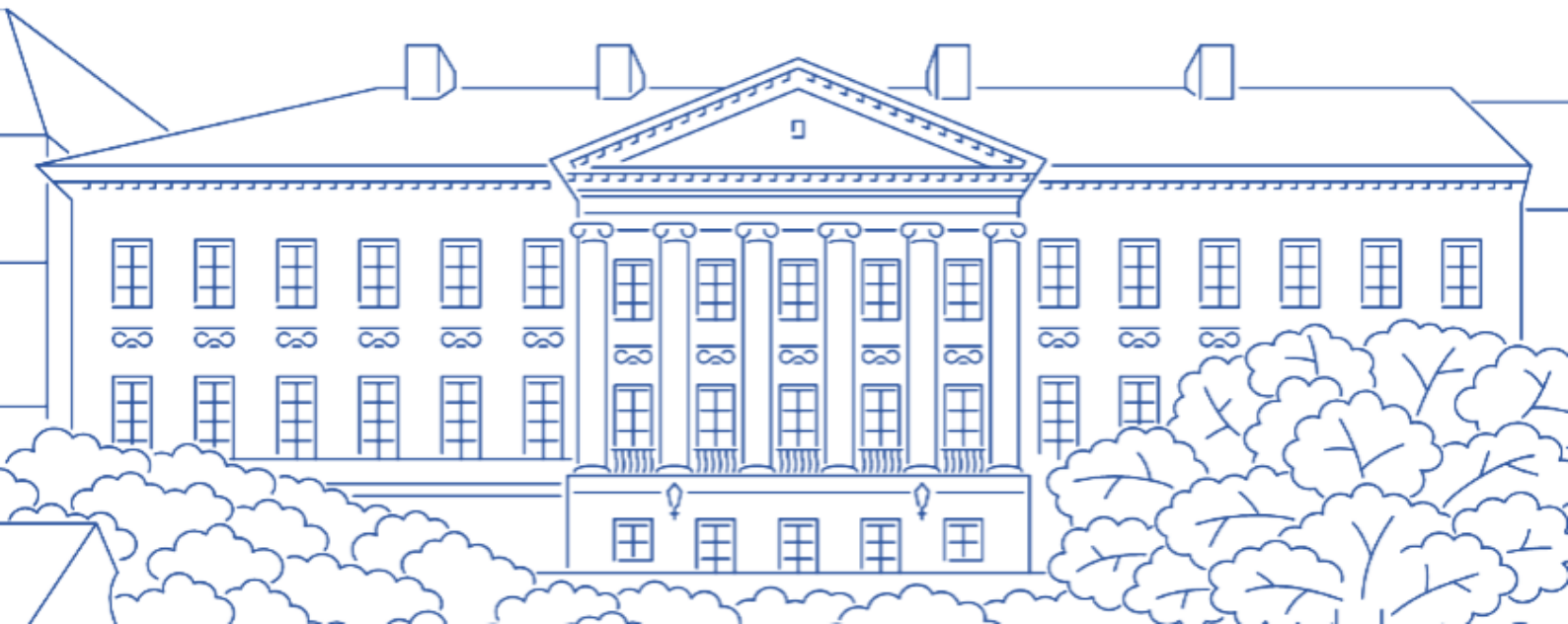
Õiguskantsler

2019-2020 OVERVIEW OF THE CHANCELLOR OF JUSTICE ACTIVITIES

Tallinn 2020



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FOREWORD BY THE CHANCELLOR OF JUSTICE

Dear Reader

During the last reporting year, every day the Chancellor's Office received justified complaints against the state and local authorities, including such that are almost humanly impossible to explain otherwise than by total alienation of those exercising power from their role as servants of the people. Heartfelt thanks to those officials and politicians who have made an effort in serving Estonia and the people living here, who have been ready to correct mistakes and change working arrangements.

Worthy of recognition and gratitude is the Riigikogu for numerous quick legislative amendments, which may have escaped the attention of the public but solved the problems of many people. For example, the unemployment insurance system was further improved. However, this does not yet completely remove the topic of 21st century work and of the security network from the list of issues that need to be dealt with. When a mistake is made, it has to be corrected immediately, as we know that the energy spent on looking for culprits – unless we are dealing with an evil act – is spent in vain. Let bygones be bygones, and let's move on happily and ever better!

In December, the Supreme Court granted the Chancellor's application to declare the unsystematic nature of provision of social services by local authorities and leaving people in difficulty unconstitutional. However, the second and more difficult part of the formula still needs to be taken care of. Perhaps help for those members of the local community who are in need of assistance will become an important issue in upcoming elections of rural municipal, town and city councils throughout Estonia. Inspection visits to care homes reveal poor living conditions and staff shortages still in many places. It is delightful to see that very many of those doing this extremely difficult work are dedicated to looking after care home residents as well as possible. Often, our summaries of an inspection visit begin with well-deserved comments on how residents acknowledge friendly staff, and we too were left with an impression of diligence, often despite objectively poor room structure and lack of money.

The issue of dignity at the end of life is wider. Could a person give well-considered notarised instructions concerning their resuscitation and life-preserving treatment for a situation when actually there is no more hope? If at least the so-called 'patient's last will' (also termed a 'living will' or 'advance directives') were indeed made executable, this would also show mercy to doctors who have to bear the burden of difficult decisions.

Estonian healthcare is of good quality and medical care is better ensured than in many other countries. More could be done to better appreciate our medical staff. For example, it is necessary to resolve the issue whether a doctor may be prevented, under

threat of a corruption offence, from upholding the doctor's oath and treating a person. We believe the answer is no. Thanks to the Riigikogu for having set about resolving these issues. Corruption is unquestionably completely impermissible, but an honest society cannot be achieved by placing all decision-makers, even doctors, in a confining atmosphere of suspicion. Even when to the best of your knowledge you have done nothing wrong, have not caused damage to the state or given unfair advantage to someone, you may be labelled as corrupt in the eyes of the public because of a formal violation. Corruption is a very serious thing, and so it must be clear to all decision-makers what is allowed and what is prohibited.

During the reporting year, many complaints concerned decisions to close or refusal to open a bank account. Certainly, no assistance should be provided to criminals or suspicious transactions tolerated. However, it seems that undertakings with no substantive connection to money laundering also had their bank accounts closed. Since no justification is given for these decisions, they cannot protect their interests. A person not allowed to have even a single bank account in Estonia is largely sidelined from the normal functioning of society. It is hardly likely that cash transactions instead of bank transfers reduce the risk of money laundering. Actually, not all transactions can be made in hard cash. Access to government e-services, or rather the absence of access, for example when an ID card cannot be used because of a mistake by the state, or if a blind person cannot access a hospital's digital registration service to book, cancel or change a doctor's appointment, brought about numerous petitions this year. It is commendable that the authorities also promise to correct mistakes and indeed do so. Estonians living in Abkhazia, who have already once been issued with a passport of a citizen by birth, may keep it as a favourable outcome of a long dispute. This helps to avoid much human tragedy. Thanks to the Police and Border Guard Board for finding such a human-centred interpretation showing care for our own people.

The above is only a small selection of the concerns and joys reaching the desk of the Chancellor and the whole of the Chancellor's Office. A comprehensive chapter on the emergency situation could already be presented to the parliament in the spring session. I would like to thank the Riigikogu for this opportunity. One thing is clear: there is no doubt that the Constitution is still valid in the conditions of an emergency situation.

I hope that during these hectic times Estonia will be able to serve as an example with its science-based approach and its courage. Fear or over-enthusiasm never serve us well. Analysts will probably continue to scrutinise for a long time why an almost hysterical wave of closing borders and social life rolled from country to country, why infection rates increased in some countries despite the strictest obligation to wear masks. Could it be that we are witnessing the artificial creation of a new permanent need for consumption and a profitable environmentally damaging branch of industry?

It is worth paying careful attention to how long people's patience will last and what happens when exhaustion occurs.

In terms of scientific research, we live in extremely exciting times. If only decision-makers had the courage to be guided by the results of these studies, to set reasonable and attainable goals in combating the spread of the virus, goals which are also non-damaging in the long term, and to impose only restrictions which are logically appropriate.

It is not fair to rashly criticise decision-makers. For years, the complaint was heard that those at the head of the state often strive for goals with a view to the long-term gain of the nation, yet do not bother to explain clearly why something is done that does not seem either convenient or right at the time, but will still be useful later. Now the situation is different: rational decisions are too often swept aside by perceptions of what voters might like at the moment. Hopefully this trend, too, will turn. Decisions affecting society as a whole may not be based on momentary emotion arising without a careful analysis of facts and their interconnections. In the end, this is not what voters want, either.

The Chancellor's Office does not let itself be disturbed by this irrational confusion and will do its best to contribute to preserving the rule of law. This will be done within the limits of the Chancellor's mandate and powers, just as the Chancellors of Justice of the Republic of Estonia have done their work since 1993. Competently, swiftly, and as clearly as possible. If possible, by pre-empting problems and not picking up the pieces trying to be wise after the event.

The Constitution does not allow the Chancellor to rewrite or criticise court judgments, nor is it within our capacity to ban the spread of the coronavirus, or to send people to a doctor's appointment, and we cannot resolve debt disputes with a bank or a bailiff, let alone a family quarrel or a row between neighbours. Even though it is not directly our task, we nevertheless try to tell individuals how they can protect their rights in these cases.

The central task of the Chancellor of Justice – constitutional review – is supported by the Chancellor's roles as ombudsman, the Ombudsman for Children, the national preventive mechanism against cruel treatment, supervisor of surveillance agencies, the human rights institution, and promoter of the rights of people with disabilities. The Office of the Chancellor has not expanded – our good colleagues were able to withstand the pressure, even alongside other unexpected duties while working from their home office this special spring, if necessary also cutting down on their sleep and days off.

If at all within our capacity, we help, making use of the shortest possible lawful avenue. We leave for readers to decide whether and to what extent we succeeded in doing so. During this reporting year, i.e. from 1 September 2019 to 31 August 2020, the Chancellor received 4026 different petitions, requests and letters (3782 a year earlier). Of these 4000 messages and more received, 2473 required a substantive solution (2302 a year earlier).

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

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Ülle Madise
Chancellor of Justice of the Republic of Estonia

I. CHANCELLOR'S YEAR IN REVIEW

1.1. Accreditation of the national human rights institution

Under the Act on supplementing the Chancellor of Justice Act passed on 13 June 2018, the Riigikogu imposed new duties on the Chancellor: as of 1 January 2019 the institution of 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).

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

The last step of accreditation, i.e. an interview with the SCA, was to have taken place in March 2020. However, due to the Covid-19 pandemic, most of international communication (including the activities of the SCA) essentially stopped overnight. Thus the international accreditation of the Chancellor's institution was also postponed.

1.2. Work of the Advisory Committee on Human Rights

The Advisory Committee on Human Rights, set up in spring 2019 and advising the Chancellor of Justice, was to have convened for the third time in March this year, but the meeting was cancelled due to the emergency situation. Nevertheless, several members of the Advisory Committee notified the Chancellor about issues (e.g. healthcare) arising during the emergency situation and provided important information about developments in their area. The next meeting of the Advisory Committee on Human Rights is scheduled for October.

1.3. Human rights education

In the autumn semester of the academic year 2020/2021, the Chancellor's advisers will teach a unique interdisciplinary subject "Human rights and design: an introduction" at

the Estonian Academy of Arts, the substance and structure of which has been developed at the Office of the Chancellor of Justice. The subject will explore the meaning of a human rights-based approach to design and the role/responsibility that designers have/could have in protecting and promoting human rights.

The Chancellor's advisers also contributed to the revised edition of the annotated Constitution of the Republic of Estonia and are preparing the manuscript of a new book on human rights in Estonian.

1.4. Meetings with Riigikogu factions

In May and June 2020, the Chancellor traditionally met with all the Riigikogu factions. Meetings with members of parliament serve three aims. The Chancellor introduces members of the Riigikogu to her most recent opinions and the tools at her disposal in exercising constitutional review. Then the Chancellor listens to comments and observations by the members of the Riigikogu on the Chancellor's activities. In addition, members of parliament make proposals on topics and areas which they believe the Chancellor should deal with in the future.

Understandably, the emergency situation in spring left its mark on this year's meeting. Members of the Riigikogu had many questions about the effectiveness and lawfulness of restrictions. The Chancellor, in turn, provided an overview of those aspects of prohibitions imposed and measures taken in the emergency situation which most affected people and undertakings. As a preliminary result of the meetings, at the end of the Riigikogu spring session the Chancellor delivered a presentation to the Riigikogu on the legal certainty of the measures used to combat the corona pandemic.
Arising from her status and her oath of office, the Chancellor of Justice is not a politician, which means that she does not participate in current political debates nor does she express opinions on promises of a political nature. The Chancellor's work in the Riigikogu mostly concerns the constitutionality of draft legislation and the quality of law-making in general.

The Chancellor replied to most questions during the meetings and sent a written answer to the remaining enquiries within a couple of weeks.

1.5. International cooperation

Since 2001, the Estonian Chancellor of Justice has been a member of the International Ombudsman Institute (IOI). The Institute was established in 1978 and includes over 190 national and regional ombudsmen from over a hundred countries worldwide. The IOI operates in six regions – Africa, Asia, Australasia and the Pacific, Europe, the Caribbean and Latin America, and North America – and is governed through worldwide and regional Boards.

The Chancellor of Justice, Ülle Madise, was elected to the seven-member Board of the IOI European region on 30 September 2015 and was re-elected on 27 July 2016. Since November 2017, Ülle Madise has also been a member of the IOI World Board. Due to the Covid-19 pandemic, the mandate of the members of the Board was extended to May 2021.

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

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

The Chancellor's foreign guests during the reporting period 2019-2020

11 September 2019 – delegation of judges from the European Judicial Training Network exchange programme.
7–8 October 2019 – the founder of the De Hogeweyk care facility for people with dementia syndrome, Eloy van Hal, and Associate Professor of social welfare law at Tampere University, Laura Kalliomaa-Puha, attended the conference „Väärika vananemise võimalikkusest. Kuhu küll lõpeb rändaja tee? (G. Suits)" [On the possibility of dignified ageing. Where does a wanderer's road end?] organised by the Office of the Chancellor of Justice on 8 October.
5–8 November 2019 – study visit of the Armenian Ombudsman's Department for Prevention of Ill-treatment.
6 January 2020 – German Federal Minister of Justice and Consumer Protection, Christine Lambrecht, with a delegation.
11 March 2020 – delegation of advisers to the Ukrainian Ombudsman.

Foreign visits of the Chancellor of Justice and her advisers

18–20 September 2019 – Vallo Olle attended a meeting of the Group of Independent Experts on the European Charter of Local Self-Government in Strasbourg.
20 September 2019 – Evelin Lopman and Marje Kask attended an event organised in Helsinki by the network of European environmental lawyers.

24–27 September 2019 – Andres Aru and Margit Sarv attended the annual meeting of the European Network of Ombudspersons for Children (ENOC) in Belfast.
26–27 September 2019 – Ülle Madise, Kertti Pilvik, Indrek-Ivar Määrits, Juta Saarevet and Eva Lillemaa attended the annual meeting of Baltic and Nordic ombudsmen in Vilnius.
9–11 October 2019 – Käti Mägi attended the training seminar "Migrants' rights at the borders" organised by the European Network of the NHRI (ENNHRI) in Madrid.
12–14 October 2019 – Olari Koppel observed parliamentary elections in Poland as a member of the National Electoral Committee.
14–18 October 2019 – Eva Lillemaa attended the international conference "Measuring and Enhancing the Impact of National Preventive Mechanisms" organised by the Georgian Ombudsman in Tbilisi.
15–17 October 2019 – Ülle Madise and Kertti Pilvik attended the seminar "General Data Protection Regulation" organised by the Latvian Ombudsman, and a meeting of the European Board of the IOI.
16–18 October 2019 – Käti Mägi attended a meeting of the European police ombudsmen network (IPCAN) in Paris.
31 October – 2 November 2019 – Arno Tuisk attended the debate "How ombudsman assess the actions of government" organised by the Dutch Ombudsman in the Hague.
12–14 November 2019 – Liiri Oja attended the assembly and conference of the European Network of the NHRI (ENNHRI) in Brussels.
12–16 November 2019 – Käti Mägi, Maria Sults and Ksenia Žurakovskaja-Aru were on a study visit to Iceland studying the situation of prisons and police establishments and discussing issues of supervision of these establishments.
24–26 November 2019 – Andres Aru and Juta Saarevet attended the conference "Inclusive Education – Missing Links" in Vilnius.
26–28 November 2019 – Piret Arukaevu, Kaidi Kaidme, Kadi Kallas, Kristine Kärner and Riste Uuesoo were on a study visit to Sweden studying the country's public service organisation and discussing issues related to the support function.
1–3 December 2019 – Kristi Paron attended the conference "The International Scientific Conference on Shared Parenting" in Malaga.
4–5 December 2019 – Ülle Madise and Piret Arukaevu attended the conference "Clear writing for Europe" organised by the European Commission in Brussels.
9 December 2019 – Ülle Madise attended a plenary session of the Council of Europe Commission against Racism and Intolerance (ECRI) in Strasbourg.
9–11 December 2019 – Olari Koppel attended a seminar on the Venice Principles in Nicosia.
12–13 December 2019 – Kertti Pilvik attended a meeting of the Management Board of the EU Agency for Fundamental Rights (FRA) in Vienna.
23 January 2020 – the Chancellor of Justice and her advisers visited Helsinki in the frame of work on promoting the rights of people with disabilities to examine the accessibility of ports and ships in Tallinn and Helsinki and of public buildings in Helsinki.

26–28 January 2020 – Ksenia Žurakovskaja-Aru attended a meeting in Rome of experts on prevention of ill-treatment.

Study visits

In autumn 2019, the Chancellor's advisers visited parliamentary ombudsmen in Iceland and Sweden. In Iceland, they studied the situation of prisons and police establishments and discussed issues of supervision of these establishments. In Sweden, they studied the country's organisation of public services and discussed issues related to the support function. The study visits took place with support from the Nordic-Baltic mobility programme for public administration.

