attending another school, this directly affects a family's everyday living arrangements. The law does not prescribe where a school should be located but it does stipulate that education must be accessible to every child. The school owner is not prohibited from changing the school's location or even closing down the school, but the rural municipality or city must inform the school family about it in good time and also justify the planned changes. Introducing the plans does not mean that the school owner must take into account

every wish expressed by local inhabitants. Nevertheless, reasonable suggestions must be considered and at least an attempt should be made to find the best solution, or often also the least inconvenient of all the possible ones.

Due to reorganisation of the school network as well as other essential circumstances, a situation may sometimes develop where it takes too long for a pupil to reach school. Where a child is unable to reach school by public transport, the local authority must offer another suitable option, for instance arrange a school bus. In various places in Estonia are children whose school route is unreasonably long or whose parents have had to take upon themselves the task of taking children to school and back home, even though under the law school transport must be organised by a local authority.

During the reporting year, schools were of course most affected by the corona pandemic and the restrictions imposed to combat it. Despite the difficult epidemiological situation, most schools still remained open. At the same time, in some schools distance learning was applied unjustifiably often, especially considering that before the beginning of the new academic year all adults could vaccinate themselves against the virus. Without a decision (by either the Health Board or the Government) restricting on-site instruction at schools nationwide, schools themselves started extensively applying distance learning with the justification of health protection. Therefore, on several occasions the Chancellor had to explain to schools and school owners as to who may restrict on-site instruction at schools and when due to considerations of health protection.

The Constitution allows restricting access to higher education, for example, for the purpose of ensuring quality of instruction. Accordingly, higher educational institutions may select students. Yet, applicants for higher education may not be treated unequally without a valid justification, and admission conditions must be clear and selection criteria transparent. It is not enough if selection criteria are only known to the university; people applying to the university must also be informed of them.

With regard to labour issues, the Chancellor's assessment was most often sought in connection with problems related to certificates of professional qualifications. Teachers in general education schools have been required to hold a teacher's professional qualifications since as early as September 2013; yet to date questions still arise as to whether it is necessary and who is entitled to award teacher's professional qualifications.

First and foremost, this concerns teachers who graduated from a higher educational institution before 2013 or a few years later.

Preschool education

Several parents have contacted the Chancellor with the concern that a local authority has not ensured a kindergarten place although under the law this is the duty of a local authority. Under the Preschool Childcare Institutions Act, a rural municipality or city must provide a kindergarten place to every child at least one-and-a-half years old. A rural municipality or city has complied with its duty if it gives a child a kindergarten place within a reasonable time. In line with the case-law, in general a reasonable time is two months from the moment when the family applied for a kindergarten place.

Parents may not be placed in a forced situation where they have to find a place for their child in childcare because the local authority failed to offer them a kindergarten place. Under the law, a rural municipality or city may replace a kindergarten place for a child aged one-and-a-half to three years old with a place in childcare only when a parent agrees to it. If a local authority has failed to provide a kindergarten place on time and for this reason the family has incurred additional expenses (e.g. paid a higher childcare fee in comparison to the fee for the municipal kindergarten) then the local authority must compensate these expenses to the family.

The Chancellor explained the parents their rights and how to protect them in court.

Sometimes disputes arise from the fact that a family is offered a place at a kindergarten located too far from the child's home. The law does not definitely entitle a family to a place in a kindergarten of their choice, for example one located closest to their residence. However, a local authority must ensure a place in a kindergarten of its service district, i.e. a place should be offered in a kindergarten within the particular local authority's boundaries. Nevertheless, the local authority must bear in mind that the kindergarten service should be accessible to the family.

When resolving people's complaints, on two occasions the Chancellor also noticed problems in local authority legislation. In one case, the Chancellor found that Harku Rural Municipality Government regulation of 30 December 2015 on "The procedure for admission to and exclusion from preschool childcare institutions in Harku rural municipality" contravened the Constitution. The regulation enabled the rural municipality government, with parental consent, to replace a kindergarten place

for a child aged one-and-a-half to three years old with a place in childcare if the municipality government could not offer the family a place in a kindergarten. This deprived a parent of the statutory possibility to choose between a kindergarten and childcare. The Chancellor asked the rural municipality to inform her how the municipality intended to comply with the proposal The rural municipality amended the regulation in line with the Chancellor's proposal.

In another case, the Chancellor found a conflict with the law in Haljala Rural Municipality regulation of 19 July 2018 on "The procedure for admission to and exclusion from preschool childcare institutions in Haljala rural municipality". The regulation contravened the law by imposing more extensive restrictions on obtaining a kindergarten place than laid down by law. Under the law, a child of kindergarten age is entitled to a place in a kindergarten if their parents so wish.

Ensuring kindergarten places to all children of kindergarten age within a reasonable time may indeed often be complicated but, in the interests of children and parents, a local authority must resolve the problem. After all, a rural municipality in general knows the number of children of kindergarten age. The Chancellor proposed to the rural municipality to bring the regulation into conformity with the law and the Constitution. The rural municipality amended the regulation in line with the Chancellor's proposal.

Children with special needs at a kindergarten

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

In the course of resolving the petition, the rural municipality and the kindergarten admitted to the Chancellor that the municipality is of course responsible for enabling a support person for a child and the kindergarten cannot refuse to admit a child without a support person. The Chancellor recommended that the rural municipality should analyse how to resolve the situation where for some reason a support person cannot perform their tasks. The Chancellor also asked the municipality to

comply with the Rajaleidja decision and provide the necessary extent of support services to children in the kindergarten adjustment group that the children attend.

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

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

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

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

the principle of good administration when it failed to answer the parent's questions. The Chancellor recommended that Tallinn Education Department should avoid such mistakes in the future.

General education and school healthcare

The Chancellor was asked whether Lääne-Harju Rural Municipality Government complied with the principle of good administration by discontinuing instruction in the Lehola school building of Laulasmaa School. In addition, the petitioner wanted to know whether children and their parents are entitled to have a say in the matter of changing the place of instruction, similarly to having the right to a say in the case of a school reorganisation. The Chancellor found that Lääne-Harju rural municipality did not err against the principle of good administration when preparing to discontinue instruction in the Lehola school building.

The Chancellor was also contacted by parents of pupils at Narva Soldino Upper Secondary School since they were dissatisfied with the plan for reorganising the school. The Chancellor explained to the parents that the draft education development plan drawn up by Narva City Government has been introduced to the public and everyone interested has been able to submit written proposals to it. By the time of replying to the petition, no decision had been adopted on the reorganisation of Narva Soldino Upper Secondary School. Accordingly, no parental or children's rights had been violated in this connection.

Organisation of school transport

A local authority has the duty to organise a child's transport to and back from the school assigned to the child based on the child's residence. Transport must be safe and the child's age must be taken into account in organising it. The child must be able to reach the school on time while not being forced to hurry too much or spend excessive time on public transport. The child must also be able get back home within a reasonable time after the school day.

When planning a child's school route, consideration should be given to how long they have to walk, whether the route to a bus stop or school is safe and whether the bus stop has a shelter offering cover from inclement weather.

Where necessary, a local authority must consider using individualised solutions. One option is to propose to a parent that the parent takes the child to school and back home on a contractual basis. That is, the parent enters into a contractual relationship with the rural municipality as a service provider and not as a parent. A local authority has failed to arrange transport if a parent themselves is forced to take the child to school (see the Chancellor's recommendations to Antsla Rural Municipality Government and Kehtna Rural Municipality Government).

The right to education of a child staying in the country without a legal basis

The Chancellor was described a situation where the Police and Border Guard Board (PBGB) prohibited a child staying in Estonia without a legal basis from attending school and took the child back home after it had reached the school.

The Chancellor found that by doing so the PBGB had violated the law and the child's rights. The PBGB is not competent to assess whether a child is entitled to attend school.

Every school-aged child in Estonia is entitled to education. The Chancellor also explained to the child's mother issues related to both her own and the child's legal status.

Distance learning

The Chancellor was asked to assess whether transfer of all schools in Tallinn to distance learning was lawful.

The Chancellor replied that since the beginning of academic year 2020 she has repeatedly explained to parents, pupils as well as teachers on what legal grounds and who is entitled to apply distance learning in schools (see the annual report for 2020/2021). The problem was that in 2021 the legal framework was the same as in 2020 but the situation to which the rules applied had significantly changed as compared to autumn 2020.

Distance learning as a health protection measure is allowed in principle, but only if its use is justified by the actual (epidemiological) situation. Accordingly, a school can only proceed from its own specific situation when implementing distance learning, including information about the proportion of those vaccinated against Covid-19 and those recovered among pupils and teachers. Neither the

school director nor the owner of the school is competent to assess the spread of the virus and the anticipated hospital burden arising from this.

The Chancellor was also asked to assess implementation of distance learning in schools in Pärnu city. The Chancellor found that, formally, Pärnu city as the owner of the schools did not adopt a legislative act requiring schools to apply distance learning. The decision on transfer to distance learning had to be made by each head of school themselves. Yet it should be kept in mind that a head of school may take an instruction given by the owner of the school as obligatory even though formally this is not so. The owner of the school and the Health Board informed heads of schools in a manner that may have inclined them to apply distance learning while at the same time not taking responsibility for this.

Choice of curriculum

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

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

Organisation of tests

The Chancellor was asked about rules on organising tests at school.

It is clear that a pupils' study load must correspond to their age and capabilities, and testing may occur up to three times a week. Rules on organising tests have been established with a view to leaving pupils sufficient time for rest and hobbies. Pupils must also be enabled to acquire the necessary knowledge and skills in the best possible way. If the study load exceeds the admissible threshold, then a child may start lagging behind and it may also have a negative effect on their mental health.

The Chancellor explained that in planning tests teachers must also keep in mind the statutory requirements. A test is defined as a written paper to check study results at the end of a quarter of a school year or upon completion of a course. It is inadmissible to have pupils take more than three papers a week which in substance correspond to a test.

Home schooling at parental request

Parents contacting the Chancellor expressed dissatisfaction with the organisation of their child's home schooling.

It is clear that home schooling is implemented in accordance with an individual curriculum, and responsibility for home schooling lies with the parent. An individual curriculum must set out the necessary learning outcomes and agreements as well as when and how the school checks them (see the Chancellor's opinion).

Implementing home schooling may not endanger a child's right to education and when considering a parent's application for home schooling the teachers' council must primarily assess whether the parent is capable of properly organising provision of education. If according to the school's assessment a pupil might not acquire the necessary knowledge and skills through home schooling, then no home schooling may be applied.

Basic school graduation conditions

The Association of Estonian Language Teachers asked the Chancellor to assess a proposal by the Ministry of Education and Research under which graduating from the basic school would no longer depend on the results achieved at the final examination.

The Chancellor explained that a pupil's development and academic progress can be assessed on the basis of various assessment systems. Under the Basic Schools and Upper Secondary Schools Act, the conditions for graduating from the basic school are established by the Government in the national curriculum. The Riigikogu has not laid down a threshold for passing basic school final examinations. Laying down that threshold is an education policy choice (see the Chancellor's opinion).

For a child at the age of compulsory school attendance, acquiring basic education is both a right and duty. Good education is supported by good teachers, and schools must be able to use appropriate

teaching aids and methods and the school environment must be safe for pupils. Under these conditions, it is possible to offer young people knowledge and skills with the help of which they can continue acquiring general or vocational education as well as otherwise participate in society in line with their age and capabilities.

The right of a parent to participate in school events

Several parents expressed dissatisfaction that schools prohibited them from participating in events intended for parents, justifying this by the need to combat the spread of the coronavirus.

Measures for combating the epidemic spread of infectious diseases are established either by the Government of the Republic or the Health Board. Despite the spread of the coronavirus, in the academic year 2021/2022 the state did not consider it necessary to restrict parents' participation in events intended for them.

The Chancellor reminded the schools that measures for protecting the health of pupils and staff must be established by internal school rules, and when establishing the requirements the school must also bear in mind the rights of parents. A parent is not a third party in relation to a school since it is in the child's interests that the school and parent cooperate. Thus, a parent cannot be sidelined from school activities.

A parent is entitled to receive information and explanations about organisation of school life and the rights and duties of pupils. A parent is also entitled to attend a parents' meeting. Direct participation is not replaceable by subsequent publication of the minutes or an e-mail sent by a teacher. When organising the first year's school ceremony, the school must also keep in mind that allowing a parent to a festive event is mostly in the child's interests. When planning a school ceremony or a parents' meeting, the school may consider applying precautionary measures which are less restrictive on parents.

School bullying

The Chancellor was informed that Russia's military aggression against Ukraine has caused such considerable tensions at school that they have even led to bullying based on children's ethnicity and views.

In her reply, the Chancellor had to note that unfortunately this was not the only signal to this effect. She explained to the petitioner that, in cooperation with the Ministry of Education and Research, schools and teachers an attempt is being made to resolve such cases as swiftly as possible and prevent them in the future. The Chancellor also explained in more detail how to behave in these situations and where to find help.

Another petition also concerned school bullying. A parent asked whether activities in the classroom may be recorded, for example, by a camera or other device with the aim of proving or preventing inappropriate conduct by a teacher. The Chancellor explained that even though parents have a relatively free hand in raising and guiding their child, parents in their activities must always respect the child's rights. Monitoring and recording a child's every word would violate their right to privacy and amount to misuse of power. Moreover, this may also amount to private surveillance of a teacher, which is prohibited and punishable.

In order to prevent situations endangering the safety of pupils and school staff, or to respond to such situations, surveillance devices may only be used by the school itself. At the same time, the school is not allowed to monitor lessons in the classroom and parents cannot request this from the school nor can they consent to this (see the guidelines from the Data Protection Inspectorate on the use of cameras, paras 11 and 13).

Vaccination of schoolchildren against the coronavirus

During the reporting year, the Chancellor was asked on several occasions whether parental consent is required to vaccinate a child at school. People also asked whether schools may exert pressure on children to consent to be vaccinated against Covid-19.

The Chancellor explained that the same rules apply to vaccination against Covid-19 as to other vaccinations. Vaccination is voluntary both for adults and children.

A patient may be examined and healthcare procedures administered to them (including vaccination) only with their consent. This means that a patient must be informed about the purpose of medical procedures as well as possible risks and consequences. Then the patient themselves can decide whether to provide consent or refuse.

Parental consent must be sought to vaccinate a minor patient, but the child themselves must also approve the vaccination (see paras 17 and 18 of the guidelines on child patients). However, a doctor who deems that a young person has sufficient capacity to reason must proceed from the young person's own decision. In that case, a parent may not decide on the child's vaccination.

The Chancellor has been asked how a young person's capacity to reason is assessed. A child's capacity to reason must be assessed similarly to an adult's capacity to reason. A patient with the right to decide and having the capacity to reason understands the nature of their illness and the choices they are faced with. They understand the information provided to them and are capable of drawing conclusions from this. A patient must also be able to come to a decision based on the information received and their own value judgements, and notify the healthcare professional about it. The greater the risks entailed in a decision, the greater the capacity to reason presumed for making the decision.

Age may be one criterion for assessing a child's capacity to reason, but it cannot be the only criterion. A child's capacity to reason must be assessed on the basis of the specific situation and the specific child, because children reach maturity and independence at different ages. If a child comes to a doctor's appointment together with a parent or with parental approval, and both child and parent are unanimous about the issue needing to be decided, then the doctor has no reason to assess the child's ability to reason (see in more detail the guidelines).

A school nurse vaccinates children at school in line with the Minister of Social Affairs regulation, under which the consent of a parent or other legal representative is asked for vaccination.

Under the Minister of Social Affairs regulation, the school informs a parent about planned vaccination at least one week in advance and also asks for their consent. Consent or refusal is recorded in writing and is maintained among the pupil's health documents. If a pupil's vaccination is held off for some reason, the school healthcare provider proceeds from a parent's previous consent and informs them about the new time for vaccination at least one week before it takes place.

If one of the parents consents, a school nurse may also presume consent from the other parent. If the other parent refuses, the child cannot be vaccinated on the basis of consent by one parent.

Under current legislation, a school cannot oblige children to be vaccinated but it may provide information about organisation of vaccination and study at the school. For instance, the rules on quarantine for a pupil who was a close contact depended on whether the pupil was vaccinated or not and whether they allowed themselves to be tested for the coronavirus. When offering explanations, school staff must remain as neutral as possible. The school may not actively promote vaccination. Nor may the school allow unvaccinated pupils to be bullied at school.

Higher education

The Chancellor was contacted by an upper secondary school pupil who was dissatisfied that during their upper secondary school studies the University of Tartu changed the conditions for admission to the medical faculty. When the young person started studying at Tallinn English College according to the International Baccalaureate (IB) curriculum, no requirement of a combined chemistry and physics examination existed for admission to the medical faculty. In the pupil's opinion, applying the new admission conditions to them was not justified and they asked for an assessment of the university's actions.

The Chancellor found that, unfortunately, no one is entitled to request any derogations in admission conditions from a university. A pupil cannot reasonably assume that during their upper secondary school studies a university's admission conditions always remain the same. The university has not made any such commitment. Understandably, pupils make plans concerning their future career choices but these plans cannot impose restrictions on a university.

Admission conditions to Tallinn University

Based on information sent to her, the Chancellor on her own initiative checked the lawfulness of the conditions for admission to the speciality of English Language and Culture at Tallinn University.

The Chancellor found that the university was treating applicants unequally without justification. Unjustified different treatment arose from the fact that the university required that those having passed an international language proficiency test should have a score corresponding to level B2 for each skill whereas no such requirement was imposed on applicants having passed the national examination.

The Chancellor asked the university to establish the conditions and procedure for proving foreign language proficiency so that applicants would not be treated unjustifiably differently on that basis. The Chancellor asked the university to review decisions on admitting applicants to the entrance examination which had been made under the currently applicable procedure. Tallinn University agreed to review the admission conditions.

Another petition also concerned Tallinn University's admission conditions. In her reply, the Chancellor found that a university may establish admission conditions to ensure the quality of higher education, but in doing so the admission rules must also keep in mind protection of applicants' fundamental rights.

Tallinn University admission conditions for formal full-time study stipulate that the university need not allow an applicant to undertake group work or an interview if the applicant receives a negative result in the academic aptitude test for the psychology curriculum. However, the principles on the basis of which different parts of the entrance examination are assessed are not apparent from the university admission procedure or the website. Although explanations concerning assessment of the test were given to applicants during the consultation, oral clarifications cannot replace generally accessible and clear information on the university website.

Even if the university cannot disclose all information related to assessment, the assessment system can still be made more transparent by disclosing the principles under which the test is considered as passed and how the weighting of results for different parts of the examination is distributed. Assessment of the examination can also be made more transparent by disclosing – after the test is taken – the smallest test score which is still considered a pass (recommendation to Tallinn University).

The conditions for a teacher training speciality scholarship

A student from Tallinn University asked to verify whether it was lawful that in granting teacher training speciality scholarships the university preferred master's students enrolled in the natural and exact sciences curricula as compared to other teacher training students.

The Chancellor found that the delegation norm laid down by the Higher Education Act does not empower the Minister of Education and Research to sub-delegate establishment of additional conditions for awarding scholarships to an educational institution or the Education and Youth Board.

Teacher training curricula of national priority, whose students receive a teacher training speciality scholarship in the interests of the state, can only be determined by law or – on the basis of a proper delegation norm – by a regulation, or alternatively these decisions can also be made by an administrative contract.

The Chancellor asked the Minister of Education and Research to bring the regulation into conformity with the Higher Education Act. The Minister promised that the Ministry would draw up an amendment to the regulation no later than by the beginning of the academic year 2022/2023.

The student's right to choose a minor speciality

The admission conditions for minor specialities (i.e. second specialities) as well as for universities may differ but reasonable justifications must exist to establish the conditions. What is important is that applicants are treated equally.

Tallinn University wishes to identify students choosing a minor immediately at the beginning of studies. At the same time, with its entrance test the university prepares a ranking of students having at least B2-level language proficiency. By doing so, the university aims to ensure comparable language proficiency of students participating in study and thereby create the precondition for students to successfully complete the minor. This aim can be considered admissible. The maximum number of students to be admitted is set because language learning cannot be organised in a group which is too large since in a large group the risk exists that the students fail to acquire the knowledge. Despite a student not being able to be enrolled in a minor of their choice, they can still acquire higher education by choosing another minor.

What is important is that even before choosing a curriculum applicants know under what conditions the instruction there takes place. A student applicant must also know in advance that despite having the required language proficiency they might not have the possibility to choose the desired minor (see the Chancellor's opinion).

The right to work

A teacher contacting the Chancellor disagreed with an assessment by the Ministry of Education and Research that their qualifications did not conform to requirements because they did not hold a teacher's professional qualifications.

The Chancellor explained that the regulation laying down qualification requirements for teachers entered into force as early as 2013. Thus, the Estonian Academy of Arts (where the petitioner studied) should have clearly explained to students on enrolment at the academy that completion of the teacher training curriculum without acquiring a teacher's professional qualifications does not provide the qualifications required to work as a teacher. A teacher's qualifications can only be awarded by a school entitled to award the particular professional qualifications. The Estonian Academy of Arts has never been entitled to award a teacher's professional qualifications. The Chancellor recommended that the petitioner should apply for a teacher's professional qualifications from the body awarding those qualifications.