1.6. Media

Articles

The Chancellor's adviser Külli Taro, „Kodanik on riigi omanik, mitte klient" [The citizen is the owner of the state and not its client], radio programme *Vikerraadio päevakommentaar*, 25 August 2020
The Chancellor's adviser Külli Taro, „Kes peaks saama kuuluda volikokku?" [Who should be able to serve on municipal council?], radio programme *Vikerraadio päevakommentaar*, 9 July 2020
The Chancellor's adviser Hent Kalmo, „Konservatiivsusest põhiseaduses" [On conservatism in the Constitution], *Postimees*, 13 June 2020
The Chancellor's adviser Külli Taro, „Suur osa avalikust ruumist paikneb meil kaubanduskeskustes" [Much of public space is located in shopping centres], radio programme *Vikerraadio päevakommentaar*, 11 June 2020
The Chancellor's adviser Külli Taro, „Erakondade rahastamise kontrolli muutmine on üks riukalik plaan" [Changing the control of financing political parties is a devious plan], radio programme *Vikerraadio päevakommentaar*, 27 May 2020
Chancellor of Justice Ülle Madise, „Amet ja hirm" [Government agency and fear], *ERR* opinion, 15 May 2020
The Chancellor's adviser Külli Taro, „Mis on inimelu hind?" [What is the price of human life?], radio programme *Vikerraadio päevakommentaar*, 21 April 2020
Chancellor of Justice Ülle Madise, „Eriolukorra lõpetamise võimalikkusest" [On the possibility to terminate the emergency situation], *ERR* opinion, 21 April 2020
The Chancellor's adviser Külli Taro, „Usun, et mitmed seadused lähevad pärast kriisi muutmisele" [I believe many laws will be amended once the crisis is over], radio programme *Vikerraadio päevakommentaar*, 24 March 2020
The Head of Disability Rights of the Chancellor's Office, Juta Saarevet, and Supreme Court analyst Raina Loom, „Sotsiaalabi piirid – inimeste õigused ja kohalike omavalitsuste kohustused" [The limits of social assistance – the rights of people and duties of local authorities], journal *Sotsiaaltöö*, 1/2020

The Chancellor's adviser Külli Taro, „Vabadus ja Hiina kodanikupunktisüsteem" [Freedom and the Chinese social credit system], radio programme *Vikerraadio päevakommentaar*, 25 February 2020
The Chancellor's advisers Maria Sults and Käti Mägi, „Süüteo toime pannud vaimse häirega inimese kinnipidamiseks sobivad asutused: olukord Eestis ja põgus ülevaade mõningatest Euroopa Inimõiguste Kohtu lahenditest" [Establishments suitable for detaining people with a mental disorder who have committed an offence: situation in Estonia and a brief overview of some case-law of the European Court of Human Rights], journal *Juridica*, 2020/1
The Chancellor's adviser Liisi Uder, „Mind ei huvita mu pension, mina töötan surmani" [I am not interested in my pension, I will work till I die], *ERR*, 2 February 2020
The Chancellor's adviser Kristi Paron**,** „Lapsesõbralik tervishoid" [Child-friendly healthcare], journal *Märka Last*, November 2019

Interviews

Chancellor of Justice Ülle Madise explained issues related to restrictions on the sale of alcohol on the *Raadio 2* programme „R2 päev", 4 September 2020
The Chancellor spoke on *Kuku* radio about speeches heard on the Day of Restoration of Independence, 21 August 2020
Interview with the Chancellor of Justice on the 100th anniversary of the Constitution on the television programme „Esimene stuudio", 15 June 2020
Interview with the Chancellor of Justice on *Kuku* radio – 100 years from adoption of the first Constitution of the Republic of Estonia, 15 June 2020
Interview with the Chancellor of Justice on the *Klassikaraadio* programme „Suveduur", 1 June 2020
Chancellor of Justice on the *ETV* programme „Aktuaalne kaamera": „Ärge kartke piirangu rikkumisega kaasnevat karistust, kartke nakkust" [Don't be afraid of punishment following violation of restrictions, but be afraid of infection], 15 May 2020
Chancellor of Justice on the *Vikerraadio* programme „Uudis+": „Vaja oleks selgel õiguslikul alusel põhiseaduspäraselt panna nakkuse levikule piir" [The spread of infection needs to be stopped on a clear legal basis and in line with the Constitution], 13 May 2020
Chancellor of Justice on the *ETV* programme „AK nädal": „Kui on vaja välkkiiret juhtimist, siis ei pea eriolukorda pelgama" [If lightning-speed decision-making is required, there is no need to be afraid of an emergency situation], 3 May 2020
The Chancellor's adviser Eva Lillemaa spoke on the *Vikerraadio* programme „Uudis+" about what happens in care homes during the crisis, 5 May 2020
Interview with the Chancellor of Justice: „Paljud inimesed on valmis nii kergelt vabaduse ja vastutuse ära andma" [Many people are prepared to give up their freedom and responsibility so easily], *Õhtuleht*, 30 April 2020
Chancellor of Justice on Äripäev radio: riigijuhid on tugeva surve all [the country's leaders are under strong pressure], 23 April 2020

Interview with the Chancellor of Justice on the *ETV* programme „Esimene studio": „Piiranguid ei saa järsult kaotada" [Restrictions cannot be lifted quickly], 23 April 2020
Interview with the Chancellor of Justice on the *ERR* programme „Otse uudistemajast", 22 April 2020
Interview with the Chancellor of Justice on the *ERR* portal: „Ülle Madise: ka koroonakriisi ajal võiksid seadused olla arusaadavad" [Ülle Madise: even during the corona crisis laws should still be understandable], 21 April 2020
Chancellor of Justice on the *Vikerraadio* programme „Vikerhommik": „Soovitan inimestel hoolega kaaluda, mis andmeid nad jagavad" [I recommend that people should carefully weigh what data they share], 14 April 2020
Interview with the Chancellor of Justice on the ERR portal: „Ülle Madise: omavalitsused ei saa andmeid nende koroonahaigete nimedega" [Ülle Madise: local authorities do not receive data with the names of their corona-infected people], 10 April 2020
ERR news: Terviseametil polnud õigust hambaarstide ja erakliinikute tööd piirata [The Health Board had no right to restrict the work of dentists and private clinics], 9 April 2020
ERR news: Õiguskantsler taunib mõningaid vanglate kriisimeetmeid [Chancellor of Justice critical of some crisis measures in prisons], 9 April 2020
Interview with the Chancellor of Justice on the PARE podcast: „Avameelselt inimeste juhtimisest" [Frankly about management of people], 8 April 2020
Interview with the Chancellor of Justice on the Delfi news portal: „Ülle Madise: nakatunud inimest telefoni asukoha määramisega jälitada ei tohi, see on täiesti keelatud" [Ülle Madise: tracing an infected person by mobile phone positioning is not allowed, it is absolutely prohibited] 30 March 2020
Kanal 2 news Euroopa inimõiguste konventsioonist ja Eesti põhiseaduse kehtimisest [On the European Convention on Human Rights and validity of the Estonian Constitution], 30 March 2020
TV3 news Euroopa inimõiguste konventsioonist ning selle toime osalisest peatamisest Eestis [On the European Convention on Human Rights and partial suspension of its effect in Estonia], 30 March 2020
Chancellor of Justice: ka haiged Riigikogu liikmed saavad hääletada [Sick members of the Riigikogu can also vote], *ERR* news, 18 March 2020
The Chancellor of Justice on the *Vikerraadio* programme „Reporteritund" replied to questions from host Kaja Kärner and listeners, 17 March 2020
The Chancellor of Justice on the *Kuku* radio programme "Vox populi" replied to questions from listeners, 13 March 2020
Interview with the Chancellor of Justice on the *ETV* programme „Terevisioon": „Õiguskantsler praegu eriolukorra välja kuulutamist ei toeta" [The Chancellor does not support declaring an emergency situation at the moment], 12 March 2020
The Chancellor of Justice debated on the issue of justification for declaring an emergency situation in the *Vikerraadio* programme „Uudis+", 12 March 2020

The Chancellor of Justice debated on Delfi radio with Mihhail Lotman on the issue of pension reform, 28 January 2020
The Chancellor's adviser Külli Taro spoke about state reform on *Äripäev* radio, 23 January 2020
The Head of Disability Rights of the Chancellor's Office, Juta Saarevet, spoke on *Vikerraadio* about the year 2019 in social protection, 8 January 2020
The Chancellor of Justice discussed on *Äripäev* radio how to measure the work of an official, 12 December 2019
Interview with the Chancellor of Justice on the *ETV* programme „Esimene studio" about the risk of politicization of public officials, 27 November 2019
Interview with the Chancellor of Justice on the *Kuku* radio programme „Nädala tegija", 22 November 2019
Interview with the Chancellor's adviser Kristi Paron in the daily *Postimees* – „Kristi Paron: ravi mõistev laps paraneb paremini" [Kristi Paron: a child who understands the treatment heals better]
Interview with the Chancellor of Justice in the daily *Eesti Päevaleht* – „Ülle Madise: mängurlus on Eesti tulevikule kõige ohtlikum" [Ülle Madise: political gambling is the biggest threat to Estonia's future], 12 November 2019

Speeches

The Chancellor's speech on the 100th birthday of the Supreme Court and opening of the newly renovated building in Tartu on Toomemägi Hill on 28 August 2020
The Chancellor's presentation „Õigusriik eriolukorras" [Rule of law in an emergency situation] in the Riigikogu on 22 June 2020
The Chancellor's welcome in the Rose Garden of the President of the Republic at the presentation of the merit awards „Lastega ja lastele" [With and For Children] on 1 June 2020
The Chancellor's speech at the colloquium „Eerik-Juhan Truuväli – tema ajastu ja tulevik" [Eerik-Juhan Truuväli – his era and future] at Tallinn University on 11 March 2020
The Chancellor's speech on the 102nd anniversary of the Republic of Estonia in the North Estonia Medical Centre on 26 February 2020
The Chancellor's speech at the presentation of the Enn Soosaar ethical essay competition award at Harju County Library on 13 February 2020
The Chancellor's opening speech at the annual human rights conference on 10 December 2019
The Chancellor's presentation at the 7th Estonian scientific language conference „Eestikeelne ja üleilmne teadus" 21 November 2019
The Chancellor's welcome at the annual meeting of the Estonian Paediatric Association on 31 October 2019

The Chancellor's opening at the conference „Väärika vananemise võimalikkusest. Kuhu küll lõpeb rändaja tee? (G. Suits)" [On the possibility of dignified ageing. Where does a wanderer's road end?], on 8 October 2019
The Chancellor's welcome at a conference of Tartu University Law Faculty alumni on 3 October 2019

Power talks

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

Lectures held from September 2019 to June 2020:
24 September 2019 **Rein Raud** „Jaapani hierarhilised võimusuhted" [Hierarchical power relationships in Japan]
29 October 2019 **Daniel Schaer** „Aafrika võim: Tuleviku võimalused ja väljakutsed" [Africa's power: future opportunities and challenges]
12 December 2019 **Dimitri Demjanov** „Toidukunsti võim" [The power of the culinary arts]
14 January 2020 **Jaak Prints** „Teatri võim" [The power of theatre]
11 February 2020 **Ivo Felt** „Filmi ja kino võim 21. sajandil" [The power of film and cinema in the 21st century]
15 June 2020 **Kristjan Port** „Igavese elu võimalikkus" [The possibility of eternal life]

II. RULE OF LAW IN AN EMERGENCY SITUATION

This year spring arrived differently. From 12 March to 17 May 2020, an emergency situation was in force in Estonia, and from 18 May some restrictions on fundamental rights were maintained under the Communicable Diseases Prevention and Control Act and the State Borders Act.

An emergency situation may be established where an emergency cannot be resolved without applying the command organisation and measures laid down in Chapter 4 of the Emergency Act. The Chancellor of Justice has explained repeatedly when establishing an emergency situation is allowed and what it entails for people, also that there is no need to be afraid of establishment of an emergency situation nor should it be overestimated. For people it is important to understand what restrictions and obligations affect their daily life and that restrictions should be constitutional. Instead of being concerned about formal compliance with restrictions, it should first of all be kept in mind that it is infection that we should be afraid of but not punishment following violation of restrictions (see the article).

On 17 June 2020, on a proposal by several parliamentary factions the Chancellor delivered a presentation to the Riigikogu on observations on the rule of law and the work of various agencies, and replied to questions by members of the Riigikogu. In part, the Chancellor had to repeat what had been said in the Riigikogu on 5 June 2018 during the debate "Underlying principles of state reform and good administration". The crisis caused by the coronavirus SARS-CoV-2 affirmed the need to distinguish daily essentials from the unessential, to value resolution instead of processing, and the ability to daily improve the organisation of public administration.

First, about the positive things.

The emergency situation and the epidemic that caused it have brought to our attention many heroes we were not aware of before: from sales assistants and pharmacists who had to work for days and even weeks without personal protective gear or a glass partition to care home and hospital staff who had, at least seemingly, to set aside concern for themselves and their family members and do their best. Unfortunately, this cost the life of at least one medical staffer. In the ministries, public agencies and inspectorates, local authorities, the Defence Forces and the Defence League, as well as among public transport drivers, teachers, kindergarten teachers, trainers and representatives of many other professions are people – maybe so far unnoticed even by their colleagues – who during very complicated times distinguished themselves through selfless action demonstrating a completely new quality, for example by revealing their leadership skills. Hopefully, their dedication, brave spirit and capability were noticed and will be taken into account. Worth recognition are entrepreneurs who found creative solutions without facilitating the spread of the infection. Definitely

deserving our recognition are also musicians and actors who found surprising avenues of expression in the new circumstances, as well as journalists who worked tirelessly. Worthy of recognition are members of the Riigikogu for swiftly addressing shortcomings in the legal order and for the fact that, once again, we saw that the Riigikogu reveals a necessary sense of criticism which sometimes, rightfully, results in a decision not to adopt a legal provision. In general, the Government and the Government Office have kept an open and rational, mostly science-based, line, being forced to speedily make decisions concerning the whole of Estonia, without letting themselves be misguided by public pressure based on emotions.

Certainly, a positive aspect is that the crisis has brought to us elementary hygiene principles – which have now hopefully become ingrained not just in our short-term but in our muscle memory. It would be encouraging if in every eating establishment, office, school, rural municipality centre, and elsewhere an opportunity to disinfect the hands would remain in a year or years to come. It would be safe to know that also in the future someone who feels ill would postpone going to work, the cinema, public transport or the shops not only because they are afraid of being fined but because they really care about their own health as well as the health of others.

Unlike many other countries, Estonia left people breathing space, the right to move, work and develop entrepreneurship. We were able to assess how much people's own wisdom can be trusted in a crisis situation as concerns infection and prevention of infection, and to what extent restrictions are necessary. It was found that the majority of people are able to cope with the freedom and carry the responsibility inevitably involved in it.

At the beginning of the emergency situation, the Government and the Prime Minister were under constant pressure to strictly close all markets, hairdressers', restaurants, as well as to stop all public transport, prohibit movement and start real-time monitoring of everyone. Unfair criticism was levelled even against reasonable and balanced solutions. If everything was not uniformly closed down or restricted, those who are more daring and inventive would obtain an advantage, it was alleged. However, the Constitution of Estonia guides us to respect freedoms. This is a central value, followed by justice and only then law. When imposing restrictions for whatever reason, consideration of the degree of freedom and responsibility should never be forgotten, room should always be left for inventiveness, creativity, novel thinking and courage. We can be proud of the Estonian people, we must be sincerely thankful to everyone individually and to all together. We held together, we thought with our heads, we did everything possible.

Less about the positive.

At the same time when people on the frontline became heroes and the whole nation made efforts to prevent the spread of the disease, it also became apparent that the legal provisions necessary to fight the cause of the crisis were ambiguous, outdated, contradictory and not well rehearsed; frontline officials who were already undermotivated and little recognised were often left without the necessary support.
The central and main problem was the ability of the state to solve crises. Crises can happen simultaneously, also consecutively. Therefore, we need a comprehensive picture of how to resolve crises: beginning from a regional power blackout, extinguishing a fire in the countryside, an epidemic or a natural disaster up to a war situation. An epidemic, natural disaster, power blackout or other emergency may begin to endanger our national security and independence, our freedom. The Draft National Defence Act and possible amendments to the Emergency Act provide a suitable platform to create a comprehensive picture. When planning a comprehensive and logical process for resolving crises, it is first necessary to think what needs to be done to resolve the crisis and only then formulate legal rules. Legal rules should be written down simply and briefly, in clear and well-phrased Estonian.

First, the law must state in generally understandable terms who may restrict people's rights and freedoms and impose obligations on them. Second, it is necessary to determine the distribution of tasks between the state and local authorities in resolving crises. And third: to a certain extent it may also be reasonable to regulate who issues a certain legal act or who is in charge of what. Some of this work is written in laws, some in regulations and some should be contained in crisis management plans.

Substitute activities have caused considerable harm to Estonia. Years have been spent on rewriting laws under the name of codification, revision, and the like. The essential has often remained undone: to come up with solutions to specific problems encountered in real life, and if necessary to establish rules and learn to implement them.

Everyone should be paid for what they have been hired to do when joining the relevant agency. Unfortunately, these main tasks have been pushed more and more into the background. All kinds of projects, revisions, renewals, development strategies, working groups created for this purpose, meetings that have been organised and interim reports, re-evaluations and final ceremonies take most of the energy and time, and also bring significant income to an official, but the necessity and usefulness of a project – or even the absence of these features – may be revealed only after a number of years. The main tasks are put on hold at the same time.

The Riigikogu has the right to simply reject unnecessary laws and compel the drafters to rewrite ambiguous laws clearly. It also has the right to initiate draft legislation and amendments itself and to adopt them.

Once the procedure for resolving crises has been devised and written into the law insofar as necessary, things should be tried out in practice exercises and what has been learnt needs to be implemented in practice. From the Chancellor's point of view it seems that the results of exercises taking place outside the frame of national defence remain on paper, at best. A civil exercise should also be followed by a specific action plan and correction of mistakes, including in the legal order. Figuratively, the Health Board and many other agencies and inspectorates should keep a table setting out precisely who does what in the case of one or another crisis event and what is the legal basis and the legal form for this.

Fourth, is the quality and reliability of work done by agencies and inspectorates. Sometimes, the Health Board has received unfair criticism. According to the general understanding, the Health Board had to resolve a crisis the cause of which was "a highly infectious disease which spreads fast and extensively and which is serious or life-threatening". The law was interpreted correctly that infected and infectious people should be quarantined in order to prevent more serious harm, establishments should be closed and events cancelled. Yet Estonian legal space entered the emergency situation in a state where the same virus which essentially stopped social life in Estonia and elsewhere was not an extremely dangerous infectious disease in the eyes of the law, but simply a disease to combat which, to be frank, eventually involved the need to take even stricter measures than to combat an extremely dangerous infectious disease. The emergency situation and extensive harm occurred, inter alia, because the laws had not laid down clear measures respectful of fundamental rights to rapidly stop the spread of infection. A sweeping conclusion that agencies and inspectorates are actually not allowed to impose restrictive measures is neither fair nor reasonable. On the contrary, officials must do the work that is theirs to do and politicians must do theirs.

Let's hope that the crisis has affirmed the importance of frontline work. This is difficult work done by health officials to identify and isolate virus carriers; by police officers, rescue service officials, regional crisis managers and many others – everyone in their own role, in direct communication with people. The well-being of our people as well as the attitude to the Republic of Estonia depends on the quality of work by those officials. Regrettably, these professions are often understaffed and their work underpaid, on top of which legal ambiguity accompanies their work. Be it the Environmental Board or the Veterinary and Food Board, the Health Board or the Data Protection Inspectorate – they all have very serious tasks. The solution is not prejudiced distrust towards frontline officials but reinforcing them.

The temptation may be great to look for mistakes, omissions, culprits, to point the finger, but this does not necessarily help us to be better prepared for an equally or even more complicated situation. The faster we find constructive and functioning solutions the better. Hopefully, sufficient anxiety and the resulting will to get things in order will remain, so that it does not happen as in the good old tale "Peipsi pääl" (On Lake Peipus) by the Estonian writer Juhan Liiv: "Jaak, land, damn it, my feet are already touching the bottom!" ... and instead of a chandelier that the men in trouble had promised to donate to the church, in the end only a pathetic candlestick was given.

The following overview provides a summary of different areas and problems, issues and questionable practices that most caused the Chancellor and her advisers to rack their brains during the emergency situation. Although the Chancellor of Justice is not (nor should she be) directly involved in law-making, some observations and proposals for remedying mistakes that were identified are still relevant.

2.1. General legal space

The Emergency Act

An emergency situation in Estonia was established on 12 March. Since no precise and well-considered legal rules existed to regulate restriction of fundamental rights, most restrictions in Estonia were imposed under § 31 subsections (1) and (3) of the Emergency Act by establishing a prohibition on stay and restriction of people's freedom of movement. For example, theatres, cinemas, shopping centres, schools, sports halls, saunas and other places where people gather together were closed; movement to the islands was restricted; hobby activities were stopped; visits to and departure from care homes were prohibited, and many other restrictions. On the same basis, movement of residents at the Tartu University dormitory at 22 Raatuse Street was significantly restricted.

In order to be able to anticipate – and carry out judicial review of – restrictions on fundamental rights, rules should indicate more precisely when and on what conditions fundamental rights may be restricted. The situation improved somewhat with the help of amendments to the Communicable Diseases Prevention and Control Act.