An upper secondary school teacher contacted the Chancellor with a similar concern. According to an assessment by the Ministry of Education and Research, the petitioner lacked proper qualifications to work as a basic school or upper secondary school teacher, and in order to comply with the requirement they were recommended to acquire a teacher's professional qualifications. According to the petitioner's explanation, they graduated from the speciality of the class teacher at Tallinn University before the regulation on qualification requirements was established but started working as a teacher only after the regulation had entered into force.

In her reply, the Chancellor had to note that, at the time when the petitioner graduated from the university, Tallinn University did not yet have the right to award a teacher's professional qualifications and the derogations set out in the regulation do not apply to them. The Chancellor explained that if the petitioner wishes they may apply for a teacher's professional qualifications from the body awarding those qualifications.

Professional standard for a fire safety expert

Questions arose about conformity of the professional standard for a fire safety expert (Level 6) with the Fire Safety Act. The person contacting the Chancellor found that the professional standard did

not conform to the law and was also not reasonable. They noted that the professional standard failed to take into account the specialisation of fire safety experts.

The Chancellor explained that by assessing the professional standard in abstract terms no basis exists to assert that the mandatory skills and knowledge under the professional standard for a fire safety expert are clearly unjustified. However, several mandatory skills in the professional standard are worded so narrowly that this may unjustifiably restrict the freedom of profession and enterprise.

Although preparing a new professional standard for a fire safety expert is already under way, the Chancellor asked the Estonian Qualifications Authority to consider initiating administrative supervision over the activities of the Professional Qualifications Council for the Protection of Property and Persons. According to the Chancellor's assessment, it is necessary to ascertain whether the current or new professional standard enables unjustified restriction of the freedom of profession and enterprise.

Collective labour relations

In a case initiated by Tartu Court of Appeal, the Supreme Court asked for the Chancellor's opinion as to the compatibility of § 4(4) of the Collective Agreements Act with the Constitution. Under that provision, wages as well as working and rest time conditions set out in a collective agreement between an association of employers and an association of employees or in a collective agreement between a confederation of employers and a confederation of employees could also be extended to those employees and employers who were not parties to the agreement. The scope of extension was to be determined in a collective agreement.

The Chancellor found that the provision contravened the freedom of enterprise established under § 31 of the Constitution. The provision enabled organisations representing a small number of employees and employers to agree that the conditions of a collective agreement (wage conditions and working and rest time conditions) entered into between them also extend to those employees and employers who are not parties to the agreement. At the same time, it was not ruled out that the conditions set out in the collective agreement are unreasonable and harmful to businesses that are not parties to the collective agreement.

The Supreme Court decided to decline to examine the application by Tartu Court of Appeal.

Security

The Chancellor supervises whether security and law enforcement agencies (the Estonian Internal Security Service, the Police and Border Guard Board, the prosecutor's office, and others) respect fundamental rights and freedoms when covertly collecting and processing personal data. The Chancellor carries out that supervision on the basis of petitions as well as on her own initiative. Under the law, the Chancellor has access to closed surveillance files. That is, she does not intervene in ongoing surveillance.

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

The Chancellor's work is largely affected by events and crises in society. Thus, during the reporting year the Chancellor was busy dealing with problems of reception of people fleeing Ukraine because of the war and monitor that the fundamental rights of foreigners reaching Estonia are ensured.

The Chancellor received many petitions from refugees reaching Estonia or their relatives already previously staying here who were worried about their loved ones. Issues arose in connection with the possibilities for temporary protection of people fleeing the war. In general, an explanation was sufficient but there were also instances where the work of state agencies had been unsatisfactory. The main concern was lack of simple explanations about how to protect one's rights.

On the basis of a Government order arising from a European Commission regulation, the right to temporary protection was granted only to those Ukrainian residents who left Ukraine because of the war after 24 February 2022. Therefore, initially temporary protection was not granted to those who for some reason had left Ukraine earlier but could not return there because of the war. For instance, people who had gone on a tourist trip immediately before the war broke out or who had come to visit their relatives in Estonia. No explanation was offered to these people that even though they were not entitled to temporary protection they do have the right to apply for international protection under the general procedure. Probably a certain role in this was played by the fact that the authorities had to cope with a sharp increase in their workload and adapt to new rules.

Many petitions were also received in connection with restrictions imposed by the Government on Russian and Belarusian citizens entering and staying in Estonia. First and foremost, these concerned people with next of kin in Estonia or already studying in Estonia before the war. In August 2022, the Government nevertheless decided to establish exceptions for people wishing to visit their children or elderly parents living in Estonia.

Covert processing of personal data

The Chancellor of Justice checks the work of those state agencies that organise interception of phone calls and conversations, surveillance of correspondence, and otherwise covertly collect, process and use personal data. Supervision focuses on whether covert measures were justified, whether they were carried out in compliance with applicable norms and in a manner that respects people's fundamental rights. Even when the actions of the relevant agencies are formally lawful, the Chancellor always tries to ensure that people's fundamental rights are reckoned with to the maximum possible extent.

It is important to alleviate people's fear of unjustified surveillance.

On 13 May 2020, the Riigikogu adopted the Act amending the Defence Forces Organisation Act, the Security Authorities Act, and the Chancellor of Justice Act , by which § 29 of the Security Authorities Act was also thoroughly amended. This section lays down the cases in which non-notification of people about a measure for collecting information is allowed. Section 1 of the Chancellor of Justice Act was supplemented with subsection (9^1) under which the Chancellor was tasked with verifying at least every two years whether non-notification of persons under § 29(2) of the Security Authorities Act and § 40(2) of the Defence Forces Organisation Act about measures for collecting information was justified.

In 2021–2022, the Chancellor's advisers checked compliance with these requirements by security agencies (the Estonian Internal Security Service and the Estonian Foreign Intelligence Service) and the Military Intelligence Centre.

Through in-house guidelines, security agencies have set the general requirements for implementing § 29 of the Security Authorities Act. Based on the results of the check, the Chancellor considered it necessary to offer some proposals to ensure better protection of fundamental rights of persons.

The Chancellor's advisers also checked surveillance files processed by Tallinn, Tartu and Viru Prisons and the lawfulness of surveillance measures described therein. Primarily the check focused on justifications offered for opening a surveillance file and surveillance authorisations (the principle of *ultima ratio*, the necessity of a specific measure), whether surveillance had been carried out lawfully (including protection of fundamental rights of third parties), and compliance with the requirement to notify surveillance.

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

Inspection visits to security agencies and the Military Intelligence Centre of the Defence Forces

The Chancellor's advisers checked arrangements for compliance with the requirements established for non-notification of covert measures (§ 29 Security Authorities Act and § 40 Defence Forces Organisation Act) at the Estonian Internal Security Service, the Foreign Intelligence Service, and the Military Intelligence Centre of the Defence Forces.

As a result of the inspection visits, the Chancellor considered it necessary to offer some proposals to the security agencies and the Military Intelligence Centre concerning further elaboration of regulations and future development of administrative practice.

Supervision of the activities of security agencies and the Military Intelligence Centre of the Defence Forces is vital because current law and practice leave little possibility for information collection activities by these agencies coming under scrutiny by superior courts. Prior judicial review does not even apply to some types of information collection.

Notifying an individual about measures (including covert measures) carried out in respect of them falls within the scope of protection of § 44(3) of the Constitution since it creates the prerequisite for an individual to examine the data held about them by a state agency. This is a fundamental right, which, under the law, may be restricted, inter alia, in order to protect the rights and freedoms of

other people and to combat a criminal offence. However, notification may be postponed only as long as the above reasons outweigh the restriction on fundamental rights resulting from the measure.

All the inspected agencies have established in-house guidelines containing requirements on how to draw up, register and store the documents (including various approvals) necessary for carrying out information collection measures, as well as making sure that the measures are carried out lawfully. All this is necessary for ensuring people's fundamental rights.

Security agencies must notify people if they have:

- restricted a person's right to the confidentiality of messages (§ 25(3) Security Authorities Act), i.e. examined their postal item(s); wiretapped, observed or recorded messages or other information transmitted over an electronic communications network; wiretapped, observed or recorded information communicated by other means;
- covertly entered a person's premises, building, enclosed area, vehicle or computer system for the purposes of covertly collecting or recording information, or for installing and removing technical aids necessary for such purposes;
- carried out covert surveillance of a person;
- covertly examined an item and, if necessary, covertly altered, damaged or replaced the item.

For carrying out the first two of these measures, authorisation is granted by the court and, for the remaining two, authorisation must be sought from the head of a security agency or from an official authorised by them.

The Defence Forces must notify an individual if they have carried out covert surveillance of that individual under the grounds set out in the Defence Forces Organisation Act, collected information by means of signals intelligence, or sought professional assistance from the Foreign Intelligence Service involving, inter alia, exercise of the powers laid down by §§ 23, 25 and 26 of the Security Authorities Act.

Security agencies and the Defence Forces must notify an individual if they have collected information about that individual by using the above methods or significantly restricted the individual's rights by

collecting that information. An individual must be notified about the type of measure and when it was carried out. Notification must take place immediately after the information collected under the measure is no longer confidential. Non-notification of an individual is allowed if notifying would harm other people or compromise the work of the security agency.

Security agencies and the Defence Forces must assess whether grounds exist not to notify the individual. Where such grounds do exist, notification may be postponed by one year. If grounds for postponing notification still exist even a year after declassification, a decision may be made not to notify the individual of the measures at all. This decision is made by the same body that authorised the information collection measure: the court, the agency head or the person authorised by the head.

State secrets by nature means information requiring protection from disclosure in the interests of national security or foreign relations of the Republic of Estonia. As a rule, information collected by using the above methods is classified for years, so that most of the information collected by these methods in a re-independent Estonia still remains classified. Thus, mostly people have not been notified about information collection measures carried out in respect of them.

The law enables premature declassification of state secrets. If this decision is made concerning measures carried out in respect of people, this also brings closer the deadline for the duty of notification. This possibility has been used in isolated cases, for instance in the event of intention to use information collected under the Security Authorities Act as evidence in criminal proceedings. To date, no other considerations have been invoked to declassify information as state secrets.

Control of surveillance files

When inspecting the Ministry of Justice Department of Prisons, the Chancellor's advisers examined surveillance files opened in 2018–2021 in Tallinn, Tartu, and Viru Prisons for which active proceedings had ended by the time of inspection. During the inspection visit, the advisers spoke with officials from the Department of Prisons and all three prisons. Prison service working arrangements concerning surveillance measures were also examined.