A separate issue is also how to contest restrictions imposed. The Chancellor of Justice cannot contest general orders given during an emergency situation, but people themselves may have recourse to the administrative court for protection of their rights.

General order

A general order derives from the Austrian and German legal systems. In Estonia, the distinction between a general order and a regulation is not yet completely clear. Figuratively, it may be said that a general order is a swarm of uniform individual orders

which are not individually delivered to each addressee and are not individually weighed in terms of protection of the rights of each specific addressee. On the other hand, a regulation, similarly to a law, is a legislative act of general application whose possible conflict with the laws and the Constitution is scrutinised by the Chancellor of Justice.

If a person finds that a general order excessively restricts their rights, they should have recourse to the administrative court.

The standard of the Supreme Court on legal standing in administrative court procedure says the following: "11. Under § 44(1) of the Code of Administrative Court Procedure, individuals may have recourse to an administrative court only for the protection of their rights. Rights and freedoms to be protected in the case of review of an action for annulment of an administrative act should be understood as subjective public rights of a person – fundamental rights and freedoms, the rights arising from other legislative acts, administrative acts and administrative contracts (see Supreme Court Special Panel order in case No 3-3-1-8-01, para. 22). Thus, the precondition for having legal standing is interference with subjective rights enjoyed by a person, while the interference does not have to be serious for legal standing to arise (see Supreme Court Administrative Law Chamber order in case No 3-3-1-87-16, para. 8)."

The Supreme Court Administrative Law Chamber has allowed contestation of an individual order similarly to a regulation (and differently from an order) upon appearance of its negative effect, i.e. essentially in each case when it is applied: "14. On that basis, the Chamber finds that **the starting point for running of the deadline for contestation of a general order depends on when its effect on the rights of the addressee of the act appears**. If a provision of a general order directly affects the rights of an individual, an action with the administrative court must be brought within 30 days as of notification of the order. However, if a provision deals with an undefined number of cases and it does not affect the rights of the addressee of the act at the time of its notification, a person may bring an action for annulment of the general order within 30 days of appearance of its effects, for example after a procedural step was carried out or an administrative act was issued in respect of the person. In that case, in order to ensure effective protection of their rights, the person should also contest the relevant procedural step or administrative act in the administrative court alongside contestation of the general order."

A favourable deadline for contesting a general order for an applicant is also affirmed by the Supreme Court Administrative Law Chamber order of 7 June 2018.

A separate answer is needed to the question whether the administrative court should declare an unlawful general order invalid in its entirety or only in respect of the applicant. If the court finds that grounds for nullity of an administrative act are present (i.e. establishes its nullity), the administrative act has lost its validity in respect of

everyone; if only grounds are present that enable declaring an administrative act invalid (i.e. declares it invalid) the administrative act loses effect only in respect of the applicant. In the case of legal acts concerning an emergency situation, establishment of grounds for nullity is unlikely.

A void administrative act is invalid from its inception. An administrative act is null and void if
1. it does not specify the administrative authority which issued the administrative act;
2. it does not specify the addressee of the administrative act;
3. it has not been issued by a competent administrative authority;
4. it requires commission of an offence;
5. the rights and obligations are not specified therein, the obligations are contradictory or the administrative act cannot be complied with for other objective reasons.

Probably, the necessary answers will be provided by emerging case-law. In Estonian law, the possibility of recognising so-called hybrid acts as a separate category may be considered. That is, specific features of constitutional review would be created for acts which unavoidably combine the elements of an individual and general act.

The concept of quarantine

In the Estonian legal order, quarantine has different meanings. One meaning is provided by the State Borders Act and another by the Communicable Diseases Prevention and Control Act. In addition, people can be subjected to restrictions on movement. The Health Insurance Act says that a quarantined person receives sickness benefit for up to seven days and up to 70% of the wage. In the case of a restriction on movement – despite it being the same in substance – no sickness benefit is paid. Both quarantine and a restriction on movement last for 14 days.

Force majeure

The Chancellor was asked about the contractual relations between a concert organiser and a ticket buyer if an individual bought a ticket for a concert planned between 13 March and 30 April 2020 which was cancelled due to the emergency situation. The Chancellor was asked to explain whether an emergency situation may be deemed *force majeure*. A concert organiser proposed acting the same way as in Latvia and interpret § 103(3) of the Law of Obligations Act so that an organiser must refund the ticket fee if an event is cancelled but may wait to do so until the end of the emergency situation. When the emergency situation is over and the event is cancelled, the organiser must refund the ticket fee within a reasonable time (30 days) or may offer a gift card, a postponed concert ticket, or the like, as a replacement, which the guest may accept but also refuse.

The Chancellor reached the opinion that no general interpretation of *force majeure* can be given. In Estonian case-law, *force majeure* has been interpreted as an extraordinary

irresistible event in the context of specific circumstances which is beyond a person's sphere of influence (Supreme Court Civil Chamber judgment 3-2-1-111-03, para. 12). Interpreting a certain circumstance as *force majeure* thus presumes that a person cannot in any way prevent the resulting damage. For example, an extraordinary force of nature has been interpreted as such a circumstance (Supreme Court Civil Chamber judgment 3-2-1-64-06, para. 16).

In the legal literature, it has been emphasised that, to recognise *force majeure*, a circumstance must occur that prevents due compliance with an obligation and the emergence of which must be unforeseeable and independent of the obligor. It may not be a circumstance the emergence of which would be predictable and the course of which the obligor can influence and also overcome. In connection with the emergency situation declared in Estonia, the issue of *force majeure* has also been analysed by attorney-at-law Maivi Ots.

2.2. Restrictions on movement

Due to the coronavirus outbreak, restrictions on movement were established for people diagnosed with the virus and those living with them, as well as people crossing the Estonian national border and for all others living in Estonia. In establishing the restrictions the state proceeded from scientific risk assessments. Retrospectively, it is difficult to criticise the decision-makers for anything since restriction of human contact is known as the best way to combat the spread of the Covid-19 disease. However, we will never know for certain how the Covid-19 disease would have spread in Estonia if different restrictions had been imposed.

To prevent the spread of an infectious disease, the Constitution allows circumscribing the right of both infected as well as uninfected people to freely move around, so as to avoid contact with infected people (see § 20(5), § 34 Constitution). However, freedom of movement may only be restricted in the cases and under the procedure laid down by law. Restrictions on freedom of movement during an emergency arising from an infectious disease are regulated by the Emergency Act. Under the law, during an emergency situation declared with a view to resolving an emergency, people may be required to leave the emergency situation area or be prohibited from staying there, and their right to freely move around in the emergency situation area may also be restricted (§ 31 Emergency Act).

During the emergency situation, extensive restrictions on movement were imposed on the Estonian islands. Thus, under § 31(3) of the Emergency Act, the head of the emergency situation imposed restrictions on movement on the islands (Saaremaa, Hiiumaa, Vormsi, Ruhnu, Kihnu and Muhu rural municipalities and Manija island) by Order issued on 14 March and 16 March. The aim of the Order was to prevent the spread of the virus both from the islands to the mainland and vice versa. Entry to as

well as exit from the islands was banned for individuals (clause 1 of the Order). A derogation was made (clause 2 of the Order) for those helping to resolve the situation related to the virus outbreak. Public transport was ensured, as well as transport of goods and raw materials. The inhabitants of those areas were also allowed access to their homes. Supervision over the restrictions was carried out by the Police and Border Guard Board which was also granted the right to make exceptions for entry to and exit from the islands for people without any signs of the disease.

Special permits for movement between the mainland and islands

The Chancellor received many petitions in connection with restrictions on movement on the islands. People complained that they could not go from the island to work on the mainland or from the mainland to their home or for a vacation at their country house on the island. The Chancellor recommended that these people apply for a special permit from the Police and Border Guard Board under clause 2 of the order (see sub-clause 5: "the prohibition is not applied to persons who are not symptomatic and who are permitted to leave or enter a territory subject to the restriction on movement by a police officer's decision") or contest refusal to make an exception and/or the Order of the head of the emergency situation by having recourse to extrajudicial challenge or administrative court procedure.

A special permit from the police to be able to get from the mainland to an island or from an island to the mainland was applied for in approximately 1900 cases, and a special permit was granted in approximately 1400 cases. As far as the Chancellor is aware, no-one had recourse to the administrative court. Restrictions on movement were somewhat alleviated by Order No 69 of 28 April by the head of the emergency situation. As of 28 April, one-off permits for movement between the island and the mainland could be issued to people permanently or temporarily resident or staying on the islands. Lists of special permits were drawn up by the respective local authority which forwarded the data to the Police and Border Guard Board.

The Chancellor was asked based on what a local authority grants these permits and whether it may amount to discrimination. For example, Vormsi rural municipality decided that a special permit is given only for movement from the island to the mainland and back, but not for movement from the mainland to the island and back. Such an interpretation by the municipality was not relevant since, according to the explanatory memorandum to the Order, the aim of granting special permits was to alleviate the situation where "people living on the islands often work elsewhere and restrictions have set serious impediments for working or seeing one's family".

Since travel brings about a bigger risk of contact with other virus carriers, it may be considered justified to restrict a person's freedom of movement after arrival in the country. This makes it possible to avoid contact with other people and thereby reduce

the possible risk of spreading the infection. The head of the emergency situation imposed a 14-day restriction on movement (under § 31(3) of the Emergency Act) for people who are allowed to enter Estonia (see the Order of 16 March of the head of the emergency situation). The task of enforcing the restriction on movement was given to the Police and Border Guard Board (clause 4 of the Order) which had to decide, based on legislation, how precisely to enforce compliance with the restriction.

After the end of the emergency situation on 17 May, the Government, under the State Borders Act, imposed a 14-day quarantine for people who are allowed to enter Estonia at the border (the Order of 16 May). The Chancellor received a complaint that imposing quarantine on people arriving in Estonia contravenes the law since it is not proportionate and discriminates against Estonian residents and citizens in comparison to citizens and residents of Latvia, Lithuania and Finland. The Chancellor reached the opinion that imposition of quarantine is compatible with the law. At the same time, the Chancellor agreed with the petitioner that the initial version of the Order establishing a quarantine requirement for Estonian citizens and residents and those of foreign countries indeed contained questionable distinctions. The Government repeatedly amended its Order in this regard and the substantive reason for the distinctions was not a person's citizenship but a consideration of which country the person had more permanently stayed in prior to arrival in Estonia and whether the epidemiological situation in that country enabled lifting the quarantine requirement.

People's freedom of movement was not always restricted lawfully. For example, Haljala Rural Municipal Government set up a traffic sign prohibiting entry on roads leading to Käsmu village, allowing entry only for local people and service transport. The concern of local people for their health and safety must be understood but a restriction can only be imposed by a person or institution entitled to do so. The head of the emergency situation imposed restrictions on movement in public places by Order No 45 of 24 March. According to the restrictions, it was prohibited for more than two people (except families) to be together in a public place, and they had to keep at least two metres' distance (the 2 + 2 rule). The head of the emergency situation also obliged the Police and Border Guard Board and cities, towns and rural municipalities to ensure compliance with restrictions on movement (clause 3 of Order No 45). The Chancellor explained that local authorities had to ensure compliance with the restrictions by lawful measures.

2.3. Protection of personal data

Section 26 of the Constitution protects everyone's right to the inviolability of private and family life, an inseparable part of which is the right to protection of personal data. Even in an emergency situation the state may process personal data only in cases laid down in legislation and processing must be strictly limited to what is unavoidably necessary. The Chancellor was repeatedly asked about the processing of health data of

Covid-19 infected persons and personal data of others subject to restrictions on movement.

Positioning of mobile phones

Several petitions received by the Chancellor expressed suspicion that Covid-19-infected persons had become subject to constant surveillance and that mobile phone positioning was used for this. The Chancellor explained that, as a rule, location data of mobile phones of private individuals may not be used to check compliance with a restriction on movement. Mobile phone location data could be used only in very limited cases when necessary to identify or counter a grave threat (i.e. a threat to someone's life) and if court authorisation for this exists in misdemeanour proceedings and a prosecutor's authorisation in criminal proceedings.

The Chancellor was also asked to express an opinion in connection with Statistics Estonia wishing to process data of people's passive mobile positioning which does not enable real-time tracing of a person. The Chancellor replied that if communications undertakings wish to issue data to Statistics Estonia, they must ensure that the data are anonymous. Thus, the methodology used by a communications undertaking must ensure that data transmitted are indeed anonymous and that individuals cannot be identified on the basis of the data. Otherwise, transmission of clients' location data is not lawful. The conclusions of the movement analysis are available here.

Processing of personal data to check compliance with restriction on movement

It must be possible to check compliance with lawful restrictions. During the emergency situation, the Police and Border Guard Board (PBGB) had to ensure that restrictions on movement are complied with by everyone on whom they had been imposed: people infected with the coronavirus, people living with them or permanently staying in the same residence (Order No 52 of 26 March). To perform this task, the PBGB also had the right to process people's personal data.

In order to be able to check compliance with restrictions on movement, the Health Board initially transmitted to the PBGB the data of infected persons and those living with them in an Excel table in encrypted form. To enable more effective and safer transmission of data through the X-road interface, the statutes of the police database were amended and the Health Board was added to the list of data providers for the duration of the emergency situation (see § 29^1(1) of the statutes of the police database). The list of data automatically transmitted from the register of infectious diseases to the POLIS database is set out in § 29^1(3) of the statutes of the police database.

Checking compliance with the 2 + 2 rule

During the emergency situation, restrictions were also imposed on movement in public places (Order No 45 of 24 March). In this connection, the Chancellor received angry complaints that the PBGB was also using drones in the open country to supervise compliance with the 2 + 2 rule. People asked whether such a measure was proportionate since people normally go to the country in order to get away from the artificial environment and technology.

Restrictions on movement apply and compliance with them is checked while they are unavoidably necessary to prevent the spread of the virus. Drones were used for the reason that very many people simultaneously gathered on popular bog and forest trails and they did not always observe the rules established for the duration of the emergency situation. After the end of the emergency situation and passing of the threat of the virus, no need for these measures exists any longer.

Quick legislative changes

Due to the emergency situation, the need arose to amend several laws, so as to be able to respond more swiftly to crisis situations. For obvious reasons, the Riigikogu processed these amendments quicker than normally.

The Chancellor of Justice asked that the planned amendments to the Emergency Act (§§ 25^1 and 26^1) be omitted from the Draft Act 170 SE amending the Auxiliary Police Officers Act and other Acts, which, inter alia, would have allowed the head of an emergency situation and an official appointed by the head of an emergency situation to process data in national databases, including health data, while resolving an emergency situation.

The principles of data processing are set out in the European Union General Data Protection Regulation, which is also applicable, without exceptions, during an emergency situation. The Chancellor found that the explanatory memorandum to the Draft Act failed to explain what problem was intended to be resolved by the non-specific and general powers planned to be introduced. Since no need existed for a swift resolution of the specific problem, it was also not appropriate to deal with these provisions as urgent in that Draft Act.

Disclosure of the data of infected people

The Chancellor was contacted in connection with publication of health data in the media. Unless an individual agrees to disclosure of their data, disclosure of their health data in the media is normally prohibited. An exception is laid down in § 4 of the Personal Data Protection Act. Under that provision, someone's personal data may

be disclosed in the media without their consent if certain criteria are fulfilled. The media channel must be convinced that three main criteria are fulfilled simultaneously: public interest exists for disclosure of the data of the particular person; principles of journalism ethics are observed in disclosure; and disclosure of personal data does not cause excessive damage to the rights of the data subject.

The Estonian Code of Journalism Ethics lays down that data and opinions about the health (both mental and physical health) of specific individuals shall not be disclosed. As an exception, the Code sets out cases when disclosing data is allowed; if a person consents to disclosure of their data or if disclosure of such data is required by the public interest. To disclose data, it is not merely sufficient that the public is in principle interested in a particular topic (e.g. spread of the coronavirus). Disclosure of personal data must contribute to debate on an important public issue, not merely to satisfy people's natural curiosity or serve the economic interests of a media publication.

The Chancellor of Justice was persistently against the disclosure of data of infected persons. The Health Board was asked for information about infected persons, which was due to a natural and understandable fear of the virus. For example, people enquired who was infected and where that person lived. Stigmatising infected people does not in any way help to combat the coronavirus since it would encourage people to hide their symptoms. Disclosure of such sensitive health data is unequivocally prohibited.

Mobile applications

The use of corona applications has been considered as a possible tool in the fight against the coronavirus. Estonia's own corona application *Hoia* became operational on 20 August. Users of this application are informed if they were in close contact with a Covid-19-infected individual but they do not receive information about the person or the location of the infected individual.

In view of the sensitivity of the issue of sharing and processing health information, all such applications must be transparent and credible. Thus, the use of a corona application can only be voluntary. That is, people must clearly and voluntarily consent to processing of their health data. It must be possible to withdraw that consent at any time. It is important that people should be aware what is done with their personal data and what risks may be involved in using the application.

2.4. Schools, kindergartens, hobby activities

For the period of the emergency situation, distance learning was introduced in schools: the physical school environment was closed everywhere in Estonia, instruction took place via online platforms. Naturally, pupils, families and schools were faced with a

difficult task in the new situation since teaching and learning were thoroughly reorganised.

Certainly, of great help in coping with distance learning were information and instructions provided by the state (see, e.g. kriis.ee, or instructions by the Ministry of Education and Research, or the website of Innove Foundation). Now that the emergency situation is over, we should, however, think about what could have been done differently. Among other things, we should agree on whether it is reasonable (and reckoning with the interests of pupils and parents) to leave organisation of distance learning for each school itself to decide, or whether it should to a certain extent be planned and managed on a national level, if necessary by adopting or amending legislation.

Children with special educational needs

A very important issue – which however is difficult to resolve in practice – was how to organise instruction of children in need of educational support in the conditions of the emergency situation. Different special educational needs exist. It is clear that while in an ordinary situation specially trained staff is needed to teach these children, it is not conceivable that a parent can replace specialists.

A parent writing to the Chancellor explained that their child was in need of constant and methodological support but they were unable to provide this to their child as they had to go to work. The Chancellor recommended asking for information first from the child's school or also from the local authority. She also recommended seeing guidance for organising a child's instruction on the website of the Innove Foundation. At the same time, the Chancellor was forced to concede that even though under the Government Order special guidance was promised on how to organise teaching of pupils with special needs, at the time of replying to the petitioner only a few such guidelines were available on the emergency situation website.

Organising the instruction of children with special educational needs during an emergency situation definitely requires analysis, and the problems encountered need to be resolved. Most vulnerable children and their parents should not be left without necessary assistance during an emergency situation.

Teaching a child during an emergency situation

A parent complained that during distance learning the school only gave tasks to children and checked that they were done while it was parents who had to teach all the material to the child. The Chancellor explained that, inevitably, during distance learning a teacher gives less guidance to pupils than during study on site at school. However, teaching a child must not be left completely to a parent. The school cannot presume

that parents of all children can be at home with them and provide guidance during the day. It is also not a solution when studying is postponed until the evening when parents are home from work but the child is already tired. Thus, from the viewpoint of the child and the family it would be reasonable if clearer rules or instructions were given on organisation of teaching in an emergency situation that the school and teachers have to follow.

Parents were also concerned about practical arrangements for study. For example, a parent complained that because of distance learning the family had to incur additional expenses on the child's education (computers, internet connection, a place for study). A parent asked whether leaving such expenditure for the family to bear was compatible with the right to free education.

The Chancellor found that in this specific case incurring such additional expenses was not incompatible with § 37(1) of the Constitution, which stipulates that compulsory education is free of charge in general schools established by the national government and by local authorities. To cope with the costs, the parent had the opportunity to ask for assistance from the school (the school lent a computer) or the local authority (an opportunity to obtain support, housing service, free school meals). However, whether bearing indirect costs (e.g. transport, clothes, food) may violate the right to receive education free of charge depends on the particular circumstances. Therefore, in the future, this aspect should be kept in mind in organising distance learning.

Expenses related to distance learning

A teacher also asked the Chancellor about additional expenses incurred due to distance learning. The teacher wrote that they used a personal computer and internet for work for two months during distance learning, and because of working at home they had to pay more than usual for electricity. The employer and the owner of the school had not compensated those costs to the teacher.

Unfortunately, the Chancellor cannot help with this issue since a teacher has a relationship in private law with the school (i.e. has concluded an employment contract). However, local authorities as school owners should think whether teachers and heads of schools need training on labour law, so that school staff are aware of their rights and duties.

In connection with schools, most petitions were received about provision of meals to pupils during distance learning (see the chapter "Social guarantees").

Quite a lot of dissatisfaction was caused by the Draft Act for amendment of various Acts initiated by the Government seeking, inter alia, to change the conditions and procedure for organising uniform final examinations of the basic school and upper

secondary school. Although amendments in the Draft Act were motivated by the emergency situation, according to the initial version of the Draft Act they had to remain in force also after the end of the emergency situation. A petitioner contacting the Chancellor found that, with the Draft Act, the Government wished to make use of the emergency situation to push through changes with a long-term effect, significantly reducing the role of the parliament in making educational decisions and consolidating the decision-making power in its own hands for an indefinite period. In the course of debating the Draft Act, several people and organisations addressed the Riigikogu with a similar problem. In the end, amendments which were not urgent and which had to remain in force also after the emergency situation were dropped from the Draft Act.

Questions about the work of kindergartens

Unlike in schools, no restrictions on movement were imposed in kindergartens, and families also had to have an opportunity to take children to kindergarten during the emergency situation. A local authority had to decide whether to keep a kindergarten open or close it. The Chancellor was asked whether temporary closure of a kindergarten due to the risk of coronavirus infection was justified where a child whose parent was infected with the coronavirus did not go to the kindergarten for six weeks after this.

The Chancellor explained that the decision by the rural municipality to close the kindergarten for disinfection for a few days was reasonable as that family's child had played with other children attending the same kindergarten. Parents whose children were healthy and in the case of whom no coronavirus infection was suspected were given an opportunity to take their children to another kindergarten for the time of disinfection of the rooms.

The Chancellor was also asked about paying the kindergarten fee for the time when a kindergarten was closed due to the emergency situation. The Preschool Childcare Institutions Act does not regulate charging a fee from a parent in a situation where a kindergarten is closed. Under the Act, a local authority decides on charging a fee from a parent. The size of the fee is set by the rural municipality, town or city council. The Chancellor also explained that the fee charged from a parent only partially covers the fixed costs incurred in keeping a kindergarten. Some of those fixed costs have to be borne by a local authority even when the kindergarten is temporarily closed. A dispute between a parent and a local authority can be resolved by the court. If a dispute arises about justification of the fee, the decisive factor could be the amount which the local authority still had to incur in costs.

Questions were also caused by reorganisation of the work of kindergartens during the summer period. For example, the Chancellor was asked for a legal opinion on the organisation of work of kindergartens in Haapsalu town since after the end of the emergency situation the town did not open all the kindergartens and children from

several kindergartens had to attend another kindergarten in summer. In a letter sent to the town, the Chancellor found that temporary closure of kindergartens may be justified since the Preschool Childcare Institutions Act enables a rural municipal, town or city government, on a proposal by the board of trustees, to decide on the opening times of a kindergarten and on its year-round or seasonal operation. Regrettably, closure of kindergartens in this specific case was not lawful since no legal basis existed for temporary closure and offering the service in another kindergarten. On that basis, the Chancellor asked that the town should organise closure of kindergartens lawfully.

A parent was concerned that after the end of the emergency situation children could no longer attend their usual kindergarten group. Children had to attend a 'standby group', meaning that their teachers and group mates would constantly be changing (until August). The Chancellor explained that the law does not prohibit temporarily rearranging the work of kindergarten groups in the summer months. Despite this, when merging standby groups a kindergarten must ensure that rearrangements do not cause excessive inconvenience for children and that all the interests of children are complied with.

Training during the emergency situation

The Chancellor was also asked about the fee for football and basketball training sessions during the emergency situation. Some sports clubs charged parents a participation fee even for the period when no training sessions for children took place because of the emergency situation.

Sports clubs are private legal entities, and a private law relationship exists between a sports club and a parent. Since the Chancellor has no legal power to intervene in private disputes, she limited her reply to an explanation. Generally, the size of the fee for participation in training is set by a contract entered into between a parent and a sports club. The contract may also set out an agreement as to when no fee need be paid. The Chancellor recommended that the parents examine the conditions of the contract and try to reach an agreement on the fee with the sports club. If the solution offered by the sports club does not satisfy the parents, it is possible to invoke legal remedies laid down in the contract and in the law of obligations for protection of one's rights. In the event of a dispute, a final assessment of the rights and duties of the parties is given by the court.

Now that the emergency situation is over, parents have a good opportunity to review the contracts they have concluded with sports clubs and agree on the procedure for paying the fee, so as to avoid unpleasant surprises next time.

2.5. Organisation of family life

Rights of access to the child for a parent living separately

The Chancellor was asked whether, due to the emergency situation, a parent may refuse to comply with a court order regulating access arrangements between a child and a parent living separately from the child. The Chancellor explained that orders on access arrangements are also valid during an emergency situation and that whether non-compliance with access arrangements is justified should be assessed on a case-by-case basis. The Ministry of Justice also published on its website an explanation on compliance with orders for access arrangements.

The Chancellor was also asked for assistance by a parent who wished that the child living separately from them could visit them on Vormsi Island where the parent resides. For this, the parent applied for a derogation for the the child to be allowed on the island in accordance with the Prime Minister's Order No 30 of 14 March. The Police and Border Guard Board (PBGB) initially refused to allow the child on the island, on justification that the child's residence was not on Vormsi Island. The parent asked the PBGB to re-examine the application, explaining that the parents lived separately and the child's residence was with both parents. The PBGB granted the child a permit to go to Vormsi Island.

How old must a child be to be left at home alone during an emergency situation?

Since schools were closed during the emergency situation, but not all parents could stay at home with children, an issue arose as to how old a child must be to be left at home alone. The law does not provide an unequivocal answer. Each case is different and a lot depends on a child's maturity and circumstances. A parent decides whether to leave a child temporarily at home alone. In doing so, the parent must proceed from the child's best interests, assess their child's maturity and consider the potential safety risks. The child's well-being and safety must be ensured.

In general, a child's ability to act independently to a certain extent (a child is responsible for their behaviour; knows how to behave safely) is connected with school age maturity. Leaving kindergarten-aged and younger children at home alone should be avoided, and they should also not be left for the whole day in the care of a school-aged child who is at home. When leaving younger children in the care of their older siblings, a parent must be sure that all the needs of the children are satisfied and that all children feel safe.

If necessary, next of kin who are healthy and are not in the coronavirus risk group (e.g. elderly people) should be asked to assist in caring for a child. Information about the opening times of kindergartens and childcare institutions, and the like, should be asked

from city, town or rural municipal governments. People should also contact the city, town or rural municipal government when their family needs other assistance or support due to emergency situation.

Recommendations to parents of babies and infants to support their children in an emergency situation

It is positive that recommendations and advice were given to schoolchildren and their parents on how to cope well in the emergency situation, and guidance materials were made available (see, e.g. kriis.ee, recommendations by the Ministry of Education and Research, the website of Innove Foundation). Since materials intended for infants were scarce, the Estonian Association for Mental Health of Infants and the Children's and Youth Rights Department of the Chancellor's Office prepared recommendations to parents of babies and infants to support their children in the emergency situation.

2.6. Places of detention and social welfare institutions

The emergency situation also very directly affected people in places of detention and social welfare institutions. The risk of infection is particularly high there as affirmed by the corona statistics of almost all other countries. During the emergency situation, the Chancellor carefully monitored compliance with people's rights in places of detention and social welfare institutions.

Prisons and police detention facilities, accommodation centres for aliens

Almost a thousand prisoners in Estonian prisons belong to the risk group to whose life and health the SARS-CoV-2 virus may pose a great risk. Therefore, since 16 March several measures were implemented in Estonian prisons to prevent the spread of the virus and to protect the health and life of the staff and prisoners. The aim was to prevent the virus reaching the prison through visitors and infected surfaces and to avoid its spread among the prisoners. Retrospectively, it may be said that the measures were effective. A couple of prison officers were infected with the SARS-CoV-2 virus. As far as is known, no prisoners or persons remanded in custody caught the disease.

The Chancellor monitored what measures were taken and, for this purpose, actively communicated with both the prisons and the Ministry of Justice. The Chancellor also received letters from several prisoners who sought advice and protection against, in their opinion, overly harsh restrictions.

To prevent the spread of the virus, when in contact with prisoners, prison staff used personal protective equipment, stocks of which were sufficient and constantly being replenished in prisons. Disinfectants were used. The shift rota of prison officers was

changed – officers had longer shifts and did not leave the prison grounds during that time.

Prisoners were locked in their cells, they were prohibited to visit the prison shop, joint activities and visits were cancelled. In view of the situation, these prohibitions were reasonable and necessary.

However, some the measures taken were too intense: prisoners were not allowed to go outdoors and communication with family was allowed only once a week. Therefore, in a letter sent to the Ministry of Justice on 6 April, the Chancellor emphasised that sufficient stocks of personal protective equipment would have enabled taking prisoners for outdoor exercise either cell by cell or in smaller groups. During the emergency situation, prisoners were able to call government agencies, local authorities, their defence counsel or an attorney representing them. Thus, it would also have been possible to allow them to call their families and next of kin more frequently than merely once a week. The Chancellor recommended that prisoners be offered meaningful free-time activities while in their cells: books, board games, etc.

As of 29 April, restrictions in prisons were gradually alleviated, and on 1 June normal working arrangements in prisons were restored.

In the detention facilities of the Police and Border Guard Board (including the detention centre for aliens), no extensive spread of the virus occurred. From 16 March to 17 May, restrictions on visits in police detention facilities applied, which did not extend, for example, to counsel or public officials (including prosecutors, the Chancellor of Justice, persons carrying out proceedings). Parcels to detainees could only be sent by post. All detainees admitted to a police detention centre (except people detained short-term) were kept in isolation from others for 14 days. If a detainee suspected of Covid-19 was brought to a police detention centre, when admitting the person the staff used personal protective equipment which was destroyed after use. During the emergency situation, as a rule, no detainees were taken from police detention centres to prisons. The staff of police detention centres observed the necessary precautionary measures in contact with detainees and used personal protective equipment and disinfectants.

Aliens brought to the detention centre for aliens were kept in isolation from others until an initial health check was carried out. In the case of suspicion of Covid-19, a test was done. The same procedure continued after the end of the emergency situation so as to avoid the spread of the virus. Separate rooms (apartments) were fitted out for new arrivals in accommodation centres for aliens in which they lived during the entire isolation period. General access to accommodation centres was restricted, and people who were symptomatic on arrival in Estonia were tested.

Social welfare institutions

On 13 March, the Government established a prohibition on visits to all social welfare institutions, and from 3 April people in general care homes and special care homes were prohibited from leaving the grounds of the care home until the end of the emergency situation (Order No 58).

The restriction on movement did not apply to care home staff and owners and to people performing official duties there. Also those in need of hospital treatment and those with no symptoms of the virus and wishing to go to their own home without the possibility of returning to the social welfare institution until the end of the emergency situation were allowed to leave the care home.

Thanks to careful compliance with safety requirements, most special and general care homes were able to avoid the spread of the disease among their residents. However, not all general care homes remained untouched by the infection and deaths also occurred. To prevent and combat the spread of the infectious disease, guidance on measures to take was given by the Social Insurance Board as well as the Health Board.

A point of concern was that residents of care homes could not meet their next of kin for a long time. Alleviation of the problem was sought via technical solutions (e.g. visits via the internet) but not all the elderly are able to cope independently with using the equipment. Restrictions during the emergency situation caused anxiety and stress for care home residents and their next of kin. The restrictions affected life in care homes in its entirety: joint activities were cancelled and the residents could not as easily see a minister of religion, psychologist or a pastoral counsellor who could have provided support to people in this situation.

Apparently, problems arose when it was necessary to transfer a resident or patient from one social welfare or healthcare institution to another. There was confusion as to how to organise testing of an individual in that situation, so that the virus would not move from one institution to another. Several social welfare institutions stopped admitting new residents during the emergency situation. Therefore, it may have been more difficult than usual to find a place for someone in a social welfare institution. To resolve such situations, precise guidelines on action could be agreed for the future.

The end of the emergency situation did not mean the end of restriction on visits to social welfare institutions. Under the directive of the Director General of the Health Board, the restriction had to be observed until 1 June. The Health Board also issued guidelines on action to social welfare institutions for the period after the emergency situation. The guidelines explained what needs to be kept in mind to prevent the spread of the virus in future, how to use personal protective equipment and how to act in the case of suspicion of a virus.

In respect of people in other social welfare institutions, restrictions applicable generally throughout Estonia were applied if necessary. However, in the amended Order entering into force on 9 April, the head of the emergency situation deemed it necessary to emphasise that restrictions on movement are also imposed on people with the Covid-19 diagnosis who are in a shelter or a safe house and people permanently staying there together with them. That further condition arose from the fact that the virus was also discovered among people having visited shelters in Tallinn. It was important that the shelter and safe house services as unavoidably necessary social services should also be available to people and organised safely during the emergency situation.

2.7. Rights of people with disabilities

By Order No 58 of 3 April, the head of the emergency situation imposed additional restrictions on movement in social welfare institutions.

It is positive that the Order (clause 2.1) clearly laid down the possibility to leave a social welfare institution. Thus, people were not deprived of their liberty under the pretext of the emergency situation. Yet the Order forced a stay on those residents of social welfare institutions who have no next of kin or who are in a financially poorer situation (who cannot lease a temporary dwelling). For those people, the restriction on movement imposed by the Order essentially amounted to deprivation of liberty (forced stay) as they had no place where to go. Even with the best of will, a local authority would not have been able to quickly find a new residence for those people if they had wished to leave the care home. Thus, the restriction had a particularly seriously effect on those financially less well-off and with no next of kin.

The Order did not restrict the freedom of movement of people receiving the community living service but imposed a ban on movement of people staying in a special care home (clause 1). The Social Welfare Act, which regulates provision of the special care service, does not use the concept "special care home", but Division 3 of the Act speaks of different special care services. Inter alia, it is regulated differently where and on what conditions a person receiving the services lives.

In the course of deinstitutionalisation, large care homes have been gradually replaced by small units created according to the principle of family accommodation. That is, in several places the care service is still provided in large institutions but increasingly residents live in smaller accommodation units. Mostly, recipients of the community living service also live in small units (e.g. in apartments in apartment blocks in Lasnamäe or Annellinn city districts) and while they are provided with support they are independent and many of them go to work. Some of the other recipients of special care services also go to work.

Since the Order imposed a restriction on movement on those staying in a "special care home", it was not unequivocally clear to whom the restriction applies. In the explanatory memorandum – which has not been signed and which was revised after the Order was signed – the restriction is explained as follows: "Based on the foregoing, the head of the emergency situation imposes additional restrictions on freedom of movement in all [...] special care institutions providing [...] the community living service and 24-hour special care services". The explanatory memorandum also states: "Currently, there are 64 locations of 24-hour special care services in different areas throughout Estonia, providing the service to 2778 people."

Thus, reading the Order and the explanatory memorandum, which use different terminology, the question arises whether the restriction also extends to people living in small family-like units, in particular people living in apartments. The Order and the explanatory memorandum contain concepts such as "special care home", "special care institution" and "location of special care service". It cannot be considered right that in an act restricting such important rights, and in the explanatory memorandum to it, different terminology is used which does not proceed from the wording of the law – this cannot be justified by the special nature of the emergency situation either. The quality of law-making has to be ensured at any time, and when restricting fundamental rights it must meet a particularly high standard. The addressee of a rule must understand that the rule applies to them and that they have to be able to behave on the basis of it.

Since the Order and the explanatory memorandum caused ambiguity, the Chancellor's advisers enquired from the Social Insurance Board how to interpret the Order. Initially, the Social Insurance Board expressed the opinion that the Order also restricted the freedom of movement of all people receiving the community living service (even those living in apartments), and also sent an instruction to that effect to service providers. Later, the Social Insurance Board sent out instructions noting that the Order only applied to those recipients of the community living service who lived in larger units intended for more than three people. The instruction by the Social Insurance Board to service providers was as follows:
"We have received the assessment of the Ministry of Social Affairs on the additional restriction on movement in units of community living service for up to three people. According to the Ministry's assessment, the additional restriction on movement does not include apartments with up to three people receiving the community living service, and it is reasonable to allow people in small apartments, i.e. for up to three people, to move around following the same 2 + 2 principle as other people. The additional restriction on movement remains applicable to all other services (general care service, 24-hour special care services and community living service units including more than three people) mentioned in the Order of the head of the emergency situation."

If at least some justification can be found from the explanatory memorandum to the initial interpretation given by the Social Insurance Board, the subsequent interpretation is a clear example of bureaucratic arbitrariness. Neither the Order nor the explanatory memorandum has set any restrictions based on the number of people living together.

As a result of the instruction, service providers implemented the restrictions differently. Along with deprivation of freedom of movement, some people were simultaneously deprived of the possibility to go to work. Since the Order is ambiguous, some people were deprived of freedom of movement unlawfully. The Order was contested and judicial proceedings are pending.

Whether imposing the restriction in respect of people receiving the special care service was justified, still needs to be analysed because those in need of the special care service do not generally belong to the Covid-19 risk group due to their age. It is true that they may have somatic conditions which puts some of them in the risk group, but that is also the case with other people.

2.8. Treatment of foreigners in the emergency situation

When establishing the emergency situation, the Government significantly restricted the range of people allowed to enter Estonia. The decision largely affected the work of businesses that had reckoned with labour arriving from abroad (in particular seasonal workers).

The Government restricted people's arrival in the country under § 17(1) clause 1 of the State Borders Act. Under that provision, in the interests of national security, in order to ensure public order, prevent and solve a situation which may endanger public health, and also at the request of a foreign state, the Government may temporarily restrict or suspend crossings of the state border. The above provision confers on the Government extremely broad powers to deviate from rules laid down by other laws which regulate entry of foreigners in the country. Therefore, implementation of this provision should keep in mind that the restrictions imposed should not be excessive. Restrictions are justified only insofar as they are unavoidably necessary to protect public health and other less restrictive measures cannot be used. Under that provision, no restrictions for attainment of other aims (e.g. for protection of the labour market) can be imposed.

First, the Government imposed restrictions by Order No 78 of 15 March on "Temporary restriction on crossing the state border due to the spread of the coronavirus causing the COVID-19 disease". The Order was declared invalid after the end of the emergency situation but on 16 May the Government established similar restrictions by a new Order. While imposing extensive restrictions could be deemed justified during the emergency situation, the justifiability of newly established equally restrictive measures after the end of the emergency situation was questionable. Less restrictive measures

could have been set for foreigners to whom permission to work in Estonia has been granted on the basis laid down by law and who had no symptoms of the disease. The threat to public health can also be avoided through a self-isolation obligation and testing if the employer ensures the necessary conditions for this (see, in more detail, the Chancellor's opinion). The Government alleviated the restrictions on entry to the country imposed on workers and foreign students only on 6 July.