The Chancellor's advisers checked primarily whether, in each specific case, carrying out the surveillance measure while collecting information about a criminal offence had been lawful, including

unavoidable and necessary, and how the prisons complied with requirements to notify people about surveillance.

Opening the surveillance files examined had been justified. As a rule, processing the files had been in compliance with the requirements of the Code of Criminal Procedure and the procedure established by the prison service for carrying out surveillance. The Chancellor's earlier remarks and proposals for better protection of fundamental rights had been taken into account.

Surveillance had been carried out under authorisation by a prosecutor and a preliminary investigation judge by complying with the conditions and time limits set out in the authorisation. Surveillance authorisations contained the requisite reasoning as to the circumstances why surveillance measures were needed in a particular case. In several instances, preliminary investigation judges also refused to authorise surveillance, which shows that applications by the prosecutor's office were reviewed in substance and competently.

In the majority of cases, people had been notified about surveillance in time and in compliance with the requirements of § 126[13] of the Code of Criminal Procedure. Only one surveillance file indicated a delay in notifying the individuals.

For the purpose of more effective protection of fundamental rights (i.e. to enable effective supervision), some proposals were put forward to prisons and the prosecutor's office for improving quality in organising surveillance measures.

Organisation of surveillance measures

The Chancellor's advisers found no surveillance measures that had been carried out without authorisation by a preliminary investigation judge or a prosecutor and without compliance with the conditions set out in the authorisation. Surveillance authorisations were reasoned and issued in line with the so-called principle of a measure of last resort (*ultima ratio*).

Opening the surveillance files examined had been justified. Based on the files, it may be concluded that without surveillance and without interfering with people's fundamental rights it would indeed have been complicated to gather the necessary evidence for proving suspicion of a criminal offence.

Notifying a surveillance measure

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

Based on the surveillance files examined, it may be said that notification requirements were mostly complied with. People in respect of whom the prosecutor's office or the court had authorised surveillance were mostly notified of the measure in time. The same can be said about the people identified during proceedings whose inviolability of private or family life was significantly interfered with by the measure.

Nevertheless, examination of a surveillance file revealed a case where notifying two people had been delayed for an unjustifiably long time (more than a year and five months). In the remaining cases (five people) the delay mostly lasted between two and six months.

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 both suspects and accused.

Resolving petitions by individuals

Apart from carrying out supervision on her own initiative and regularly over the activities of surveillance and security agencies, the Chancellor also resolves complaints related to the activities of those agencies. Where necessary, the Chancellor also verifies other publicly raised allegations (e.g. in the media) about illegal or insufficiently reasoned surveillance.

Although providing legal explanations is not the Chancellor's task, she has nevertheless offered general explanations about the underlying principles for the activities of surveillance and security agencies. Based on petitions received during the reporting period, the Chancellor identified no violations in the work of surveillance and security agencies.

Aliens

The war launched by Russia in Ukraine has resulted in an extensive flow of war refugees which also directly and immediately started affecting Estonia. In half a year, Estonia has accepted 52 000 Ukrainian war refugees, of whom 33 200 people have received temporary protection (data as of 23 August 2022). Temporary protection means that Ukrainian residents fleeing to Estonia from the war are entitled to receive assistance, education and work here.

The huge and to a large extent unexpected influx of war refugees put the Estonian people, and in particular our state agencies and local authorities, to the test. It is still too early to offer final assessments but in the Chancellor's opinion, during the first half year, Estonia has coped with this challenge satisfactorily – even well in some respects. The Chancellor must monitor that war refugees in Estonia are treated in line with the rules agreed in the European Union and by respecting all international human rights protection norms and Estonian domestic legislation. In half a year, the Chancellor had to resolve numerous complaints caused primarily by the novelty of the situation and inexperience of officials, but sometimes also by shortcomings in human communication.

Among the main shortcomings, petitions and complaints received by the Chancellor highlighted problems in the administrative practice of the Police and Border Guard Board (PBGB). That is, sometimes the PBGB declined to accept the necessary applications from people or failed to issue a decision on applications submitted. This, in turn, deprived the applicant of the possibility to exercise and protect their statutory rights. This concerned both recognition as an applicant for temporary protection as well as applying for international protection under the general conditions.

The Chancellor resolved a petition by an individual with Nigerian citizenship. The PBGB had detained a Nigerian citizen who was married to a Ukrainian citizen and accordingly entitled to temporary protection upon arrival in Estonia. However, PBGB officials reached the opinion that the person was not a beneficiary of temporary protection and declined to register their application at the border. Instead, the PBGB detained them as a person arriving in the country illegally even though they repeatedly explained to the officials that they were a spouse of a Ukrainian citizen and had come from Ukraine. Officials were intending to issue a precept to leave subject to compulsory enforcement

and deport them from Estonia to Nigeria. Subsequently, the person applied for international protection.

According to the assessment of the PBGB officials, the person was not entitled to temporary protection as they did not arrive in Estonia together with their spouse who is a Ukrainian citizen. This position adopted by the PBGB was unlawful. Under different European Union and Estonian legislation, spouses need not arrive in Estonia simultaneously in order to qualify for temporary protection. In view of the Estonian law and provisions in European Union directives, it would even be impossible to impose the requirement that spouses must arrive in the country together in order to obtain temporary protection.

The Chancellor explained that if a person orally expresses the wish to receive temporary protection, the application must be considered as made. Further steps depend only on the PBGB: whether the person is able to draw up an application for a residence permit and when the PBGB decides on it. The Chancellor proposed to the Director General of the PBGB that the application for temporary protection should be immediately examined.

Later the PBGB issued a residence permit to the applicant but they were held in the detention centre for almost two months. The Chancellor also explained ways to claim compensation for damage caused by unlawful deprivation of liberty.

Accepting applications for temporary protection

Petitioners also noted that officials at PBGB service bureaus have declined to accept applications for temporary protection from people wishing to submit them, and have failed to issue a decision on refusal to grant temporary protection. This was due to officials' assessment that a particular applicant was not entitled to temporary protection. This concerned situations where temporary protection was sought by people who had arrived in Estonia or departed from Ukraine before the start of the war or who held a visa issued by a European Union member state.

The Chancellor found that such conduct by the PBGB contravened the law. The reply from the PBGB showed that the Board had changed the practice concerned. According to the PBGB assessment, declining to accept an application for temporary protection is not in line with the rules of administrative procedure. The PBGB assured that applications for temporary protection will now be

accepted and a notice of receipt of the application is issued to applicants. A decision with regard to the application will be made.

The petitioner also mentioned that the PBGB did not consider as entitled to temporary protection those people who held a European Union member state visa for work or study and who had previously stayed within the European Union but at the start of the war were residing in Ukraine. The PBGB conceded that refusing to grant temporary protection to people holding a European Union visa had been unjustified.

Legal status of people having left Ukraine before the war

Several petitioners asked the Chancellor what happens to people who arrived in Estonia or departed from Ukraine before the war started on 24 February 2022. They seemed not to be entitled to temporary protection although they had lost the possibility to return to Ukraine because of the war. Petitioners found that if the right to temporary protection depends merely on the date of departure from Ukraine, this may amount to discrimination.

The Chancellor explained that, under European Union law, temporary protection is granted to those Ukrainian citizens who had lived in Ukraine and were forced to leave their homeland after the war started.

However, European Union member states may also grant temporary protection to those who were on a trip at the start of the war and could no longer return home. No relevant obligation exists and the situation does not amount to discrimination but at the same time a solution should also be found for these refugees.

The Chancellor explained that people in this situation are entitled to apply for international protection under general procedure (subsidiary protection, see also the opinions on "The legal status of Ukrainian citizens arriving in Estonia before 24 February 2022" and "The legal status of people having departed Ukraine before 24 February 2024").

Petitioners noted that PBGB officials had failed to explain the situation to them or had recommended working on the basis of regulatory arrangements for short-term employment. Some people had wanted to apply for international protection but PBGB officials recommended not doing so.

Later, the PBGB changed its practice and now, as a rule, applications for international protection by Ukrainian citizens are examined as quickly as possible.

The legal status of war refugees who are third-country nationals

The Chancellor was contacted by people who wished to be sent back to the European Union member state in which they had a legal basis for stay. They had first gone from Ukraine to Slovakia and obtained a permit to stay there for 62 days. From there, they continued their way to Estonia in order to look for opportunities to study here. The PBGB offered them the choice of either applying for international protection in Estonia or being deported to Nigeria. The petitioners applied for international protection while in actuality they wished the PBGB to return them back to Slovakia already from the border.

The Chancellor explained that under § 17(1) of the Obligation to Leave and Prohibition on Entry Act (OLPEA) an alien is expelled to the state from which they arrived in Estonia, to the country of their nationality or to their country of habitual residence, or to a third state with consent of the third state unless otherwise laid down in European Union legislation or an international agreement. If there is more than one option, the reasoned preference of the person to be expelled is the primary consideration, unless that preference significantly impedes enforcement of expulsion. Under § 17(3) of the OLPEA, as the primary option, a person is to be expelled to the member state of the Schengen Convention in which they have a legal basis for residence or temporary stay, but not to their country of nationality.

Virtual currencies

The Chancellor has been asked to assess the constitutionality of restrictions imposed on virtual currency service providers. Restrictions include the education requirement for members of the management board and a restriction on activities (including for compliance officers), and an additional audit requirement.

Under the Money Laundering and Terrorist Financing Prevention Act, a virtual currency means a value represented in digital form, which is digitally transferable, preservable or tradeable and which natural or legal persons accept as a payment instrument, but which is not the legal tender of any country or funds. With regard to a virtual currency, it should be kept in mind that its owner has no certainty

whether at any time they can exchange it for an official currency. Every country regulates virtual currencies somewhat differently, but they attract special attention due to combating money laundering and terrorist financing.

The most well-known and currently probably the most successful virtual currency is Bitcoin with which it is possible to buy both virtual as well as real goods and services. Bitcoin is freely available to all.

All businesses operating on the financial market and offering their services must combat money laundering and terrorist financing. Services involving virtual currencies entail similar risks to services by financial institutions. Thus, service providers linked to a virtual currency are classified as financial market participants, so that some of the same provisions apply to them as to financial institutions (§ 2(5) Money Laundering and Terrorist Financing Prevention Act).

Users of these kinds of services have the right to presume that service providers possess the skills and knowledge as well as the opportunity to pay attention to details of their work and dedicate themselves to it. A client wants to be assured that the assets they entrust to a business are protected. Assurances can be provided by establishing restrictions on activities of management board members and compliance officers (§ 72^5 Money Laundering and Terrorist Financing Prevention Act), which guarantees that persons dealing with virtual assets have the necessary preparation, that they do not fragment themselves by working simultaneously for several companies and can dedicate all their time and energy to clients.