The situation of foreigners in Estonia was alleviated by the general order of the Director General of the Police and Border Guard Board of 16 March. This provided a legal basis for continued stay in Estonia for foreigners who were in Estonia legally after 12 March and whose return to their country of residence was prevented by restrictions imposed on crossing state borders or increased risk in the country of origin. According to the order, those foreigners had to leave Estonia within ten days as of the end of the emergency situation.

The order of the Director General of the PBGB by which he suspended examination of all applications related to the legal status of foreigners (except registration of short-term employment, which was later added as a derogation) was unlawful. According to the order, procedural deadlines were to start running from beginning at the latest on the tenth day after the end of the emergency situation. On the website of the PBGB, it was announced that new applications are accepted but no decisions are made. The Chancellor drew attention to the fact that establishment of an emergency situation does not entitle the Board to suspend procedures related to foreigners. Resolution of applications concerning the right of foreigners to stay in Estonia is one of the main tasks of the PBGB, and an emergency situation does not provide a basis to abandon performing main tasks. The law stipulates an administrative procedure which must ensure people an opportunity to exercise their rights arising from the Constitution and the laws. The Board may extend procedural deadlines for a sound reason, but not completely suspend processing applications. Moreover, it was found that the order and the information published on the PBGB website were misleading because in actuality the Board still continued examining applications.

The situation caused a need to supplement legislation. The amendments were presented in the Draft Act (170 SE) on amending the Auxiliary Police Officers Act and other Acts (measures related to the spread of the SARS-CoV-2 virus). A central issue was again how to balance restrictions imposed on foreigners on entry to the country in the frame of the emergency situation, which prevented implementation of several legal rules regulating employment of foreigners. Since the emergency situation was declared before seasonal farming work begins, agricultural undertakings could not hire foreigners as they normally did, but at the same time they could not necessarily find local labour sufficiently quickly. Seasonal work is urgent, so that it is not possible to wait until the labour market is transformed or people undergo re-training.

As a rule, the state has a wide margin of appreciation as to how to regulate issues of foreign labour. However, by establishing the restrictions due to the emergency situation, the state had a duty in line with the principles of legal certainty and legitimate expectations to lay down measures that would balance the established restrictions and would ensure the rights of agricultural undertakings and workers as well as food security. In the course of debating the Draft Act, a provision was inserted in the law under which permission for employment of agricultural workers legally staying in the country was extended to 31 July 2020.

Regrettably, several other provisions restricting the rights of foreigners were inserted in the Draft Act which were essentially not connected with the emergency situation and the addition of which in this urgent Draft Act was not justified (see the Chancellor's opinion on the Draft Act).

2.9. Freedom of assembly and freedom of religion

All public meetings were prohibited during the emergency situation. The Chancellor was asked repeatedly whether the prohibition on holding (political) rallies and religious services due to the emergency situation was indeed constitutional.

The freedom of assembly stipulated in § 47 of the Constitution may be restricted to prevent the spread of an infectious disease. The prohibition on public meetings was imposed with a view to protecting the life and health of people, to preventing physical assembly and movement resulting from this. Even in the event of compliance with the 2 + 2 rule, the state has the right to prevent gatherings of crowds.

The Chancellor noted in her reply concerning restriction of (political) rallies that during the emergency situation declared because of the epidemic everyone's right under § 45 of the Constitution to freely disseminate ideas, opinions, beliefs and other information by word, print, picture or other means was not and could not be restricted. Freedom of expression is a basic principle of a democratic society. However, restriction of freedom of assembly does not necessarily excessively inhibit freedom of opinion and freedom of expression. It is possible to express one's views otherwise than through physical assembly. Not every form of expression of one's views in a public space (for example, distributing leaflets or carrying posters) can be considered a public meeting. The Chancellor explained that the prohibition on public meetings did impede holding religious services but the state did not restrict freedom of thought and beliefs through this. It was allowed to perform religious rituals alone or privately; churches, prayer houses and places of worship were not closed during the emergency situation.

2.10. Social guarantees

Three main issues arose when establishing the emergency situation: how schoolchildren would be fed during the day, how food, medication and other necessities are obtained by those who cannot themselves arrange this, and how to ensure income for people who are forced to stay at home and cannot work or those who are about to become or have already become unemployed.

It seems that local authorities did not leave people in difficulty and began to organise provision of school lunches as well as home help services to those who could not themselves obtain daily necessities. Curiously, the Chancellor received most petitions about organisation of provision of school lunches and the right to unemployment insurance benefit. However, not a single petition was received about organisation of home help services even though this could have given rise to several issues: for example, how assistance was ensured to children with disabilities and their parents whose child had not been previously appointed a support person and who had to cope with their child alone all the time; how services were organised for people whose registered residence was different from their actual residence; whether services were also provided to infected people or people suspected of infection, etc.

Organisation of social services in extraordinary circumstances

Current laws do not regulate how essential services are obtained by people suspected of infection or infected people who have, for instance, been required to stay in quarantine in their home or whose conditions at home are not appropriate for quarantine (e.g. the toilet is shared by several apartments, see § 8 of the Social Welfare Act (SWA) – regulation on emergency social assistance, and § 17 SWA – the right to home help services, and § 41 SWA – the right to provision of dwelling).

Clear interpretation is needed as to the conditions under which, to whom, and to what extent social services should be provided when a compelling need exists to restrict or reorganise those services. For example, the laws have not regulated the right of reorganising and restricting public services if the situation so requires. The only changes that have been introduced in the field of social services concern special care services and the social rehabilitation service (§ 13^1 SWA), but those amendments also do not deal with the situation where a need exists to restrict provision of a service or even stop it. Also the Draft National Defence Act debated in the Riigikogu does not resolve all these issues since it focuses mainly on restriction of financial benefits during an emergency situation or state of war (§ 51 of the Draft Act) and only regulates restriction of social services provided by local authorities in a situation of defence (§ 57(2)). It is true that § 39 of the Draft Act would give the Government general powers to restrict fundamental rights and freedoms in a state of emergency and state of war. However, the issue is whether the Riigikogu could set criteria based on which the

Government may decide that it does not provide all state services but only some of them, such as the 24-hour special care service.

School lunch

In many rural municipalities, towns and cities, school lunch is organised free of charge for all pupils even though the law does not directly require this. For quite a few children, the school may be the only place where they get a hot meal during the day.

When schools were closed, rural municipalities, towns and cities began to distribute school lunch to those who requested it or those who in their opinion most needed it. In the initial days of the emergency situation, for example, Tallinn organised distribution of a hot school lunch at specific food distribution points. As this kind of organisation led to children gathering, the Chancellor was asked whether such an arrangement for distributing school lunch was lawful.

The Chancellor explained what should definitely be kept in mind when looking for solutions. It should also not be ruled out that school lunch be brought to home for children, while taking into account the ability of children with disabilities to move, as well as other circumstances (e.g. a schoolchild is looking after a sibling). The Chancellor also recommended thinking about pupils who must eat different food for health reasons (e.g. children with milk allergy), etc.

During the emergency situation, people started to ask a lot about equal treatment, because some rural municipalities, towns and cities had begun to restrict provision of school lunch, setting preconditions such as a family's coping difficulties. Since in many places provision of school lunch had previously been free of charge, people asked whether restrictions on provision of a free school lunch were lawful, i.e. whether they were based on a municipal council regulation and were compatible with the principle of equal treatment. Since many questions were received about the provision of school lunch, the Chancellor sent a circular to local authorities.

Financial support to those who cannot work

What about the income of people who cannot go to work and are forced to stay at home? This concerned many people and the Chancellor had to reply to several petitions in this regard. For example: what assistance is ensured to a person who worked under a contract of mandate and lost their job; who is entitled to so-called wage support from the Government's employment programme, etc.

Two main changes introduced by the state during the emergency situation were the so-called wage support and financial support to those who, due to family obligations or health reasons, could not fulfil their working duties and therefore lost their income.

The Government added wage compensation in its employment programme. Although there were many who welcomed this step and generally no doubts were expressed about its necessity, from the legal point of view one may ask whether the Government was allowed to do so under the Constitution. The Government has extremely broad powers to establish the employment programme. Yet, sidelining the Riigikogu from passing such an important decision may not be compatible with the principle of legality arising from § 3(1) of the Constitution. It stipulates that the Riigikogu must decide all essential issues and the executive may operate only in respect of less essential issues or issues requiring specification and do so on the basis of powers clearly defined by the Riigikogu.

Section 4^1 of the Labour Market Services and Benefits Act does not answer the question as to the basis on which the Government assigned benefits to some people and not to others. The right to equal treatment is a fundamental right under § 12 of the Constitution and this may only be restricted by the Riigikogu. The underlying legal rule for establishing the employment programme, for instance, also fails to answer the question how big wage compensation may be. For these reasons, the Riigikogu should reexamine § 4^1 of the Labour Market Services and Benefits Act and, in line with the Constitution (§ 3), set specific limits on the Government's activity. The employment programme does have a considerable monetary dimension, and leaving this lever for the Government to use, it also has an impact on the state budget.

The Riigikogu authorised financial support to people specially affected by the emergency situation, whose ability to cope may have considerably worsened due to the emergency situation (§ 140^2 Social Welfare Act). Following up on this, the Government established a regulation laying down the conditions for receipt and payment and the basis for calculation of support to the parent(s) of a child with a special need. This step is commendable.

The Riigikogu also amended the Health Services Organisation Act and laid down a basis which enables the Government, inter alia, during an emergency situation to pay benefits on more favourable terms to people to prevent and alleviate coping difficulties arising because of the emergency situation (§ 52(1) clause 2^1 and (1^3) Health Services Organisation Act). The Government then adopted a regulation establishing the conditions and procedure for benefits and services paid by the Estonian Health Insurance Fund during an emergency situation: inter alia, it was decided also to pay the benefit for sickness days 1–3.

Both delegating norms enable the Government to react swiftly and flexibly to unexpected situations that may happen in life and to help those most in need. On the other hand, the norms leave a fairly free hand to the Government in deciding who is most in need. It is clear that the norms were introduced with the best intentions but in haste in view of the circumstances. For example, in the Social Welfare Act the Riigikogu

forgot to regulate the procedure for obtaining support so that, in view of the situation, support would as quickly as possible reach people who most need it. Therefore, the Government itself laid down the procedure (see § 5 of the regulation) even though it had no power to do so. Also, in the case of benefits laid down in § 52(1) clause 2^1 of the Health Services Organisation Act, the Riigikogu failed to set the limits on payment of benefits. It is true that more general limits on the Government's activity are imposed by the state budget, but this, in turn, may lead to a situation where in the event of differences between forecasts and the reality only those would obtain the benefits to whom the allocated funds are sufficient to pay the benefits. In this regard, it should also be noted that, unlike § 52(1) clause 2^1 of the Health Services Organisation Act, § 140^2 of the Social Welfare Act does not limit granting benefits with the sums allocated for this in the state budget and enables using state money rather freely: everyone entitled would receive benefit.

After the first lessons of the emergency situation, it should be carefully considered (a) whether there is a specific situation that would require granting such broad powers, or (b) whether these powers could be specified, or (c) whether, instead of granting these powers, the Riigikogu itself could pass the necessary decisions. Whatever the Riigikogu decides on this matter in the future, one should always be alert when establishing such norms with a serious impact on fundamental rights and the state budget, so as to ensure that legislative power does not covertly slip into the hands of the executive.

2.11. Healthcare

Already at the beginning of the corona crisis, the question arose whether Estonia is prepared to deal with the crisis: what is the legal space, what is the substantive readiness of healthcare institutions (availability of ventilators, personal protective equipment, etc.) and how is the state able to provide information to the population while resolving the crisis?

The crisis showed that gaps existed in laws, in substantive preparedness as well as in communication. Solutions were sought quickly to try and fill all these gaps. For example, the need arose to amend the Communicable Diseases Prevention and Control Act so that people in need of a health certificate to be able to go to work would also receive it without going to a doctor. Care homes had to supplement their stocks of personal protective equipment, communication needed to be improved and proper information given to medical staff, as well as information distributed to the population in Russian and English.

Some solutions took took long. Unfortunately, neither the Riigikogu nor the Government immediately saw their responsible role (i.e. sense of ownership) for tidying up the legal space. For example, the Riigikogu could have taken the initiative and quickly decided on the rights and powers of the Health Board in implementing

infectious disease control measures outside the emergency situation. In fact, the Riigikogu was debating the Draft Act on amending the National Defence Act which also covered amendments to the Law Enforcement Act, and the solutions proposed in the Draft could have been developed further where necessary. Those gaps were already being discussed in February (see the press conference of 27 February 2020). Nor did the establishment of the emergency situation prompt the Riigikogu or the Government to prepare draft laws to ensure a clear role distribution and powers to act both during and after the emergency situation. Only when it was understood that by ending the emergency situation we would be back to 'square one' were steps taken to revise the relevant laws.

After the end of the emergency situation, the media published an opinion by a specialist from the Health Board that no necessary stocks exist of personal protective equipment and medicines to cope with a potential new crisis. This raises the question of lessons learned from the crisis: have we learned something, for example, understood that the existence of sufficient stocks is an important guarantee of fundamental rights (so as to be able also to ensure planned medical treatment, safe operation of home help services and the general care service during a crisis).

Unfortunately, we cannot be sure that we have better prepared our legal space to cope with another similar crisis. Some grounds for restriction of fundamental rights were, indeed, added to the Communicable Diseases Prevention and Control Act but, in terms of ensuring fundamental rights, prevention and control of infectious diseases has not been comprehensively analysed. Time will show whether changes to the Communicable Diseases Prevention and Control Act, the Health Services Organisation Act, and the Medicines Act will provide the necessary levers (powers) to resolve new crisis situations.

That the Health Board was not clear about its competence and powers was demonstrated by the letter sent by it to the Estonian Dental Association and the Estonian Private Healthcare Institutions Association on 26 March. In it, in connection with the spread of Covid-19 and the need for rational use of personal protective equipment, the Health Board ordered dentists and medical specialists in private healthcare institutions to stop providing planned medical care (including laboratory services and issuing health certificates) and limit services to emergency care only. Although by its letter the Health Board wished to impose restrictions and duties on individuals, the letter was not formulated as an administrative act in line with the requirements of the Administrative Procedure Act, and the addressees were not notified of those restrictions (professional associations of doctors do not provide healthcare services). It was unclear what the legal basis and purpose of the restrictions imposed by the Health Board was. The letter also did not contain a reference on how to contest it.

Under current law, the Health Board could not restrict the activities of private healthcare institutions in providing healthcare services. Private healthcare institutions responded differently to the letter of the Health Board. Some of them continued providing services to patients (see, e.g., a notice by Qvalitas Medical Centre and news on national broadcasting ERR). The reason may have been that the restrictions contained in the Health Board's order were not clear or unambiguous; it was also possible that the persons concerned did not find out about the restrictions.

The Chancellor found that, even during an emergency situation, the freedom of enterprise of businesses cannot be restricted arbitrarily, without a clear and logical justification and in a manner that does not enable understanding precisely who the addresses of the restriction are and what their duties are. The Ministry of Social Affairs in its reply expressed the opinion that the Health Board had been justified in restricting the activities of private healthcare institutions since the Health Board is the competent agency for resolving an emergency during an epidemic. The Health Board was also entitled to appoint an emergency medical chief coordinating the activities of healthcare providers with the right to issue orders for reorganising the activities of healthcare providers with a view to resolving the emergency and ensuring healthcare services. The Chancellor found that, if indeed the emergency medical chief was the administrative body competent to restrict the activities of private healthcare providers, the order of 26 March should have been issued by him.

In May, the following provision entered into force as a result of amendment of the Medicinal Products Act: "In an emergency, emergency situation, a state of emergency or a state of war, the State Agency of Medicines may temporarily restrict the export and issue of medicinal products and allow for derogations from the requirements for handling medicinal products, marketing authorisations, clinical studies, presentation of information on the safety of medicinal products and information communication, provided that it is necessary for protecting human life and health and compliance with all the established requirements would not allow for the uninterrupted provision of the population and medical institutions with medicinal products. During an emergency, emergency situation, a state of emergency or a state of war, the State Agency of Medicines may restrict advertising of medicinal products where necessary for the protection of human life and health."

These are very broad powers raising the question whether in the event of full implementation of the norm the State Agency of Medicines would begin to regulate the field of medicinal products instead of the Riigikogu. It may be understandable that the norm is intended to be implemented in unforeseeable situations but, considering how the norm originated, it should be carefully considered what situations requiring regulation can be predicted and what could be regulated more precisely. The Riigikogu should elaborate on this norm. Moreover, even though formally this is an administrative act of specific application, its actual substance may in certain cases be

that of an act of general application. In addition, there might exist no subject of law with the right to contest an act of the State Agency of Medicines, so that review of its legality may prove to be too complicated.

Organisation of obstetrical care

During the emergency situation, the Chancellor was contacted by several pregnant women who were dissatisfied with the restrictions established in maternity hospitals.

On 19 March (letter: 3-22/8969), the Health Insurance Fund sent to hospitals recommendations for monitoring normal pregnancy and provision of obstetrical care and monitoring of newborn children at risk of infection during the first weeks of life during the Covid-19 epidemic, agreed between the Estonian Gynaecologists Society, the Estonian Midwives Association, the Estonian Paediatric Society and the Estonian Society of Perinatology. The guidelines were sent with a remark "Please take the attached recommendations into use in daily work". Thus, it was reasonable to presume that hospitals would start to observe the guidelines. Inter alia, the guidelines noted that "the first trimester screening for pregnant women is temporarily suspended". It was also noted that an "NIPTIFY test is possible as a paid service for everyone".

A screening or an NIPTIFY test provides essential information about the health of a foetus. The results of this study are used to decide whether pregnancy should be interrupted. Naturally, these instructions by the Health Insurance Fund caused concern among pregnant women. Knowing that a paid service had to be used to screen the health of a foetus was particularly hard for those who would not have been able to pay for the service. The Chancellor communicated with professional associations and, in cooperation with the Health Insurance Fund, the associations found a way to mitigate Covid-19-related risks and continue foetus screening. The solution was that the Health Insurance Fund made the NIPTIFY test available for everyone free of charge. Accordingly, the guidelines prepared by the professional associations were modified.

Based on recommendations of the Health Insurance Fund and the professional associations, several hospitals required women coming to give birth to take a Covid-19 test and wear a protective mask. Recommendations by professional associations constitute general guidelines given to health service providers. This means that exceptions from the restrictions can be allowed if a specific hospital is able to ensure the safety of patients and staff. On that basis, the Chancellor contacted the Ministry of Social Affairs and the Health Board with a request to ascertain, as soon as possible, what can be done for hospitals to be able to alleviate the restrictions (e.g. the requirement to wear a mask) for women coming to give birth. Since it was not possible to find the necessary information on the home pages of all hospitals, the Chancellor recommended publishing all the necessary information on restrictions on obstetrical

care in a simple and understandable form both on the home pages of hospitals, as well as on the emergency situation website kriis.ee along with frequently asked questions.

In view of the problems that arose, a discussion might be useful now on how to ensure that recommendations by professional associations would in the future take into account their effect on fundamental rights; that hospitals would be clear about the legal status of such recommendations, and what support professional associations would need in drawing up and disseminating such recommendations.

Deletion of data of persons infected with the virus

Problems with dissemination and receipt of information are also demonstrated by a statement by a doctor. The doctor found that deletion of the data of coronavirus-infected people from the police information system was unclear and it would be necessary to draw up specific instructions on transmission of data for doctors.

On the one hand, the problem was that no integrated technical solution existed to enable aggregating the data on infected persons collected by general practitioners and hospitals in one place (for example, if an infected person first went to a general practitioner's appointment and was subsequently hospitalised). At the same time, the Health Board had issued guidelines on action stating that general practitioners were not required to collect data on recovery of patients but they simply needed to make a note on a patient's recovery in the digital health record (see the reply).

2.12. Economic measures

If several spheres of business are forced to suspend their normal operation, this has a detrimental effect on the economy as a whole. This, in turn, affects people's ability to cope and social security. Despite the fact that the economic activity of very many people was extremely limited (or stopped) during the emergency situation, these restrictions have not been contested in court, according to available information.

In view of the extent of the restrictions, this is surprising as such disputes could have been successful for businesses. For example, the letter by the Health Board suspending planned activities of private healthcare institutions was not drawn up in line with formal requirements and had been laid on a questionable basis. The letter was contradictory already because, in doing so, the Health Board also suspended the activity of those private laboratories from which the state at the same time continued commissioning the laboratory service. One may only guess the extent of confusion that the state's action during those days caused in private medicine.

Several alleviating measures were created to mitigate the difficulties caused by the emergency situation. For example, as of 1 March to the end of the emergency situation,

no late interest was charged from tax debtors, and an interest rate reduced by half in comparison to the normal rate applies to the end of 2020. Also, in the event of payment of tax arrears by instalments, the tax authority may reduce the interest rate further by up to 100 per cent. The tax authority did not immediately begin to collect debts incurred during the emergency situation, and no tax debts were disclosed during that time. Advance payments of the social tax of sole proprietorships for the first quarter were paid by the state. In addition, the state abolished the minimum social tax requirement: if remuneration paid was lower than the monthly social tax rate, in March, April and May employers had to pay social tax from the actual remuneration paid.

The state also took steps to ensure that a sufficient financial buffer exists to cover all the state's obligations as well as to finance planned measures to boost the economy. Managing the state's debt obligations requires the use of several debt instruments to ensure the availability of necessary funds at any time. At the same time, every year the Riigikogu by the state budget determines the amount of debt the state may incur. The balance of these debt obligations may not exceed the limit set by the current year's budget. During amendment of the State Budget Act, the Chancellor explained that, under § 65(10) of the Constitution, the Riigikogu decides on the state's debt obligations. On that basis, the maximum balance of debt obligations laid down by the State Budget Act cannot be changed by a decision but must be done by a law.

Section 115 of the Constitution does not stipulate changing the state budget by a Riigikogu decision. If the parliament wishes to authorise the Government to incur higher debt than the maximum permitted balance of the state's debt obligations, the Riigikogu should amend the adopted annual budget in line with the established procedure, i.e. through a supplementary budget or by amending the state budget.

In the annual State Budget Act, the amount of debt obligations the state may incur must be clearly indicated. This limit is established in the Act as the permitted balance of the state's debt obligations. The Riigikogu was also dealing with several amendments to the 2020 State Budget Act by which, inter alia, the maximum permitted balance of the state's debt obligations was increased to five billion euros, and the maximum permitted balance of loans and state guarantees granted by the Government was increased to 1.57 billion euros. On that basis, the state has taken loans and issued bonds.

Due to the coronacrisis, the European Commission adopted a state aid temporary framework enabling member states to use all possibilities compatible with the state aid rules to support their economies. Under the temporary framework, EU member states can provide direct grants (selective tax advantages and advance payments), state guarantees for loans taken by companies, subsidised public loans to companies, safeguards for banks that channel state aid to the real economy, and short-term export credit insurance. The temporary framework is in force to the end of 2020.

On the basis of the foregoing, the European Commission approved two Estonian state aid schemes for support of the Estonian economy. The first aid scheme will be implemented and administered by the public Foundation KredEx. The scheme is open to all companies, subject to certain exceptions defined by Estonia. The second scheme is implemented and administered by the public Estonian Rural Development Foundation. It is open to companies in all sectors throughout Estonia.

The total estimated budget for both schemes is 1.75 billion euros, and support will consist either in the provision of public guarantees on existing or new loans or in the grant of loans on favourable terms. The aim of the schemes is to help businesses cover immediate working capital or investment needs. The Chancellor was asked primarily about the constitutionality of the conditions of grants offered under the state aid temporary framework.

The state has a wide margin of appreciation in deciding whether and what grants to give to businesses to alleviate economic difficulties. For example, it is possible to distinguish between permanent and temporary activity in business, and give preference to permanent activity when providing grants. If the state wishes to support the activities of tourist attractions permanently open in Estonia, there is no need to consider the condition that the company that opened the tourist attraction must be registered in Estonia as arbitrary. That condition is compatible with the aim of the support. In view of the state's broad margin of appreciation in establishing aid measures, as well as the aim of the specific measure, it is not possible to oblige the state to pay the relevant support to a temporary tourist attraction, including an international exhibition displayed in Estonia for a short period (see the opinion on support for tourist attractions).

In providing business loans, confusion has been caused by the broader definition of an undertaking in European Union law. This has led to a belief that non-profit associations are undertakings and should be eligible for grants intended for undertakings. Non-profit associations are undertakings primarily and solely in terms of economic activity; they cannot be deemed undertakings in any other cases. The fact that someone is treated as an undertaking does not automatically enable them to take a business loan, because in Estonia business loans are granted only to companies registered in the commercial register. Non-profit associations are eligible for support through other measures due to the coronacrisis (e.g. as traders). Thus, in giving support, the state may prefer undertakings based on their form of operation. European Union rules allow provision of certain support measures only for some undertakings and, under the Constitution, payment of such grants is not mandatory. Giving business loans only to companies cannot be considered unconstitutional, but of course it is important to ensure fair competition and transparency of distribution of support measures and the decisions made.

More precise conditions for applying for a business loan have been laid down by the Minister of Foreign Trade and Information Technology regulation on "The conditions for granting business loans". The Regulation restricts the range of legal persons, laying down that a business loan may only be granted to an undertaking entered in the commercial register (§ 1). Although the definition of undertakings is not directly limited to companies, this has been done through the requirement of registration in the business register. Unlike companies, non-profit associations have been entered in the non-profit associations and foundations register (§ 75 Non-profit Associations Act).

Under Article 107 paragraph 1 of the Treaty on the Functioning of the European Union, one characteristic of state aid is its selective nature. That is, state aid may be intended for a certain undertaking or group of undertakings. Selectivity of state aid is determined more specifically by each state itself. Selectivity means that a state aid measure must favour certain undertakings or the production of certain goods, specific categories of companies or economic sectors. Even though aid measures may be implemented in respect of all undertakings, to a certain extent they are still selective. State aid gives the recipient a certain advantage and an aid measure may distort competition and trade between European Union member states. According to the European Commission's state aid notice (para. 121), the instant case involves *de jure* selectivity resulting directly from the legal criteria for granting a measure that is formally reserved for certain undertakings only. In Estonia, selectivity resulting from the legal form of an association is preferred in this case.

The main aim of business loans is to improve access to capital, which has a positive effect on the economy, regional development and the social sphere. According to statistics, economic activity of companies is several times higher than that of non-profit associations, so that their effect on economic capability is also stronger. On this basis, there is no reason to consider the conditions of the support as arbitrary. The choice made in the Regulation of the Minister of Foreign Trade and Information Technology – to give business loans only to undertakings entered in the commercial register – cannot be considered unconstitutional.

During the emergency situation, people's freedom of movement was restricted and they were not allowed to go to shopping centres, but this essentially also restricted the organisation of the postal service because many post offices are located in shopping centres.

The company Eesti Post, however, was able to quickly adapt to the emergency situation. Through a website, customers could express their preference as to an automatic parcel machine from which they wished to receive their postal parcel, and, due to the increased workload of post offices, some parcels arriving from abroad were sent to a parcel machine or to postal parcel distribution points opened separately.

The emergency situation was declared immediately before seasonal work in the farming sector. Naturally, this put businesses which had used foreign labour in recent years in a difficult situation.

Agricultural undertakings guarantee us local food. Guaranteeing national food security is, inter alia, important to ensure internal peace in the country. Readjustment of the labour market takes time, and national food security should not be endangered even during the period of readjustment.

The state must find solutions enabling agricultural undertakings to stay afloat during the emergency situation as well as after it. In doing so, the state has a wide margin of appreciation in finding solutions. If the Riigikogu has passed regulatory arrangements by law, enabling foreigners to come to work in Estonia, undertakings are entitled to expect that the state observes the principle of legal certainty and the rules established are not changed by unreasonably short advance notice in the middle of an agricultural season.

2.13. Organisation of work of municipal councils

The emergency situation created the need to organise municipal council meetings electronically. The Local Government Organisation Act does not regulate electronic meetings of the municipal council or government. Despite this, electronic forms of work had been laid down in statutes of several rural municipalities, towns and cities, and in municipal council rules of procedure even before establishment of the emergency situation.

In the conditions of the emergency situation, holding municipal council sessions was not legally prohibited, but to protect people's life and health and overwhelming public interest (combating the spread of the coronavirus), direct physical council sessions had to be replaced with electronic forms of work (video conferences, sessions by way of exchange of e-mails).

The Chancellor had also recognised organisation of electronic municipal council sessions before (see the opinion "Virtual participation in a rural municipal council session"), but in the conditions of the emergency situation it proved useful to reiterate this. The Chancellor noted that local authorities had to find a reasonable compromise to protect people's health and preserve the foundations of democracy. Although in an emergency situation flexible solutions may and should be found, they cannot be unlimited. The Chancellor specifically underlined that all the rights of municipal council members must be observed during an emergency situation (see "Municipal council sessions in the emergency situation"). In view of the restrictions during an emergency situation, the Chancellor has said that she supports clear stipulation by law of

organisation of electronic municipal council sessions (see "On the right of self-organisation and interpretation of law").

The right to adopt legislative acts at an electronic session

The Chancellor does not agree with the view that a municipal council and rural municipal, town, or city government may hold electronic meetings only if no legislation is adopted at those meetings.

The work format of a municipal council and municipal government is a session; the work format of a municipal council and municipal government committee is a meeting (§ 40 Local Government Organisation Act). Municipal council legislation is adopted at a council session. If a municipal council were to have no right to hold an electronic session, it would also have no statutory right to hold debates in this work format. The Local Government Organisation Act does not prescribe (nor can it do so) whether a session agenda for a municipal council must include points on processing draft legislative acts or acts of specific application or a debate on certain issue(s) (see the opinion "On the right of self-organisation and interpretation of law").

Registration of a municipal council member's participation in an electronic session

The Chancellor sent a recommendation to Antsla Rural Municipal Council, emphasising that all rights of municipal council members must also be observed even when holding an electronic session.

Registration for a municipal council session in the form of exchange of e-mails was linked to signing a voting form. A council member who participated in a debate on issues on the session agenda, but did not vote, was deemed not to have participated in the session.

This solution is not lawful. The Local Government Organisation Act (LGOA) distinguishes participation in a session from voting, and does not oblige a participating municipal council member to vote at the session. Participation in a session taking place by exchange of e-mails should be recorded separately from voting. This is an important issue since the possibility to exercise a municipal council member's mandate depends on recording the member's participation in the municipal council session. A municipal council member's authority is suspended if they have been absent from council sessions during three consecutive months, taking no account of the months when council sessions were not held (§ 19(2) clause 4 LGOA). Under § 20(1) of the LGOA, in that case an alternate member shall replace a municipal council member. Moreover, receiving a municipal council member's remuneration depends on a record of their participation at a session.

Organising a debate at an electronic municipal council session

The Chancellor drew the attention of Antsla Rural Municipal Council to the fact that, while taking into account technical differences, in principle, an electronic municipal council session should take place on the same conditions as ordinary sessions. The chair of the session must ensure that answers given to a council member's questions sent by e-mail reach all the members of the council even when the person submitting the question forgot to send the e-mail to everyone (see the opinion "Organising a debate at an electronic municipal council session").

Possibility to observe a municipal council session

The Chancellor was contacted by a rural municipality inhabitant who had wanted to observe an electronic session of Räpina Rural Municipal Council but had been unable to do so. That electronic session took place by way of exchange of e-mails, and the public could not observe its progress in real time, but the council did not declare the meeting closed.

The Chancellor drew the attention of the municipal council to the need to precisely follow the law. Under § 44(4) of the Local Government Organisation Act, municipal council sessions are public. A municipal council may declare a session to be closed in part of the discussion of an issue if at least twice as many members of the municipal council vote in favour of that proposal as against it, or if the disclosure of data pertaining to the issue under discussion is prohibited or restricted by law. The situation where a municipal council session has not been declared closed but the public cannot observe it is contrary to the law (§ 44(4) LGOA).

2.14. Drawing up and communicating orders

During the emergency situation and after it, the Chancellor's Office noticed repeatedly that the rules and restrictions to combat the corona pandemic were drawn up and published without the required reasoning and an explanatory part. Sometimes, this was an impediment to law-abiding behaviour.

During an emergency situation, the procedure for publication of decisions is laid down in § 23(1) of the Emergency Act. "An administrative act of the Government of the Republic on resolving an emergency that has led to the declaration of an emergency situation enters into force upon its announcement to the person directly carrying it out or upon its publication in national media, unless the legal instrument itself provides for a different time or procedure. This legal instrument is also published in the *Riigi Teataja*."

After the end of the emergency situation, entry into force of restrictions is generally regulated by § 28(10) of the Communicable Diseases Prevention and Control Act: "An administrative act on the establishment or termination of requirements, measures and restrictions provided for in this section shall enter into force upon communication thereof to the direct addressee or publishing thereof in the media, unless the administrative act itself provides for another term."

A general order issued during an emergency situation must contain reasoning that helps to understand the aims and substance of the restrictions and, if necessary, contest them. If substantive reasoning of an administrative act is drawn up as a separate document, that too needs to be delivered or published in the mass media.

Worth recognition is the editorial board of the *Riigi Teataja* gazette, who used the right under § 2(6) of the Riigi Teataja Act and also published during the emergency situation those acts whose publication is not mandatory. This was done with the aim of creating a picture of restrictions and changes thereto that would be easy to follow; also useful was publication of translations. However, in the future, it would be worth considering publishing the reasons and explanations of general orders in the general order itself.
Validity of orders of the head of an emergency situation is mostly connected with the act of signing them but not with the fact of arrival of a certain date or publication of the order. The underlying reasoning for a norm that is being established must be written in the explanatory memorandum before the legislative act is issued. Regrettably, on several occasions during the emergency situation and afterwards, it was found that first an order was signed while preparing, elaborating and finally signing an explanatory memorandum was done retroactively.

During the emergency situation, acts were also issued by others besides the Government and the head of the emergency situation. For example, according to the rule on entry into force, a Minister's directive imposing restrictions on non-prescription medicines (up to two packages of medication could be bought at a time) and sale of paracetamol (only 30 tablets were sold to any one buyer) entered into force as of the date of signing. However, the directive was signed at 22.41 on 9 April. That way, the rules were given an almost 24-hour retroactive effect. Presumably, this was an error in law-making but not a wish to impose obligations retroactively.

While at the beginning of the emergency situation, errors due to immense time pressure could be humanly understood, no such excuse can be given after the emergency situation.

Apparently, it should be considered a peculiar feature of political culture and modern communication that information on restrictions imposed was first published on the social media account of the Prime Minister or a member of the Government. This was so even in the situation where the Government or the head of the emergency situation

had not yet formally passed, signed or published the decision. A similarity may be found here with the behaviour of media channels who, for instance, publish a news piece titled "State X imposes ban on entry for foreigners", leaving an impression that the borders would be closed immediately or at the latest at midnight the following day. Yet, reading the news more carefully (and it is good if the author of the news piece has wished or known to specify this) reveals that the restriction cited in the title would enter into force only, for example, in three days' time or at the beginning of the new (working) week.

The attempt by media organisations to describe a fresh decision as a fact that has already become a reality and has immediate effect may somehow be understood. However, adoption of a similar communication model by official decision-makers may cause (unnecessary) confusion, and in the worst case also economic loss. This is true for information given to the public both on the establishment as well as easing of restrictions.

In addition to lawful formulation and publication of administrative acts containing restrictions, other communication is equally important, for example when people are directed to look for information on what is allowed and what is prohibited on the website kriis.ee, the new order should become available on the website simultaneously with publication in the national media.

The Government should avoid causing information noise and giving misleading signals in an already difficult situation. The overall logic of administrative procedure requires that an act (rules) is (are) known to its implementer before they begin to implement it. A threat of punishment entailed in complying with the rules not clearly imparted to the public is not suitable in a rule of law.

III. THE RULE OF LAW

3.1. Judicial proceedings

The Chancellor of Justice receives many complaints about the work of the courts. The reason is mostly discontent and disagreement with a court judgment. Under the Constitution, courts are independent and the Chancellor of Justice does not intervene in the substantive work of administration of justice. The Chancellor initiates disciplinary proceedings if a judge behaves disreputably or fails to fulfil their duties of office.

The Chancellor also participates in the work of the Council for Administration of Courts. In the second half of 2019, the Council for Administration of Courts convened twice, and in the first half of this year also twice (both times in virtual format). At the meeting in March 2020, the courts were given recommendations on administration of justice during the emergency situation. The Chancellor may initiate disciplinary proceedings against all judges, and the Chancellor gives her opinion to the Supreme Court in constitutional review court proceedings.

Complaints against the work of judges

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

When deciding on initiation of disciplinary proceedings, the Chancellor does not assess substantive issues concerning administration of justice but only a judge's actions amounting to failure to perform their duties of office or disreputable conduct. However, the Chancellor is mainly contacted about substantive issues of administration of justice. Mostly, people are not satisfied with a court decision: either a judgment of conviction, an arrest warrant, a search warrant, or an order for seizure of property. Petitioners expect the Chancellor to intervene in offence proceedings and assess a court decision, but this is not what the Chancellor can do. Only a higher court can assess issues concerning administration of justice in substance.

Nevertheless, every year there are also cases where the Chancellor examines the work of judges more specifically in order to decide whether to initiate disciplinary proceedings in respect of a judge. During the reporting period, there were 15 such cases.

The complaints mostly concerned conduct of criminal proceedings. For example, judges were criticised on the grounds that proceedings last too long, that a judge delayed with delivering a judgment, or that a judge had not explained the accused's

rights to them. One complaint also concerned holding a court hearing during the emergency situation. Having examined the materials in the case files and, if necessary, also audio recordings of hearings, in none of these cases did the Chancellor find a reason to initiate disciplinary proceedings.

One complaint concerned the length of civil proceedings in connection with the right to custody of children. Examination of the materials in the case file revealed that the case was highly complicated. Neither of the parents complied with access arrangements set by the court and themselves caused the delay in court proceedings. The Chancellor explained that a judge can be criticised for delay in judicial proceedings if the judge fails to act without reason, which was not so in this case.

Several complaints were raised against administrative judges. All these complaints concerned the length of proceedings in the administrative court, and the petitioners were prisoners. Materials in the case files revealed that the administrative court could not be reproached for delay in proceedings. The Code of Administrative Court Procedure (CACP) does not set specific deadlines for adjudication of a court case, but when planning its work the court must ensure that the case is resolved within a reasonable time. Under § 100(1) of the CACP, if proceedings in an administrative matter have lasted for at least nine months and the court, without having a valid reason, does not perform a necessary procedural act, the parties to the proceedings or a third party may apply to the court to expedite the judicial proceedings in order to ensure the conclusion of judicial proceedings within a reasonable time. In none of the cases examined had the judicial proceedings in the matter lasted for more than nine months. The Chancellor explained to the petitioners that even by looking at the number of complaints filed with the court by the particular petitioners (in one case, for example, six complaints had been filed), it is clear that adjudicating these complaints takes time.

Review of legality of the statutes of the information system of the courts

This year, the Chancellor also analysed conformity with the Constitution and the laws of the current statutes of the information system of the courts. For example, the Chancellor assessed whether a conflict existed between the Courts Act and the procedural codes.