In addition, virtual currency service providers must keep in mind the duty to impose international sanctions. Under § 20(1) clause 3 of the International Sanctions Act, a virtual currency service provider is a person with special obligations. This means that, to the extent prescribed by law, they have to verify clients and transactions in order to identify cases of circumventing sanctions. If a management board member of a compliance officer lacks the necessary knowledge or dedication for this, they cannot fulfil all the special obligations.

When selecting due diligence measures laid down by the Money Laundering and Terrorist Financing Prevention Act, a virtual currency service provider must proceed from rules of procedure and internal control rules (§ 14 of the Act), which, in turn, are based on risk assessment (§ 13 of the Act). When preparing their risk assessment, virtual currency service providers rely on national risk assessment

(§ 11 of the Act). According to national risk assessment, the greatest risks are linked to virtual currencies and virtual currency service providers, so that virtual currency service providers should take this into account. Thus, all obliged entities that have something to do with virtual currencies should apply due diligence measures strictly rather than leniently.

The Chancellor has repeatedly had to assess the constitutionality of additional requirements imposed by the Money Laundering and Terrorist Financing Prevention Act and explain that no reason exists to consider the higher education requirement for management board members and the restriction on activities (including restriction on the activities of a compliance officer) and the requirement of an additional audit as unconstitutional. It is important to protect the assets of clients more broadly and for this a service provider must be able to apply all the statutory measures.

Inspection visits

One of the Chancellor's duties involves regularly visiting places of detention in order to check whether people there are treated with dignity.

Estonia undertook this obligation when acceding to the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

Under the Protocol, a place of detention means a place 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. Thus, places of detention comprise not only prisons or police detention centres. They also include hospitals providing involuntary psychiatric care, closed childcare institutions, as well as care homes from where people cannot leave at will. Several hundred places of detention operate in Estonia.

The aim of an inspection visit is to collect information about how people at the place of detention are treated. Inspecting rooms, talking with people and examining documents offers the Chancellor a possibility to assess whether people are provided enough and regular food, whether they have clean clothes, a bed to sleep in, whether living rooms are warm and clean and whether people are offered meaningful recreational activities. When providing these assessments, during inspection visits the Chancellor's advisers proceed from the requirements defined in Estonian legislation and international conventions accepted by Estonia.

The Chancellor has inspected places of detention for as long as 15 years. Living conditions in places of detention have greatly improved over the years. A number of new and renovated care homes and hospitals have been opened. There are not many countries in the world whose oldest prison facilities currently in use date back only 20 years.

However, some problems have remained unresolved over the years. Similarly to many other areas of life, places of detention are permanently plagued by shortage of professional staff. Both prisons and care homes are confronted with shortage of labour. This work requires dedication and proper training from people. The issue lies primarily in resources: money and people. As long as no

additional resources are found, for example, the quality of service in care homes cannot improve substantially.

The Chancellor's inspection visits and recommendations help both people staying in places of detention as well as the staff, so that everyone there could enjoy a quality and dignified living and working environment. Summaries of inspection visits also help to let those entitled to allocate resources and generally organise the sphere know about problems – the addressees include local authorities, government agencies, the Government, and the parliament.

Special care homes

During the reporting year, the Chancellor inspected Kodijärve Home, Sillamäe Home and Merimetsa unit operated by AS Hoolekandeteenused. The Chancellor also inspected Koeru Care Centre Foundation and Care Home Saaremaa Valss Foundation, providing both the general care service as well as the 24-hour special care service. 24-hour special care is intended for people with mental disorders in need of guidance, counselling, assistance and supervision in their everyday life.

Fortunately, in 24-hour special care the era of large Soviet-period care homes in a poor state of repair is coming to an end in Estonia. Kodijärve Home and Merimetsa unit are new, modern, purpose-built care homes offering good living conditions and living arrangements similar to family life. Nevertheless, for instance in Sillamäe Home, buildings in need of repair stand side-by-side with new ones.

Other concerns are mostly the same as in previous years. The most important staff in such care homes are activity supervisors who, however, are forced to deal with various matters and whose numbers are small. This means that it is not possible to take into account the individual needs of all care home residents, offer them sufficient rehabilitative activities or create an environment which is safe for all.

Sometimes the minimum statutorily required staff numbers are not sufficient to enable activity supervisors to carry out all the tasks entrusted to them and also feel safe while doing so. A staff feeling of safety is especially important in Sillamäe Home and Merimetsa unit whose residents may pose a danger to the well-being of themselves or others and who have been referred to the care home under a court order.

Not all staff have completed the training needed for working with people entrusted to their care. Shortage of staff often also means that it is difficult to offer meaningful activities for residents every day.

The law allows that an agitated resident may be placed in a seclusion room for a short time in a care home offering 24-hour special care. The Chancellor emphasises that a seclusion room must be secure, safe, lit, at the required temperature and with appropriate furnishings. A person placed in a seclusion room must be able to use the toilet and they must be under constant direct observation.

One worry was a violation by the state-owned company AS Hoolekandeteenused. Despite the Chancellor's repeated criticism, an unlawful situation has persisted for years without any significant change. The Social Welfare Act lays down specific requirements for the scope of nursing care services to be provided to care home residents. AS Hoolekandeteenused as a state-owned company should be particularly heedful about complying with statutory requirements. Unfortunately, AS Hoolekandeteenused has for years failed to ensure nursing care to the extent required by law. This is not an isolated violation but conscious and deliberate behaviour. It is rather common that contracts for provision of nursing care are concluded for the extent of service not corresponding to the minimum statutory requirements.

Such systematic and conscious violation harms other care homes that comply with requirements and thus incur greater expense. This violation distorts the market of already scarce service providers suffering from a severe shortage of care home places. It would be time for the Ministry of Social Affairs to stop this violation and critically assess the management of the company.

Places of detention for foreigners

Among the places of detention for foreigners, the Chancellor inspected the detention centre of the law enforcement bureau of the North Prefecture of the Police and Border Guard Board (PBGB) and offered several recommendations as a result.

The detention centre is not a penal institution but is used to detain foreigners under a court order who are due to be expelled from Estonia, as well as some applicants for international protection.

The detention centre operates in buildings taken into use in 2018 and the grounds include a spacious outdoor area. The Chancellor found that sports fields in the outdoor area could be used considerably more effectively than at present.

All rooms in the detention centre have a separate toilet and a shower. The Chancellor recommended removing thick metal grilles concealing daylight in windows in some rooms and replacing them with another adequate solution such as impact-resistant glass.

The Chancellor appealed to the staff of the centre to use video surveillance in a person's room only if this is indeed necessary in view of their behaviour.

In summaries of inspection visits as well as in her replies to petitions by individuals, the Chancellor has emphasised that people in the detention centre should be able to spend time meaningfully and communicate with their next of kin. Residents of the centre should be able to communicate with their next of kin via video calls, and consideration should be given to allowing people to use their own mobile phone for calls. The Chancellor has asked the PBGB to deal with making information available for people living in the centre as well as creating possibilities for them to communicate.

A foreigner arriving at the centre is segregated in a separate room for some time. This medical isolation should indeed last only as long as it is medically justified. The health check carried out upon arrival should be thorough and well documented. This enables identifying a person's complaints and health problems as well as possible injuries. The health of a foreigner on hunger strike should be carefully monitored. Based on the opinion of an expert participating in the inspection visit, the Chancellor also offered some recommendations for future provision of medical services in the centre.

Some of the Chancellor's proposals also concerned treatment of foreigners detained at the Estonian border. In her letter sent to the PBGB and Tallinn Airport, the Chancellor explained that foreigners kept in the transit zone at Tallinn Airport who have been denied entry to Estonia do not necessarily have to be placed in the detention centre. First and foremost, this applies if a person departs Estonia in a few hours and they do not need to be taken to the detention centre, for example, for provision of medical care.

The Chancellor emphasised that if police officers detain a person in wet clothes during a border crossing, the person must be provided with dry clothes and footwear as soon as possible. Border guard stations must have a stock of spare clothes and footwear for this purpose.

Closed childcare institutions

During this reporting year, the Chancellor inspected the activities of the Valgejõe Study Centre of Maarjamaa Education College (*Maarjamaa Hariduskolleegium*). Maarjamaa Education College operates at two study centres. The Chancellor visited the Emajõe Study Centre during the previous reporting year.

Maarjamaa Education College is an institution intended for living and study by young people referred to a closed childcare institution under court order so as to enable their all-round development and successful coping with support from the childcare institution without harming themselves and others.

Both study centres use modern premises. Staff at the Valgejõe Study Centre of Maarjamaa Education College have been able to establish a good relationship with the children at the centre. The children were particularly satisfied with the psychologist.

The Chancellor asked the centre to ensure that young people studying there would receive the necessary therapy and support from a psychologist speaking their mother tongue, and that assistance from a psychologist is offered as soon as possible after a young person's arrival at the centre. A careful approach is needed in cases where, for reasons of security, a pupil has been placed either in a seclusion room or for a longer period accommodated separately from other young people. For a young person separated from others for a long time, the study centre must have prepared a medical treatment and rehabilitation plan to help them return to the company of other young people as quickly as possible.

Young people considered it very important that they had been able to use their mobile phones at the centre, especially when direct meetings with the family were restricted (e.g. because of the spread of the coronavirus). The Chancellor appealed to the staff at the centre that the rules for use of the telephone and contact with the family must be clear and fixed and must be complied with. The

minimum time allowed for using the phone may not be reduced for the purpose of influencing a pupil, and home visits may not be restricted.

Psychiatric hospitals

During the reporting year, the Chancellor inspected two psychiatric hospitals: the psychiatric unit at Kuressaare Hospital Foundation and the psychiatric clinic of the North Estonia Medical Centre. The psychiatric unit of Kuressaare Hospital has now moved to renovated premises. However, the situation at the psychiatric clinic of the North Estonia Medical Centre proves that it is extremely complicated to provide modern psychiatric care respecting a person's rights and dignity in outdated rooms that have not been renewed in line with modern requirements.

The Chancellor has always drawn the attention of hospitals to the fact that, if a person needs to be restrained in a psychiatric hospital, then a medical professional must constantly be present with the restrained person and monitor their condition.

Restraint means controlling a violent patient by physical force, mechanical equipment allowed for doing so, or appropriate medication. Of course, in doing so no excessive force or inappropriate aids (such as handcuffs) may be used. Medical professionals must record in detail, inter alia, injuries caused during restraint and any changes in the condition of a person under restraint so as to be clear why it was decided to continue restraint. Chemical restraint (i.e. restraint by using medication) must also be documented. Subsequently, a conversation with the patient should be carried out in order to discuss the events leading to restraint.