The Chancellor found no conflict between the Courts Act and the procedural codes. However, a conflict with the Courts Act and the Constitution exists in the case of those provisions of the statutes of the information system of the courts which entitle the Ministry of Justice to request judges to amend information in the system and lay down supervisory competence in respect of judges in using the information system. To ensure compliance with the requirements, the Chancellor made a proposal to the Minister of Justice to amend the statutes of the information system of the courts.

The amount of security on appeal in cassation

A petitioner asked the Chancellor to verify whether the requirement to pay security of 3000 euros for an appeal in cassation filed with the Supreme Court was constitutional. The Chancellor found that the amount of security (3000 euros) to be paid for an action with a claim amounting to 300 000 euros was not unconstitutionally large. However, if paying that sum proves to be burdensome, procedural aid may be sought to pay the security.

3.2. Violation of the law and its consequences

Conformity of punishment with the Constitution

During the reporting year, the Chancellor submitted an opinion to the Supreme Court on the constitutionality of § 422(2) clause 1 of the Penal Code.

In the contested case, the county court convicted the accused under § 422(2) clause 1 of the Penal Code: while in a state of intoxication the defendant had caused a traffic accident resulting in the death of a person. The punishment imposed was five years' imprisonment. The court of appeal overturned the county court judgment, declaring the sanction under § 422(2) clause 1 of the Penal Code to be unconstitutional, and accordingly referred the case to the Supreme Court. The court of appeal entered a new judgment, sentencing the defendant to 4 years and 6 months' imprisonment under § 422(2) clause 1 of the Penal Code.

In the opinion of the Chancellor, § 422(2) clause 1 of the Penal Code was not a relevant norm, thus barring specific constitutional review. The applicable sentencing range allowed the court to impose punishment which seems proper in a specific case.

Disclosure of a judgment of acquittal

The Chancellor was contacted by an individual whose potential employer had declined a job interview because the petitioner had once been a party to criminal proceedings. In those criminal proceedings the petitioner had been acquitted since the prosecutor's office dropped all charges against them.

In the Chancellor's opinion, this was a very unfortunate case. Being a party to criminal proceedings in the past provides no grounds for someone's extra-judicial 'conviction' later. A judgment of acquittal by the court or the fact of criminal proceedings may not be used to a person's disadvantage. At the same time, the rule of law is characterised by the public nature of adjudication of justice and of court decisions. The main aim in this is to ensure transparency of judicial proceedings. Under § 24(4) of the Constitution, judgments are pronounced publicly, except in cases where the interests of a minor, a

spouse, or a victim require otherwise. A judgment that has become final is disclosed at a designated place online.

In some cases, the fact of having been a party to judicial proceedings (even if the person was acquitted) may also stigmatise a person. In that case, the person must have the right to request that their name be removed from the judgment of acquittal. If someone finds that appearance of their name in a judgment of acquittal is not justified, they must apply to the court. Under the third sentence of § 408^1(2) of the Code of Criminal Procedure, the court may also replace an acquitted person's name with initials. This is also supported by the general principles of personal data protection which require that personal data should be processed only to the extent necessary for the purpose of processing. If no reason exists for continued disclosure of an acquitted person's name, the name must be replaced with initials or characters.

Possible bias on the part of the prosecutor's office

The Chancellor was asked to assess within the limits of her competence whether a reason existed to accuse the prosecutor's office of political bias. An explanation was also sought as to how to effectively verify the truthfulness of such accusations.

The Chancellor explained that the court, the prosecutor's office and all other state agencies must be independent, professional and honest and follow the law. The rule of law is endangered if it is found that law enforcement agencies do not follow the law but, instead, political guidelines. Sound and specific grounds must exist for such accusations. The validity of each such suspicion must be verified. Guarantees of independence have been established for law enforcement agencies in Estonia. The procedure for selection and appointment of prosecutors, and the restrictions and duties imposed on them, should protect them against influence by political parties or any other undue influence. Supervision has also been structured so that violations are revealed and followed by punishment. If a prosecutor violates their duties of office, disciplinary proceedings are initiated which may result in removal of the prosecutor from office. Under pain of criminal punishment, a prosecutor is prohibited from drawing up a statement of charges against a knowingly innocent person and from entering into a plea agreement with them in a plea bargain procedure. It is also prohibited knowingly to unlawfully terminate criminal proceedings or drop charges.

Right of access to a criminal file upon termination of criminal proceedings

The Chancellor was contacted by an individual in respect of whom criminal proceedings had been conducted and were terminated. The person wished to examine the information collected on them in criminal proceedings but was denied access because under the Code of Criminal Procedure (CCrP) only the victim has the right to examine the file.

The Chancellor explained that § 206(3) of the CCrP indeed lays down only the right of a victim to examine the criminal file upon termination of criminal proceedings, but this does not mean that other persons might not have the same right under a different law. The right of a victim to examine criminal proceedings is connected with their right to contest an order to terminate criminal proceedings. Granting access to personal data collected on someone in criminal proceedings which have been terminated is not, by nature, a criminal procedural step. Its aim is not to detect a criminal offence, to collect evidentiary information, or create other conditions for judicial proceedings. Therefore, this is not regulated by the Code of Criminal Procedure.

Under § 44(3) of the Constitution, pursuant to the procedure laid down by law, any citizen of Estonia is entitled to access information about themselves held by government agencies and local authorities and in government and local authority archives. This right may be circumscribed under the law to protect the rights and freedoms of others, to protect the confidentiality of a child's filiation, and in the interests of preventing a criminal offence, apprehending an offender, or of ascertaining the truth in a criminal case. On that basis, data collected within criminal proceedings can be accessed, depending on circumstances and the stage of proceedings, either by relying on § 24 of the Personal Data Protection Act or Article 15 of the General Data Protection Regulation. Access to data may be denied (for example, for security considerations or to protect the rights of others) but substantive as well as legal reasons for denial must be provided.

Constitutionality of restrictions imposed under the Traffic Act on persons carrying out roadworthiness tests

The Chancellor analysed whether § 74(1^1) of the Traffic Act was compatible with the Constitution. Under § 74(1^1) of the Traffic Act, a person testing the roadworthiness of vehicles may not be a person subject to a prohibition on business imposed by a final judgment or a person who has been deprived of the right to work as a roadworthiness tester. A tester may also not be a person deprived of the right to engage in roadworthiness testing or another similar field of activity by a final judgment due to misuse of their professional or official rights or violation of their official duties. Also, a person may not be punished for an intentionally committed criminal offence, and the restriction applies until deletion of conviction data from the criminal records database.
The Chancellor found that the provision was constitutional because persons testing the roadworthiness of vehicles perform a public function under an administrative contract. It is admissible to impose stricter requirements on them since this helps to ensure the credibility of roadworthiness testing and, thus, indirectly the protection of people's life, health and property. The ban imposed under that provision restricts the right under § 29 of the Constitution to freely choose one's area of activity, profession and position of employment. However, in justified cases the Riigikogu may impose such restrictions.

For example, qualification requirements may be set for certain areas of activity (e.g. doctors, judges, lawyers), as well as requirements for prior experience or language proficiency (e.g. a requirement of sufficient proficiency in Estonian).

This is not a lifetime restriction. The period of validity of the restriction depends on the severity of the offence committed and the punishment imposed, as well as on how law-abiding the person has been, i.e., how long ago they served their punishment and have refrained from further offences.

Personal data in an order for termination of criminal proceedings

The Chancellor was asked whether it was constitutional that, upon termination of criminal proceedings on the basis of conciliation, a suspect's name in a disclosed court order was not replaced with initials.

Indeed, the Code of Criminal Procedure (CCrP) does not contain provisions laying down replacement of a suspect's name or other personal data with characters in the event of termination of criminal proceedings due to conciliation under § 203^1 of the CCrP. In the event of termination of criminal proceedings on account of lack of public interest in the proceedings or lack of proportionality of punishment (i.e. under §§ 202 or 203 of the CCrP), the suspect's name and personal data are replaced with initials or characters (§ 206(5) CCrP).

The Chancellor drew the attention of the Ministry of Justice to the legislative gap. Until the law is amended, an individual whose name is in a disclosed court decision may apply to the court to have their name and other personal data in the court decision replaced with characters. This can be done by relying on the principles of personal data protection laid down in Article 5 of the General Data Protection Regulation.

Regulation on electronic monitoring

The Chancellor was asked to assess whether the Minister of Justice Regulation on "The procedure for enforcement and supervision of electronic monitoring" established under § 419^1(5) of the Code of Criminal Procedure was compatible with the Code of Criminal Procedure and the Constitution. Under § 8(2) clause 9 of the Regulation, a probationer subjected to electronic monitoring (i.e. wearing an electronic ankle bracelet) instead of remand in custody is given time to go to an investigator or prosecutor and to attend court hearings but is not given time to go to their defence counsel.

The Chancellor found that this clause in the Regulation contravened § 224^1(1) of the Code of Criminal Procedure. The provision lays down that materials in the criminal file of which a prosecutor's office has prohibited making copies may be presented by the

counsel to a suspect or an accused only in the counsel's office premises or in a custodial institution. Thus, a suspect or an accused has no opportunity to examine those materials, or the opportunity of access to materials in the file depends on the discretion of officials. On this basis, the provision in the Regulation is also contrary to the principle of guaranteeing the rights of defence (§ 21 Constitution) and the principle of legal clarity (§ 13 Constitution). The Chancellor made a proposal to the Minister of Justice to bring the Regulation into conformity with the Code of Criminal Procedure and the Constitution.

Punishment data in misdemeanour proceedings

During the reporting year, the Chancellor received several complaints revealing that some officials of the Police and Border Guard Board, when making a decision in misdemeanour proceedings and taking account of prior punishments, relied on data not included in the criminal records database. Those data might include, for example, data deleted from the criminal records database and archived, or earlier decisions on imposing a fine registered in the procedural information system which are not entered in the criminal records database (e.g. deterrent fines imposed in an abridged procedure).

Under § 5 of the Criminal Records Database Act, data concerning punishments of persons have legal effect until deletion of the data from the database. In ascertaining the recurrence of criminal offences or misdemeanours committed by a person, only punishment data entered in the criminal records database have legal effect. Relying on other data is not lawful. The Chancellor drew the attention of the Police and Border Guard Board to this. The internal audit bureau of the Board reached the conclusion that these were isolated cases and no systemic problem exists.

Time-out stop

In autumn 2019, the Police and Border Guard Board carried out an experiment using the so-called time-out stop to control speeding. The Chancellor's Office pointed out that the police were not entitled to use such a sanction.

A time-out stop restricts people's freedom of movement (§ 34 Constitution). The right to restrict people's fundamental rights must arise from law. This cannot be decided by an executive government agency. The police cannot experiment with new penal or sanction measures on their own initiative. The principle of legality is a pillar of a democracy based on the rule of law.

On 18 June 2020, the Riigikogu Legal Affairs Committee initiated a Draft Act amending the Code of Misdemeanour Procedure and the Traffic Act. The amendment aims to

create a legal basis to allow using alternative sanctions alongside a fine in misdemeanour procedure. The first such measure to be legalised is the time-out stop.

Probation supervision

During the reporting year, the Chancellor received more complaints than before about probation supervision. People complained that restrictions imposed by probation supervisors were too strict and often also unclear. If such duties or restrictions seem inappropriate, an individual should contact a county court judge in charge of execution of judgments.

Even though probation supervisors are staff members of prisons, probation supervision should not become a new type of punishment. The aim of probation supervision is – as an alternative to imprisonment – to direct offenders to law-abiding behaviour and develop their social skills. Unfortunately, some complaints left an impression that sometimes probation supervisors treated probationers inhumanely: for example, not letting them visit a dying close relative or prohibiting a probationer for months from going to assist a parent with a mobility disability living in the same immovable as the probationer.

In her work the Chancellor sees that probationers often lack social skills. Therefore, more attention in probation supervision could be paid to improving those skills in particular. Additional conditions or bans imposed by a probation supervisor should be intelligible and related to a specific violation and not amount to a kind of 'punishment' having humanly the most painful effect.

At the same time, there were also complaints based on which probation supervisors could not be reproached for anything but, instead, the aim and nature of probation supervision had to be explained to the probationer. For example, the fact that a person sent to do community service cannot choose an activity to their liking in any area in Estonia, or the fact of transfer of probation supervision to a foreign country does not depend on a probation supervisor in Estonia.

3.3. Avoiding conflict of interest

The Anti-corruption Act regulates prevention of corruption and avoidance of conflict of interest in very different areas. The law – which is of a general nature and applicable in different situations – is often difficult to understand and implement. Norms aimed at preventing conflict of interest also exist in other laws. Therefore, the Chancellor often has to analyse and explain how the Anti-corruption Act is implemented.

Prevention of corruption risk in local authorities

The Chancellor has repeatedly had to explain the application of the Anti-corruption Act in deciding on official travel on the mayor of a rural municipality, town or city and the chair of a municipal council. In the opinion of the Chancellor, it is compatible with the law that an application for official travel by the chair of a municipal council is approved by the deputy chair of the municipal council. In the case of a procedural restriction, an official is indeed prohibited from assigning the task of performing an act or making a decision instead of the official to his or her subordinates, but the deputy chair of a municipal council is not a subordinate of the chair of a municipal council (§ 11(2) Anti-corruption Act).

A municipal council in its rules of procedure (or other legal acts) may not restrict concepts defined by law or the bases for applying a procedural restriction. The Chancellor also had to deal with a problematic situation where the head of an agency administered by a rural municipality was simultaneously the chair of the municipality's audit committee, being directly subordinate to the rural municipality mayor (read in more detail in the chapter "Cities, towns and rural municipalities").

Incompatibility of offices in a municipal council

On 5 September 2019, the Chancellor made a proposal to the Riigikogu to bring § 18(1) clause 6 of the Local Government Organisation Act into conformity with the Constitution insofar as it did not allow a contractual employee of an administrative agency of the same rural municipality, town or city to be a municipal council member. The Riigikogu did not support this proposal (with 31 members of the Riigikogu voting in favour and 37 against). Then the Chancellor submitted an application to the Supreme Court seeking a declaration of invalidity of § 18(1) clause 6 of the Local Government Organisation Act to the extent that it contravened the Constitution.

In April 2020, the Supreme Court satisfied the Chancellor's application and declared invalid part of the sentence containing the words "or working in an administrative agency of the same rural municipality, town or city on the basis of an employment contract" in § 18(1) clause 6 of the Local Government Organisation Act. The court postponed the entry into force of the judgment by six months, so as to enable the Riigikogu to review the restrictions on municipal council members as a whole. The court emphasised that "regulation should take into account the principle of equal treatment of local authority employees. A conflict between the interests of the mandate and of the place of employment as well as public and private interests may arise not only for employees of a local government administrative agency but also for employees of an agency administered by a local authority's administrative agency" (para. 88 of the judgment).

The principle of equal treatment requires, inter alia, that the Riigikogu should give a clear and reasoned answer to the question whether a conflict of interest of contractual employees of a rural municipality, town or city administrative agency elected to a municipal council is or is not more severe than a conflict of interest of heads and deputies of an agency administered by a local authority's administrative agency elected to a municipal council. Even after the court judgment the Riigikogu has a margin of appreciation to decide whether a more appropriate measure would be suspension of a municipal council member's mandate or withdrawal from decision-making in specific cases, with a view to preventing a conflict between the interests of a mandate and place of employment of a contractual employee of a rural municipality, town or city administrative agency elected to the municipal council (see para. 76 of the judgment). To regulate the issue, on 11 June 2020 the Riigikogu Constitutional Committee initiated a Draft Act (212 SE) amending the Local Government Organisation Act.

Ministers on company supervisory boards

The Chancellor was asked to explain whether a government minister may simultaneously serve on the supervisory board of a company, including on the supervisory board of a company owned by a local authority.

Section 99 of the Constitution does not allow members of the Government of the Republic to belong to the management board or supervisory board of a commercial enterprise. The concept of a commercial undertaking includes all types of companies. The Constitution does not distinguish between companies owned by the state, local authorities, or by private entities. Consequently, the ban applies to membership of all management boards and supervisory boards of companies.

The Constitution does not prohibit a government minister from serving on the management board or supervisory board of a foundation or non-profit association. The Constitution also does not prohibit a government minister from operating as an entrepreneur or as a general partner in a general or limited partnership.

Applying the Anti-corruption Act in the work of a (family) doctor

The Chancellor receives many questions about implementation of procedural restrictions laid down in the Anti-corruption Act (ACA). This year, a wider public debate also emerged on whether and when a (family) doctor should refrain from taking a decision or a procedural step.

A doctor must observe the Anti-corruption Act in situations when performing public duties as an official. A public duty is a statutory duty performed in the public interest whose provision must be guaranteed by the state. A public duty may also be performed by private entities (e.g. a private company administering a family medicine centre).

The Chancellor found that a healthcare professional is acting in the capacity of an official when providing services which confer on a patient the right or a duty in relations with the state. For example, when issuing a health certificate to obtain a driver's licence or a weapons permit, ascertaining drug or alcohol intoxication, or the like. However, when a healthcare professional gives a diagnosis, prescribes treatment or refers a patient for a health examination, they are not acting in the capacity of an official.

Different interpretations of the Anti-corruption Act cause confusion among doctors and prevent them from focusing on their main work – i.e. treating people. Violation of the Anti-corruption Act may result in punishment. Therefore, norms must be very clear. On that basis, the Chancellor recommended that § 11(3) of the ACA should be supplemented with a provision that procedural restrictions do not apply to provision of healthcare services within the meaning of § 2(1) of the Health Services Organisation Act or to those decisions and procedures inextricably linked to provision of healthcare services. In addition, practical guidelines should be prepared for implementing the Anti-corruption Act in the work of healthcare professionals. This would ensure legal clarity and protection of health as a fundamental right.

The issue was discussed in the Riigikogu at a joint meeting of committees and at a meeting of the Legal Affairs Committee. The Legal Affairs Committee has promised to continue the debate and asked the Ministry of Justice and the Ministry of Social Affairs for feedback on the Chancellor's proposal.

Constitutionality of merging a Board with an Inspectorate

The merger of the Environmental Board and the Environmental Inspectorate raised the issue of supervisory independence in a situation where the tasks of the permit procedure and supervision are transferred to the same agency.

The Chancellor explained that boards as well as inspectorates are administrative agencies of the executive power. Under the law, one agency is not more independent than another. The purpose of the permit procedure and supervisory procedure are generally the same: one case involves an *ex ante* check of compliance with requirements and the other case an *ex post* check of whether the requirements are actually being observed. In the permit procedure, the state sets the rules for conduct for a permit recipient, and compliance with those rules is verified by the state in the course of performing supervisory functions. Those functions are not mutually exclusive and they can also be performed by the same agency.

In state organisation in Estonia it is customary and reasonable for people that the same board fulfils the functions of both the permit procedure and supervision. This, for example, helps to ensure that an agency is following the same administrative practice

in setting the requirements as well as in verifying compliance with them. And people do not have to suffer when government agencies argue with each other over interpretations of the law.

The Riigikogu decided the merger of the Environmental Board and the Environmental Inspectorate on 17 July 2020.

Calculating the training expenses of active servicemen

The Supreme Court adjudicated the issue whether § 5(2) and (3) of the Minister of Defence Regulation on "The calculation and compensation of the expenses of resource-intensive training of active servicemen and the procedure for determination of the obligation to serve on active service for an unspecified term" take into consideration the principle of proportionality set out in § 156(2) of the Military Service Act. Tallinn Court of Appeal had held that the Minister of Defence Regulation was unconstitutional since it required compensation of training expenses by persons interrupting their training or leaving active service for certain reasons in a larger amount than laid down by law.

The Chancellor agreed that the principle of legality was violated since the contested provisions in the Minister of Defence Regulation did not prescribe a proportional calculation, i.e. calculation by days, and thus exceeded the limits of the delegating norm laid down by § 156(7) of the Military Service Act.