Use of video surveillance in patients' wards without a direct reason is prohibited. Video surveillance is only justified if a person needs to be monitored more closely due to their mental health and if someone actually does directly view the video feed and intervene if necessary.

Psychiatric hospitals must also pay attention to the possibility for patients to maintain contact and meet with their next of kin while under treatment. The hospital cannot prescribe who a person maintains contact with.

Prisons

In the summaries of inspection visits to Viru Prison and Tallinn Prison, the Chancellor once again dealt with problems of solitary confinement. She emphasised that a nurse or a doctor must monitor the health of prisoners in solitary confinement on a daily basis, and a person in solitary confinement must also be able to have at least two hours of meaningful communication a day. A prison must actively deal with people held in an isolated locked cell in order to bring them out of solitary confinement as soon as possible. In this regard, an individual action plan for return from solitary confinement must be prepared for every inmate held in an isolated locked cell.

Lengthy solitary confinement is often related to a disciplinary punishment stipulating placement in a disciplinary cell. On the same issue, at the request of the Supreme Court, the Chancellor submitted her opinion in administrative case No 3-18-1895. The Chancellor explained that any solitary confinement may pose a harmful effect on a person and alleviating it necessarily involves reducing the statutorily allowed maximum duration of a disciplinary confinement punishment. Peaceful refusal to work does not constitute such a serious violation as to impose a disciplinary confinement punishment for it on someone as a measure of last resort.

The Ministry of Justice asked for the Chancellor's opinion on a Draft Act intended to reduce periods of disciplinary confinement and lift the accompanying complete ban on visits. Unfortunately, the Chancellor's proposal in 2014 to change the legislative provisions on the detention requirements for remand prisoners has still not been taken into account.

In summaries of inspection visits, the Chancellor noted that even though all the prison buildings in Estonia are new and modern, attention should also be paid to living conditions in prisons. Exercise areas must have benches for rest and training equipment, and windows should also be installed in exercise yards where this is possible in terms of engineering and without endangering prison security.

At the beginning of 2020, working arrangements of prison libraries were changed and books were distributed on shelves in different accommodation blocks. The Chancellor has explained to prisons and the Ministry of Justice that, after reorganisation, the selection of books for inmates has become significantly smaller.

In recent years, the Chancellor has paid much attention to the possibility for convicted and remand prisoners to maintain contact with their family and next of kin. In a summary of inspection visits to Viru and Tallinn prisons, the Chancellor emphasised that convicted and remand prisoners should also be able to communicate with their family via a video link. The Ministry of Justice drew up the relevant Draft Act.

The Chancellor asked the Ministry of Justice to also review those provisions which may impose unjustified obstacles to contact with family and next of kin. For instance, serious consideration should be given to whether it is justified to charge a fee for using rooms for long-term visits.

The Chancellor reminded Tartu Prison that prison staff must be able to establish good contact with prisoners' next of kin, in particular children, and that children's needs and interests should be taken into account when setting conditions for visits. During short-term visits, family members should not be separated from a prisoner by a glass partition, and small children should be able to take along a favourite toy to a visit.

For a long time, the Chancellor has been concerned about how a search of family members arriving for a visit is arranged. She has repeatedly explained to prisons that children coming for a visit may not be forced to undergo a strip search. Tallinn Court of Appeal agreed with the Chancellor by holding (in case No 3-21-161) that this procedure was unlawful.

Unfortunately, Tallinn Prison has continued its unlawful activity even after the court judgment entered into effect.

The Chancellor assessed how the prison service has investigated the circumstances of deaths occurring in prisons from September 2020 to September 2021. Suicides were investigated effectively and the prison internal audit service offered pertinent recommendations to prisons for avoiding deaths. The Chancellor underlined that prisons need more mental health specialists to prevent suicides and that a big problem is shortage of prison officers.

For the prison service it is significant that on 15 March 2022 the Supreme Court issued a judgment (in case No 5-19-29) holding that a person's impaired hearing below the required threshold cannot be an absolute impediment for employment in the prison service. Rules must enable a decision as to whether an officer with impaired hearing is able to perform their working duties or not.

General care homes

Every stage in a person's life should be characterised by the word "dignified". This could also be so in a situation where we need more external assistance for everyday coping. Therefore, the Chancellor regularly inspects the work of general care homes in Estonia.

This year, the Chancellor' advisers carried out inspection visits to Kanepi Home operated by the South-Estonian Care Centre Ltd, and to Kose Home, Koeru Care Home Foundation, Care Home Saaremaa Valss Foundation, Käru Südamekodu operated by Südamekodu AS, and Kohtla-Järve Care Home for the Elderly. The Chancellor also enquired how her previous recommendations had been complied with by the care home of the non-profit association Paju Pansionaadid and the Nõlvaku care home of the Tartu Mental Health Care Centre.

Residents of general care homes are mostly people who are no longer able to cope on their own at home, due either to poor health or an unsuitable living environment, and therefore need constant support in their everyday activities. At the same time, among general care home residents are also younger people who cannot cope on their own at home as a result of illness or injury, or who are waiting there to be able to get a place in a special care home.

Over the years, more and more care home buildings have been remodelled and also made accessible for people with challenged mobility. Heads of care homes have begun to understand the importance of care plans and increasing efforts are being made to enable people under care to spend meaningful time.

For years general care homes have been plagued by shortage of staff. Although the law does not lay down strict requirements for staff numbers, it is clear that the number of properly trained staff must be sufficient in order to enable provision of quality care to people. This means that care workers must also have time to take residents for a walk outdoors and offer them diverse recreational activities. However, because of shortage of staff, often only an assistant staff member is left to deal with people under care even though that person lacks the necessary preparation. This is not how it should be because untrained staff might not know how to properly assess situations or how to act in high-anxiety moments by taking account of a resident's interests.

Probably shortage of staff also leads to inadmissible concessions in care. Bedridden persons must be turned after certain intervals and residents must be given a whole-body wash at least once a week. Certainly, hygiene and care procedures must be carried out in privacy. For this, a screen or a partition curtain must be available in a bedroom with several residents.

Often, residents are mostly left on their own in the evening and at night. A functional staff call system would be of great assistance in these cases, enabling calls for assistance, for example, in case of an accident (e.g. if someone falls) or if a bedridden person needs something.

A painful topic is related to locking people in their rooms. The law does not allow restricting people's freedom of movement in a general care home; moreover, leaving a person in a locked room may endanger their health. Those locked into their rooms mostly included people with problematic and unpredictable behaviour as well as those with a dementia diagnosis, who are difficult to handle. Naturally, the staff worry that a resident may wander off and get lost while moving around on their own, but other – lawful – possibilities exist for resolving such situations. Changing a care home's internal working arrangements or spatial planning, as well as increasing the number of carers, might be of assistance in this respect.

Breaches against storing and use of medication also occur. The Chancellor's advisers have found prescription medication in staff working rooms where it was not clear for whom the medication had been prescribed and how and to whom it was administered. Sometimes expired medication was not properly destroyed or medication was stored so that it could be easily accessible to people who are unable to understand on their own that using medication without a doctor's prescription is dangerous.

A follow-up inspection carried out in two care homes revealed that even though a few aspects had improved, some of the changes recommended by the Chancellor had not been implemented for various reasons. The care homes were still short of staff, people's freedom of movement was restricted, and a staff call system had still not been installed.

Social state

Often people do not know their social rights: for whom and for what purpose are subsistence benefit and unemployment allowance intended; what assistance is available for the disabled from a local authority; what role do parents play in ensuring their minor children's ability to cope; whose task it is to ensure health insurance for people; who should pay and how much for an elderly person's care home place, etc. As a result, people also do not understand social policy choices nor are they able to have a say on these issues during elections. It is easier to just assert that benefits are too small and the state should spend more on social protection than at present.

Due to insufficient knowledge, it may happen that someone in need or their next of kin are unable to stand up for themselves and protect their rights. It is also clear that when applying for assistance people avoid disputes with the assistance provider in fear of being deprived of assistance. This, in turn, creates a possibility for abuse of discretion and arbitrary decisions by officials.

The situation could be improved if the state were to engage more in enhancing awareness, supervise the work of officials more effectively, and if the attitude that errors must be corrected and work not done must be done immediately, kindly and competently were to become self-evident. People must also be ensured all simple and affordable possibilities for contesting decisions and, where necessary, for mutual conciliation of the person in need of assistance and the assistance provider.

Petitions sent to the Chancellor reveal, inter alia, a deep disappointment and distrust towards the Estonian state. It is difficult to reproach someone for such feelings if they have learned that years ago they would already have been entitled to a special pension from the state but the money they were deprived of would not be paid retrospectively and the existing pension would also not be increased by the corresponding amount. For this reason, initiatives that broaden people's knowledge about the system of paying pensions are welcome. Yet, this alone is not sufficient to understand the Estonian social security system and have a say in its development. Social cohesion presumes that everyone in Estonia knows what benefits and services they can obtain from the state (or local authority) in case of need, where the money for this comes from and what the person themselves has to do in order to cope.

In quite a few cases, the Chancellor can successfully resolve a person's concern without much bureaucracy and without a formal proposal. For instance, the Chancellor was asked why, in granting a need-based study allowance, the income of a sister or brother who is married and created their own family is taken into account as the family's income. The Chancellor's advisers and specialists from the Ministry of Education and Research reached a joint conclusion that the income of a married sister or brother should not be taken into account when granting a need-based study allowance.

Since the Riigikogu was simultaneously dealing with a Draft Act amending the Study Allowances and Study Loans Act, the Ministry submitted the relevant proposal to the parliament and the law was amended.

Unfortunately, there have also been cases where nothing was done, even despite promises. Pärnu City Government social welfare department assessed the need for assistance of a family with two disabled children and decided to go and assist the family only when almost a year had passed from applying (see the Chancellor's opinion).

The Social Insurance Board deserves praise for the attitude that swift communication between officials is sufficient to resolve a problem. In one instance, the Chancellor was contacted by a pensioner from whom the Social Insurance Board had wanted to recover the pension paid to him for a period spent in prison. However, the precept issued by the Social Insurance Board was defective. References to laws were incorrect, some references and explanations were missing, and it was possible to interpret the decision so that extra pension should be paid to the person but not the pension unjustifiably paid to be recovered.

The Chancellor's advisers explained to the Social Insurance Board the errors contained in the Board's precept. The Social Insurance Board promised to send the person a new corrected precept and, based on the person's application, also reduce the monthly sum withheld from the pension.

Also worth acknowledging is that the Social Insurance Board of its own initiative changed the administrative practice for recovery of parental benefit once the Chancellor's adviser had drawn attention to the fact that administrative acts for recovery of parental benefit did not comply with the conditions laid down by the Family Benefits Act and the General Part of the Social Code Act.

The Chancellor also recommended that the Estonian Health Insurance Fund and the Estonian Unemployment Insurance Fund should change their administrative practice. The first recommendation concerned suspension of health insurance cover and the second recalculation of the work ability allowance.

Reduction of assistance

A petition sent to the Chancellor revealed that a person's health insurance may be discontinued before they have an opportunity to comply with their tax obligation. This may happen if in any one month the tax obligation is not paid and the deadline for submission of the next social tax return falls on a holiday. This means that a person may be deprived of health insurance due to an incidental circumstance beyond their control.

This problem may be encountered by members of the management or controlling bodies of legal persons, payers of tax on business income, as well as people receiving remuneration or service fees paid on the basis of a contract for services. Insurance cover for these people depends on whether social tax paid or declared for them in any one calendar month amounts to at least the minimum social tax obligation. Under the Health Insurance Act, if the minimum social tax obligation has not been complied with for two consecutive months that person's insurance cover is suspended.

The Chancellor found that it is difficult to find any justification compatible with the spirit of the Health Insurance Act for the situation described in the petition. On that basis, the Chancellor recommended that the Estonian Health Insurance Fund should either change its administrative practice or propose that the Ministry of Social Affairs amend the Health Insurance Act.

The Chancellor was also asked about deadlines for recalculating the amount of the work ability allowance. A person's work ability allowance is reduced if their monthly income exceeds the amount laid down by law. However, if a person's monthly income is higher because they received holiday pay before going on holiday and thus the wages paid to them next month are lower than normal, the amount of work ability allowance is recalculated and the Estonian Unemployment Insurance Fund pays the balance to the person retrospectively. The law does not lay down a deadline for recalculation.

The Estonian Unemployment Insurance Fund notified a person that recalculation will take up to one-and-a-half months. The Unemployment Insurance Fund justified this by relying on the deadline by which they receive information about a person's income from the Tax and Customs Board. When resolving the petition, it was found that the Unemployment Insurance Fund asks for this information only once a month from the Tax and Customs Board.

The Chancellor asked the Estonian Unemployment Insurance Fund to make arrangements so that income data are requested at intervals enabling them to recalculate and pay work ability allowance within a shorter time-limit than at present.

The Estonian Unemployment Insurance Fund promised to review the process of recalculating the work ability allowance together with the Tax and Customs Board and arrange the process so that all applications will be resolved promptly and within a reasonable time.

The Chancellor was also asked to verify whether Tapa Rural Municipal Council was entitled to annul the regulation of 28 September 2017 based on which targeted grants were paid to students residing in the rural municipality. The petition asserted that students entering a higher educational institution in autumn 2021 had already reckoned with the possibility of receiving the grant.

Under the 2017 regulation, students were entitled to a grant of a thousand euros from the rural municipality if complying with the conditions set out in the regulation. In line with the conditions, a person had to be a resident of Tapa rural municipality according to the population register data, they had to have acquired at least basic education at a school in Tapa rural municipality, be enrolled in full-time study at a higher educational institution, and have collected at least 75 per cent of credit points under the approved curriculum.

The Chancellor found that since not much time remained to the end of the semester and there may have been students about whom it was possible to state with certainty on 30 December 2021 that they would collect 75 per cent of credit points by the end of the semester, then it could not be ruled out that some students had fulfilled all the conditions for applying for the grant by that time.

The purpose of paying the grant was to reward residents of Tapa rural municipality who had enrolled in higher education so as to encourage them to tie their life to the municipality in the future as well. At the same time, the municipal regulation did not contain provisions that would have contributed

to achieving that aim. It was also revealed that in actuality that aim had not been achieved by paying the grant.

In the process of approving the Tapa rural municipality budget for 2022 it had become clear that the municipality lacked money to cover various expenses and make urgent investments. Thus, the longer the regulation that did not fulfil its purpose remained in force, the more taxpayers' money the municipality was spending inconsistently while leaving other municipal tasks unfunded.

Some months before annulling the regulation on grants, municipal council elections had taken place. In line with the principle of democracy, a municipal council may also change legal relationships when circumstances change. On that basis, ending the payment of grants was in the public interest and also outweighed the expectation of students who had fulfilled the conditions for the grant and were also expecting to receive the grant in 2021.

Welfare

The Chancellor was asked whether, in granting subsistence benefit, a local authority was entitled to take into account assets withdrawn from the mandatory funded pension fund which the person had used to repay loans. Under the Social Welfare Act in force before 1 July 2022, a person's debts (except student loans) were not included in their expenses for the purposes of granting subsistence benefit, and a person's accumulated savings (e.g. disbursement from the second pension pillar) and loan money at their disposal (except student loans) were also deemed to be available means of subsistence.

The Chancellor explained that, under the Constitution, the state is not responsible for repaying loans taken out by an individual nor does it indirectly have to pay their debts when granting subsistence benefit. The Riigikogu is empowered to decide to what extent and how the state provides assistance to the deprived. This social policy choice depends on the state's economic situation (Supreme Court judgment No 520-1/15, para. 20). However, this does not mean that the state could not be more generous and also take a person's loans into consideration when assisting a deprived person, or leave untouched their savings collected for retirement or for their funeral.

The Riigikogu amended the law and, as of 1 July 2022, in granting subsistence benefit, repayments for a loan taken out for buying housing may also be taken into account (to a limited extent) as a housing expense.

The Chancellor was contacted by a person who had applied for subsistence assistance from Tallinn city. Nõmme city district administration had asked the person's permission to visit their home, which had left the person with the impression that in case of refusal they would be deprived of benefit. However, Nõmme social welfare department justified the need for a home visit to the Chancellor's adviser by the argument that the applicant for subsistence assistance might actually not live in Tallinn. At the same time, in granting support by the city it is not relevant whether a person in need lives in Nõmme or, for example, in Mustamäe city district.

The Chancellor did not consider the justification by the city district administration to be adequate. A home visit must be substantively justified, the applicant's last three months' income and expenditure are assessed when adopting a decision. However, a home visit cannot be excluded, and it may be carried out to verify assertions by the applicant. For instance, if in applying for compensation of the price of medication a person has explained that a large amount withdrawn from their bank account was spent on repairing a fireplace, or the like, it may prove to be necessary to verify on-site whether the person's claims are true.

The Chancellor was contacted by a wheelchair user who complained that he had not received sufficient assistance from the rural municipality government to ease access to their apartment. Communication with the rural municipality government revealed that at first the person had wanted a lift inside the house but this could not be installed in the stairway. The person declined an outdoor lift for various reasons and, instead, preferred a stair crawler.

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

The Chancellor also dealt with a worry of a family with a disabled child. The local authority assessed the family's need for assistance when almost a year had passed from the moment of applying. Then, the city granted a carer's allowance to the disabled child's family but no decisions were made about applied supportive services.

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

Equal treatment

In the area of equal treatment, the Chancellor checks conformity of legislation with the Constitution and laws, as well as checking the activities of representatives of public authority. The Chancellor also carries out conciliation proceedings where persons in private law have a dispute about discrimination.

During the last reporting period, the Chancellor received a total of 18 petitions with complaints about discrimination. Among them, six petitions concerned discrimination on grounds of disability, three on grounds of ethnicity, three on race, two on age, one on political or other belief, one on language, one on European Union nationality, and one on other grounds. In one case, the Chancellor initiated conciliation proceedings at the request of the parties. In other cases, the Chancellor mostly offered explanations. For instance, people asked whether a university applicant may be treated differently on the grounds of their ethnicity and nationality, or whether a student may be expelled from school because of their beliefs, as well as whether a landlord is obliged unconditionally to enter into a tenancy agreement with a person of any ethnicity.

In several cases, the Chancellor's assessment was sought as to whether representatives of public power have complied with the principle of equal treatment. Those petitions mostly concerned the rights of people with disabilities and age discrimination. For example, the Chancellor had to assess whether Tartu Homeless Animals Shelter may refuse to give a kitten to an over-65-year-old animal lover and whether a child suffering from diabetes is entitled to attend kindergarten similarly to other children of the same age. In one instance, the Chancellor made a proposal to a rural municipality to amend the regulation, so that a child and their family would not be treated unequally in comparison to others. The topic of equal treatment was also the focus in several other petitions. For example, petitioners asked whether in paying family allowances the state may support families with many children more than single-child and two-child families and whether a fee may be charged for social transport arranged by a municipality while a disabled person could use the regular national bus service for free.

On 15 March 2022, the Supreme Court issued a judgment (in case No 5-19-29) holding that a person's impaired hearing below the required threshold cannot be an absolute impediment for

employment in the prison service. Rules must enable a decision as to whether an officer with impaired hearing is able to perform their working duties or not. The Chancellor submitted an opinion in this case already in 2019, finding that the relevant rules were unconstitutional since they did not enable assessment of whether poor hearing is an impediment to performance of a prison officer's working duties and whether impaired hearing can be compensated by a hearing aid.

The Chancellor continued her work promoting the rights of people with disabilities. On several occasions, the Advisory Chamber of People with Disabilities, set up by the Chancellor, also convened. At the meeting of the Advisory Chamber on 25 October 2021, the topic was accessibility of buildings and services. On 11 May 2022, a joint meeting of the Advisory Committee on Human Rights and the Advisory Chamber of People with Disabilities took place on the topics "How and how well is equal treatment guaranteed in Estonia?" The Gender Equality and Equal Treatment Commissioner Liisa-Ly Pakosta introduced the legal space dealing with equal treatment and discrimination.

Close cooperation with the Estonian Chamber of People with Disabilities and its member organisations enables the Chancellor to more quickly resolve the problems of those in need. For instance, it was revealed that visually impaired people had been unable to use online calculators created after establishing the energy support measure because the possibilities of a screen reader were not taken into account when creating technical solutions. After the Chancellor's intervention, the calculator was adjusted to be compatible with a screen reader.

The reputation of the Chancellor's Office as a centre of excellence for the rights of people with disabilities is becoming ever more rooted. The Chancellor's advisers have been asked for advice about accessibility and they have been involved in the work of working groups in several government agencies.

After the accessibility task force operating under the Government Office made several proposals to the Government for improving accessibility, the Chancellor's Office plans to monitor implementation of the action plan.

Freedom of belief

The Chancellor was contacted by a student whom the university wanted to exmatriculate because their views (including about the reasons for the war in Ukraine) did not coincide with those of the traineeship institution.

Section 41 of the Constitution guarantees everyone the right to their opinion and beliefs. This provision also protects the freedom to be without an opinion or beliefs, as well as the right to change one's beliefs. The fact that a student thinks differently from their school or its management about a topical event cannot serve as a reason to unenroll the student.

The right to education is a fundamental right which may only be restricted under the law (§§ 3 and 11 of the Constitution). Grounds for exclusion from a higher educational institution are laid down by the Higher Education Act. A school may exclude a student who, for example, has seriously breached the conditions of and procedure for organisation of studies, who harms other students or other persons with their behaviour, or who has committed a serious discreditable act. A school's procedure for organisation of studies cannot establish other grounds for exclusion than those laid down by law.

Ethnicity and citizenship

During the reporting year, the issue arose whether third-country nationals and stateless persons living abroad are entitled to enter a university in Estonia and study here.

No subjective right for this exists.

Under the Aliens Act, an educational institution offering study places to foreigners incurs a number of obligations. Under § 38 of the Constitution, universities are autonomous within the limits laid down by law. Universities are free to organise instruction at and operation of the university. The right of self-organisation also extends to decisions on whether and what responsibility the university wants to assume for foreign students. At the same time, universities have no grounds to refuse to admit permanent residents of Estonia if they fulfil the admission conditions. The Higher Education Act does not lay down a possibility not to admit a student because of their citizenship.

In the first days of the war started by Russia, the Chancellor was asked why some shops in Estonia removed from sale Russian-language books produced in Russia, including children's books. The

Chancellor found that people of Russian mother tongue – let alone children – are not responsible for the war started by the Russian leadership against the Ukrainian state and people, nor for war crimes committed there. For this reason, such a decision was unfair. Bookshops changed their decision while admitting that before they place books on sale they examine the content of books produced in Russia so as to prevent, for example, distribution of war propaganda.

The Chancellor received a letter from a Belarusian citizen to whom a bank had refused to provide banking services due to their citizenship. The petitioner was given the explanation that a bank must enter into a basic payment service contract with a client lawfully residing in the European Union in the event of justified interest from a client. A bank must enter into a payment service contract and open an account for a person in respect of whom no suspicion of money laundering and terrorist financing exists and if the person and the contract terms sought by them conform to statutory requirements as well as the payment service provider's general terms and conditions for services or standard conditions for provision of payment services. Nor may a bank refuse to enter into a basic payment service contract with a foreigner holding an Estonian residence permit or entitled to live here. A basic payment service contract must also be concluded with an applicant for international protection (within the meaning of the Act on Granting International Protection to Aliens) regardless of the person's citizenship or residence. If a bank refuses to enter into a payment service contract, they must justify it.

The Chancellor was asked to analyse whether the principle of equal treatment is also observed on the housing market since many owners of dwellings allegedly do not wish to rent out their dwelling to foreigners due to lack of proficiency in a foreign language and cultural differences.

The Chancellor explained that it is not possible to assess in advance whether refusal to enter into a contract with a foreigner or whether taking certain aspects into account when doing so may be discriminatory or not. Since a landlord needs to communicate with a tenant, sometimes it may be justified to take into account the language proficiency of a landlord and tenant or the possibility to involve an interpreter. Assessment may also depend on the particular landlord: whether it is a single individual renting out one apartment or a company engaged in the business of renting out housing.

If a person rents out, for example, one room in their apartment where they also live themselves, they may proceed more from their preferences when choosing fellow residents. In the case of a wish, a

landlord may also establish conditions for using the dwelling, which the tenant must observe and by which the landlord can prevent behaviour that they find inappropriate (for instance because of cultural differences). Thus, assessment depends on specific circumstances: the landlord, the tenant, as well as details of the dwelling to be rented. The landlord's considerations and their relevance must also be taken into account.

Healthcare

Under § 28(1) of the Constitution, everyone has the right to health protection. This does not mean that a person could demand all healthcare services for free and without restrictions. The state enjoys a broad margin of appreciation in deciding how to ensure social rights to people. At the same time, the Supreme Court has emphasised that in doing so the core of fundamental rights may not be excluded from protection nor may unreasonable conditions be imposed on the exercise of rights (Supreme Court judgment in case No 3-3-1-65-03, para. 14). Nor may choices based on the state's social policy considerations lead to a situation where the fundamental right to equality is violated when allocating the limited resources of health insurance (Supreme Court judgment in case No 3-4-1-12-10).

The approach to the right to health changes constantly. It is affected by several factors: on the one hand, development of medicine, and on the other hand, the fact that the right to health must be seen as evolving over time. This means that the state's obligations in ensuring the right to health increase along with the state's increasing financial and other possibilities. More information about this can be found in the book "Inimõigused" (Human Rights) published this year (see the chapter "Õigus tervisele" (The right to life)).

In several petitions the Chancellor was asked for an explanation as to why the Estonian Health Insurance Fund does not finance a certain service. People asked whether the Estonian Health Insurance Fund should pay in the same way for giving birth at home as for giving birth in a hospital. The Chancellor explained that, by relying on the Constitution, it is not presently possible to demand that a home birth should be included in the list of healthcare services financed by the Estonian Health Insurance Fund.

Legislation stipulates that the Estonian Health Insurance Fund only pays for giving birth in hospital. This has been justified by the fact that giving birth in hospital can be chosen instead of a home birth, and financing the home birth delivery assistance service is not practicable on health policy considerations.

Discussions about home birth usually focus on the issue whether hospital birth is safer than home birth. These discussions dwell on the risks involved in a home birth: mortality of newborn babies and factors endangering the health and life of mothers. However, little has been said about women's satisfaction with the experience of giving birth. The state deems it important to protect the health of child and mother. Therefore, a question may arise how to find proper balance between several rights.

Analysis is needed as to whether possible risks of home birth could be mitigated more effectively if the state were to finance this service to some extent. Possibly, this could help develop the service. Under what conditions home births could be financed is for the state to assess in cooperation with experts, while taking account of newer medical and scientific achievements.

The Chancellor was also asked whether it is admissible that financing bariatric surgery (i.e. stomach reduction surgery) by the Estonian Health Insurance Fund depends on a patient's weight. The Chancellor found that no reason exists to consider the current situation unconstitutional. Before the Estonian Health Insurance Fund decides to finance a healthcare service, expert opinions and clinical guidelines are taken into account which proceed from indications for medical intervention, scientific evidence, effectiveness, and safety. It is planned to update the guidelines for treatment of bariatric patients in 2022. Should it be found thereby that the regulation needs to be amended, it is possible to initiate amendment.

The Chancellor was asked why medicines for treatment of attention deficit hyperactivity disorder are not available at a discounted rate for those adults covered by health insurance whose disease manifested itself before the age of 20 but was diagnosed after the age of 20. At the same time, discounted medicines are available for patients whose disease was diagnosed before the age of 20. Due to such differentiation, treatment might be inaccessible for people who cannot afford the medication without a discount.

Under § 12 of the Constitution, unequal treatment of people in a similar situation is prohibited unless a reasonable and adequate justification for this exists and unless the objective of different treatment

outweighs the severity of the resulting different situation. The Chancellor found that no reasonable justification existed for the unequal treatment described in the petition and proposed bringing the ministerial regulation into conformity with the Constitution.

The Chancellor has received several petitions expressing dissatisfaction about poor communication by healthcare workers. For instance, the Chancellor received a letter from someone wishing to donate blood but who was not allowed to do so because of medication they had used. Unfortunately, the person was offered contradictory explanations about this temporary restriction and was treated impolitely. The Chancellor drew the attention of the blood centre to the incident.

A donor must receive clear answers to their questions and they must also be able to understand the reasons for a temporary or permanent ban on donating blood. People must also be offered an explanation as to why blood or blood components may not be donated if this may entail a risk for a blood recipient.

The Chancellor was also asked whether blood-donating restrictions on men having male sexual partners were lawful. The Chancellor explained that the risks of sexual behaviour of a person wishing to donate blood and their suitability to be a blood donor can only be assessed by experts in the field relying on modern science-based opinions. Mere sexual intercourse between men within the last four months might not be the best justified or the only possible risk criterion to restrict donating blood.

When assessing the suitability of a blood donor, a doctor or a nurse analyses the person's overall condition and physiological indicators and speaks with the person. On this basis, the medical professional can decide whether a person may donate blood or not. The safety of blood and blood components depends on whether a person wishing to donate blood is prepared to disclose truthful and complete information concerning their personal data and circumstances essential in terms of the safety and suitability for treatment of blood and blood components. Readiness for cooperation is better if the criteria for choosing donors are unequivocally understandable, sufficiently justified and necessary. Scientific literature contains references to the fact that in the event of excessive restrictions potential blood donors may consciously withhold truthful information.

Protection of the rights of people with disabilities

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

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

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

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

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

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

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

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

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

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

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

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

Ensuring a support person

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

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

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

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

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

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

Simplified curriculum

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

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

Assessment of the need for assistance

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

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

Fee for the social transport service

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

Being deprived of school support

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

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

Discrimination on grounds of age

Tartu Homeless Animals Shelter had established a rule that kittens are not given to animal lovers over 65 years old. The Chancellor found that in giving an abandoned animal to a new owner the animal shelter must definitely proceed from the animal's well-being but, at the same time, it cannot decline to give someone an animal merely on grounds of their age.

Although, by taking a kitten, a person assumes a long-term obligation to take care of it, a person's own ability to assess whether they can offer a good home for the animal should always be taken into account. Even when giving someone an adult cat it cannot be ruled out that the animal will outlive its owner.

It is also impossible to agree with the opinion that people cannot be given a kitten due to some inadequate cat-keeping habit. Such an opinion is prejudicial and does not justify an elderly person's poorer treatment. It is possible to explain to people how best to arrange the animal's life but the shelter may also impose specific conditions for keeping an animal at home.

However, imposing an age limit is not always discriminating. For instance, the age limit imposed on artificial insemination (50 years) is justified and compatible with the prohibition on discrimination arising from the Constitution and international law. *In vitro* fertilisation procedures are invasive and doctors, and medical science more broadly, must find solutions which are proportional, based on science and as safe as possible for patients. Moreover, it should be taken into account how a woman's age may affect pregnancy and birth. For instance, pregnancy at an older age may pose a greater risk to a woman's health: the risk of serious health problems increases as well as maternal mortality during pregnancy and giving birth.

It has been scientifically proven that after the age of 40 the success of *in vitro* fertilisation decreases sharply down to five per cent (see statistics). Thus, the age limit on *in vitro* fertilisation procedures is proportional and does not violate the prohibition on discrimination.