The Supreme Court Constitutional Review Chamber found that the interpretation of § 5(2) and (3) of the Minister of Defence Regulation, which does not take account of a proportional service period in compensating training expenses, contravened the Military Service Act and thus also contravened § 3(1) (first sentence) and § 94(2) of the Constitution. The Supreme Court found that § 5(3) of the Regulation relevant to this specific case could be interpreted in a constitutionally compliant way, and the court had no possibility to assess subsection (2) in substance and to declare it unconstitutional.

Thus, the Supreme Court judgment left in force § 5(2) of the Minister of Defence Regulation which explicitly ruled out proportionality in calculating the training expenses to be compensated. The Chancellor made a proposal to the Minister of Defence to bring the calculation of reduction of expenses of resource-intensive training set out in § 5(2) of the Regulation into line with the requirement of proportionality laid down in § 156(2) of the Military Service Act.

The Minister of Defence agreed with the Chancellor's proposal. Section 5(2) of the Regulation was worded so that the obligation of compensation of expenses of resource-intensive training is reduced proportionally by one month as of the beginning

of training to the end of the obligation to stay in active service. People who had compensated expenses for attending resource-intensive training in 2013–2019 without taking account of proportionality were refunded the amount paid in excess.

Compensation of legal assistance expenses for enforcement procedure

The Chancellor was asked to verify the constitutionality of § 175(3[1]) of the Code of Civil Procedure. The petitioner found that in case-law the provision was interpreted expansively and the claimant's legal assistance expenses were left for the debtor, i.e. the complainant, to bear. In the petitioner's opinion, the law did not prescribe compensation of the legal assistance expenses of persons concerned, including the claimant, when adjudicating a complaint filed against the decision of a bailiff.

The Chancellor found that § 175(3[1]) of the Code of Civil Procedure was not unconstitutional since the procedure for compensation of procedural and other expenses of persons concerned contained in that provision was of sufficient legal clarity.

Replacement of a weapons permit

The Chancellor was also asked about a conflict between the Weapons Act and the Constitution since the law does not enable applying for replacement of a suspended weapons permit in the event of its expiry.

However, according to the Chancellor's assessment, no conflict with the Constitution exists. Regulatory provisions concerning replacement of a weapons permit may be interpreted differently. The provisions also do not rule out replacement of a weapons permit when the permit is temporarily suspended because the person has been punished for driving a motor vehicle while exceeding the maximum permitted level of alcohol in the bloodstream.

The presumption of innocence

A petitioner contacted the Chancellor to assert that disclosure of personal data in the yearbook of the prosecutor's office violated the presumption of innocence and independence of judicial proceedings. The petitioner also found it wrong that materials from a pending judicial case had been given to a journalist.

Under § 22 of the Constitution, no one may be deemed guilty of a criminal offence before they have been convicted by a court and before the conviction has become final. The requirement of the presumption of innocence must be observed by police officers, prosecutors, judges and other public officials. The European Court of Human Rights has found that no representative of public authority may express belief that a

person is guilty of a criminal offence before a judgment of conviction has become final. For example, the presumption of innocence was violated by a prosecutor who, after a judgment of acquittal, declared publicly that the person was actually still guilty; or by a government minister who claimed that enough evidence existed to convict a person. However, expressing doubt, similarly to revealing the substance of the charges, is generally allowed. However, in so doing the words and expressions must be extremely carefully chosen. Everyone has the right to fair and impartial adjudication of justice and no one may be declared guilty in public before justice has been administered.

The Supreme Court has emphasised that it is not compatible with the presumption of innocence if a representative of public authority draws public attention to the accused before a court judgment. The authority possessed by the state may give a different weight in the eyes of the public to information disseminated by a public authority. Journalists (like other private individuals) are indirectly bound to observe the requirement of presumption of innocence. The Supreme Court has explained that if courts have not agreed in their judgments with the version of events put forward by the defence, and the media has published materials about pending criminal proceedings, this does not automatically mean a violation of the presumption of innocence.

Although the prosecutor's office as the body bringing charges on behalf of the state must be convinced of a person's guilt, it may nevertheless not treat someone as an offender before a court judgment. This holds true even if materials already disclosed in the media are re-disclosed.

3.4. Supervision over financing of political parties

Under the Political Parties Act, the Chancellor of Justice appoints one member to the Political Parties Financing Surveillance Committee (PPFSC). The Chancellor has appointed the editor-in-chief of the cultural paper *Sirp*, Kaarel Tarand, as a member of the Committee. The Committee and its members are independent, they have no obligation to report their activities to the persons or institutions appointing them, and they also do not accept or receive instructions from the persons appointing them.

In 2019, the PPFSC mostly dealt with proceedings concerning the 2017 municipal council elections and ending related court disputes. Both the Committee and the Chancellor have for many years drawn attention to the ambiguity of many provisions in the Political Parties Act. Those arguments are also raised in court disputes. Last year the issue of the legality of operation of the PPFSC was also raised in connection with a possible conflict of interest of its members. The courts did not see any errors or problems in the work of the Committee or the mandate of its members, and the decisions were upheld.

Surveillance of financing of political parties is a time-critical activity. The longer a political party can evade remedying its mistakes, i.e. complying with precepts – and a court dispute is a useful means to this end – the longer the advantage obtained in elections persists, which by the time of the next elections may already have developed into an unfair advantage. As a result, election results will begin to embody distortions not compatible with the requirements of the Constitution, and under the current procedure those distortions will, inter alia, be manifested in the amount of (additional) funds obtained from the state budget.

During the more than nine years of its operation, the PPFSC has seen all the nuances of the ambiguous law. The political parties system itself has developed, adjusted to the methods of supervision, and understood its own limits and those of supervision.

In her presentation a year ago, the Chancellor emphasised that "revision of the Political Parties Act is of critical importance to ensure that the transparency of the Estonian political system would be able to remain at least on its current level, but also be ready for new threats arising from the development of technology and the practice of its use in political fighting in the rest of the world". In June 2020, the coalition parties initiated a Draft Act on amending the Political Parties Act. Regrettably, from the moment of its initiation it was unclear by whom, for what purpose and for resolving what problems the Draft Act had been prepared. The Draft Act did not deal with the problems raised so far by the PPFSC and the Chancellor of Justice. However, it did focus on changing the relationship of subordination of the PPFSC, which at least to date has not inhibited the Committee from performing its statutory tasks.

Every law and the mechanism provided by it is a child of its own time. When society and/or circumstances change, the rules are also adapted and revised accordingly. Supervision of financing of political parties is no exception. Should real-life events confirm that, because of ambiguously worded norms, public resources are not used in the best possible way and norms let the subjects of law operate in a 'grey area', these should be addressed first.

Unfortunately, the debate on the Draft Act so far does not allow for the conclusion that the Riigikogu is focusing on problems found in the day-to-day work of the PPFSC. Effective supervision of financing of political parties has a broader meaning than that merely concerning the national context or national politics. For many years, Estonia has presented itself internationally as a success story of democracy. One of Estonia's main lines of action internationally is counselling on how to build democracy and honest, corruption-free institutions in partner countries which are developing democracies. However, unless we are able to cope impeccably with our own issues, this also inhibits Estonia's credibility.

The Riigikogu has initiated amending the Political Parties Act and this has opened up an excellent opportunity to do it right, in line with good law-making and rules of legislative drafting, by focusing on resolving real problems and relying on expert knowledge accumulated in the country over the years.

Supervision of financing of political parties cannot be made to somehow simply disappear – this is part of the foundation of a democracy based on the rule of law. And once something has already been created, the Riigikogu has the duty to ensure that a poor law does not prevent this creation from working with maximum effectiveness.

3.5. National Electoral Committee

Since no elections took place in Estonia from 1 September 2019 to 31 August 2020, this was a so-called interim year for the National Electoral Committee (NEC), allowing it to ponder over lessons learned and to set new goals. By coincidence, this was also the year when the four-year mandate of the members of the Committee ended and the new composition started. On 1 June, the new composition of the NEC started working, and at its first session Oliver Kask, a judge of Tallinn Court of Appeal, was elected as chair of the Committee. Under the law, one member of the NEC is appointed by the Chancellor of Justice. For the second mandate, the Director of the Chancellor's Office, the Deputy Chancellor of Justice-Adviser, Olari Koppel, continues in this position.

During the reporting year, the management of the national election service responsible for organising elections also changed. Since October 2019, the head of the service is Arne Koitmäe and since January 2020 the deputy head of the service is Külli Kapper.

During the emergency situation established due to the corona pandemic, the NEC had to offer flexible solutions to members of the Riigikogu for traditional election of the Board of the Riigikogu. As an unavoidable innovation, six voting places were set up in the grounds of the Riigikogu, enabling members of parliament to make their choice in compliance with all the requirements of social distancing. Public excitement was caused by voting in the courtyard of the Riigikogu where a member of the NEC carried out voting procedures in the middle of vehicles parked in the yard. This solution was, inter alia, due to the Chancellor's opinion that those members of the Riigikogu who feel sick or as posing a risk of infection are also entitled to elect the Board.

During the emergency situation, many municipal councils held their sessions over the internet. Unfamiliarity and innovation sometimes caused problems, and one such complaint was also heard in July by the NEC. The NEC had to decide whether a member of Peipsiääre Rural Municipal Council could be deemed to have been absent from three consecutive municipal council sessions or not, and whether the alleged absence was sufficiently proved in order to suspend the mandate of the particular municipal council

member. The Committee reached the conclusion that the member had actually not participated in the work of the municipal council during three consecutive months, and dismissed the complaint.

With a view to the future, the NEC analysed legal, technical and budgetary aspects in connection with combining the referendum planned for October 2021 and local elections. A memorandum to this effect was sent to the Minister of Finance and several Riigikogu committees. The NEC also analysed all the proposals made by the committee set up by the Minister of Economic Affairs and Communications to remedy the alleged shortcomings in the organisation of online voting in elections in Estonia.

IV. PROTECTION OF PRIVACY

Section 26 of the Constitution protects the right to the inviolability of private and family life, an inseparable part of which is the right to protection of personal data. In addition to the Constitution, processing of personal data is regulated by the European Union General Data Protection Regulation (GDPR), directly applicable as of May 2018. The principles laid down in the GDPR are further developed by the Estonian Personal Data Protection Act which entered into force on 15 January 2019.

The number of petitions received by the Chancellor concerning inviolability of private life increases year by year. In connection with establishment of the emergency situation, the Chancellor was also often asked about restrictions on processing of personal data. Relevant restrictions proportional in the narrow sense are inevitable in the fight against the coronavirus, but the right to inviolability of private life unquestionably still applies during an emergency situation (about the processing of personal data in an emergency situation, read the chapter on "Rule of law in an emergency situation").

4.1. The media

Disclosure of data on private life in the media

The right to protection of private life is not absolute. The right to inviolability of private life may be restricted, for example, for protection of freedom of expression. Disclosure of personal data in the media is regulated by § 4 of the Personal Data Protection Act.

The media may disclose someone's personal data if three main criteria are fulfilled simultaneously: public interest exists for disclosure of the data of the particular person, principles of journalism ethics are observed in disclosure, and disclosure of personal data does not cause excessive damage to the rights of the person. To disclose data, it is not merely sufficient to reach the conclusion that the public is in principle interested in a particular topic (e.g. spread of the coronavirus). Disclosure of personal data must contribute to debate on an important public issue, not merely to satisfy people's curiosity or serve the business interests of a media publication.

Although the Chancellor is often contacted in connection with disclosure of personal data in the media, supervision over private media publications is not within the Chancellor's competence. To such petitioners, the Chancellor can explain alternative ways for protection of their rights.

Processing of health data in an emergency situation is dealt with in the chapter on "Rule of law in an emergency situation". Disclosure of the data of children in the media is dealt with in the chapter on "Children and young people".

Recording devices

The number of petitions concerning recording devices and technical solutions enabling constant monitoring of people is growing year by year. People's concern for their privacy and for being alone free of monitoring must be taken seriously. No one likes an invasive environment of monitoring at their home, place of work or a rest area. A surveillance-free private life cannot become an inaccessible illusion. Any kind of monitoring must be justified and the people concerned must be aware of this.

The Chancellor has emphasised that privacy of residents must also be ensured in care homes. Video cameras in bedrooms in a care home may only be installed if video surveillance is necessary to ensure residents' own safety. For residents of a care home, the bedroom is their private area even when the room is shared with someone else. Processing of personal data (including subjecting someone to video surveillance) must be proportionate, fit for the purpose and minimal, as well as necessary for provision of a specific service. Video surveillance may be used if the desired aim cannot be achieved by other measures which are less invasive of a person's privacy. Consent of an individual themselves must exist for such an extensive surveillance activity as video surveillance in someone's bedroom (in more detail, see the chapter on "Inspection visits").

Use of cameras in the workplace must respect the principle that recording should interfere as little as possible with an employee's private life and human dignity. If no legitimate aim for recording exists, no recording may take place. Explanations have also been provided by the Data Protection Inspectorate on the use of video cameras in the workplace. The Inspectorate has also drawn up general guidelines on the use of cameras.

Recording in a police patrol vehicle

The Chancellor was contacted by a patrol officer asking to verify whether constant video and audio recording in a patrol vehicle was compatible with the right to inviolability of private life under § 26 of the Constitution.

The Chancellor found that constant audio recording in a police patrol vehicle, without the possibility to switch it off, may indeed be excessive and violate the constitutional right to inviolability of private life. Recording in a patrol vehicle must have substantive justification and purpose. Fundamental rights may not be restricted more than can be justified by the aim sought.

The situation where conversation among police patrol officers during field work is constantly recorded seriously restricts the fundamental right of police officers to inviolability of private life. In line with the case-law of the European Court of Human

Rights, private life cannot be interpreted narrowly. In work and occupational activity, the fundamental right to inviolability of private life is guaranteed to the extent that can be reasonably expected. Thus, police officers also have the right to inviolability of private life while in a service relationship.

A distinction should be drawn between video and audio recording. The distinction is justified since, by nature, simultaneous audio and video recording interferes more with private life than video recording alone. If sound is being recorded in a vehicle in addition to image, an individual must be notified of this. A sticker denoting video surveillance might not be sufficient to notify people who may find themselves in a patrol vehicle. It is suitable if a patrol officer orally notifies a person entering a patrol vehicle about audio recording, or if another means of notification (such as a sticker) is used in addition. The procedure for retention and use of recordings made in a patrol vehicle must be regulated and available to data subjects.

The Police and Border Guard Board (PBGB) promised that in 2020 an assessment would be carried out as to the need for recording in patrol vehicles used for different purposes. To ensure transparent data processing, the PBGB promised to improve regulations established by itself and, if necessary, make proposals to amend legislation. The PBGB promised to place stickers in patrol vehicles to notify police officers as well as third parties of the fact that both image and sound is being recorded in a police vehicle.

4.2. The state and data

Land register

The Law of Property Act establishes the principle of public access to the land register. No one may excuse themselves by the fact of not being aware of the data in the land register. These principles have been unchanged since the re-establishment of the land register. However, over time the state has simplified the procedure of access to documents: land registry data that were initially available on paper are now kept electronically.

The Chancellor has earlier drawn the attention of the Ministry of Justice to the fact that the technical solution for queries in the land register may not excessively restrict people's right to inviolability of private life. The Ministry has analysed the issue of the land register and inviolability of private life, and has taken the results of the analysis into account in renewal of the land register. On that basis, no name-based queries can any longer be made in the publicly accessible information of the land register without self-authentication. According to the changes planned, the owner of an immovable will also be able to obtain information on who has accessed their data.

Commercial register and register of economic activities

The Commercial Code establishes the requirement to disclose data of sole proprietorships. The name and personal identification code of the sole proprietorship and the registered office of the enterprise must be entered in the commercial register. Entries in the commercial register are public. Everyone may examine the registry cards and business files, and obtain copies of registry cards and of documents in the business files. The requirement of disclosure of the data of a sole proprietorship has been established with a view to the credibility of general economic turnover and the interests of the undertaking's clients and partners.

Often, undertakings have no other choice than to register their business at their home address. If an undertaking does this, residence data become publicly available through the commercial register and they can be linked to a specific person. The Chancellor understands that this may annoy some sole proprietors.

The Chancellor has previously found that, based on the Constitution, it cannot be claimed that the requirement of disclosure of the address of an undertaking's registered office is, in itself, excessive and inadmissible. The requirement of disclosure must be proportionate to the aim sought.

The Chancellor requested an explanation from the Ministry of Economic Affairs and Communications as to whether disclosure of undertakings' data in several databases (commercial register, register of economic activities) in the present form is substantively justified. If the aims for disclosure can be ensured in a manner less burdensome on undertakings, preference should be given to such a solution.

Massive transmission of data of people with disabilities

The Chancellor was asked to verify whether the Social Insurance Board was acting lawfully when sending to cities, towns and rural municipalities the personal data of people with disabilities living within their boundaries. The alleged aim of sending the data was to inform cities, towns and rural municipalities of people's possible need for assistance and help local authorities to plan and offer social services. In transmitting these data, the Social Insurance Board relied on § 13 of the Social Welfare Act under which it is required to notify a local authority of a person in need of assistance.

The Chancellor found that massive transmission of health data of people with disabilities under § 13 of the Social Welfare Act was not lawful. Technical requirements for processing personal data have also not been complied with in transmitting the data. It is understandable that the Social Insurance Board tries to help local authorities in supporting people with disabilities, but inviolability of private lives of individuals must also be respected. If a need arises to organise provision of social welfare services

otherwise than what the Social Welfare Act enables, the law must be amended. People must be left the right to decline assistance and processing of their personal data.

Section 13 of the Social Welfare Act cannot be interpreted as allowing the Social Insurance Board to massively process the health data of people with disabilities for abstract purposes (e.g. to facilitate planning social services by rural municipalities, towns and cities). A disability merely in the context of services offered by a city, town or rural municipality does not necessarily mean a need for assistance. Individuals themselves are entitled to decide whether they wish to seek assistance and, in that connection, give the state the right to process data concerning their disability.

As far as is known, the Social Insurance Board has now stopped transmitting personal data. The Data Protection Inspectorate initiated supervision proceedings in relation to the incident.

Enabling access to data in the traffic register

Tartu City Government asked the Chancellor about access to traffic register data and asked her to verify whether the administrative practice of the Road Administration in releasing these data complied with the practice of good administration.

Under the Traffic Act, local government bodies are entitled to obtain the necessary data from the traffic register to perform their statutory functions. To this effect, a local authority and the Road Administration enter into a contract. This is not a legislative act, so that the Chancellor is not competent to verify the conditions of the contract. If negotiations over the conditions of the administrative contract prove futile and the Road Administration blocks the city government's access to traffic register data, the city may have recourse to the court.

The Chancellor explained that under § 14 of the Constitution the right to good administration is one of the fundamental rights of individuals. A local authority is not a bearer of fundamental rights but their addressee, so that in its relations with the state a local authority may not rely on fundamental rights. However, good administration in the broader sense also includes categories of ethics and morals (politeness, readiness to help, etc.) which everyone must respect.

Business information portals

The Chancellor was also repeatedly asked about processing of personal data published in business information portals. Since these are undertakings in private law, the Chancellor is not competent to supervise their activities.

The Data Protection Inspectorate has initiated supervision proceedings to ascertain whether data processing by information portals complies with data protection rules and is compatible with the principles of personal data protection.

Disclosure of personal data and presumption of innocence

A petitioner contacted the Chancellor to assert that disclosure of personal data in the yearbook of the prosecutor's office violated the presumption of innocence and independence of judicial proceedings. Criticism was also directed against giving materials from a pending judicial case to a journalist.

Under § 22 of the Constitution, no one may be deemed guilty of a criminal offence before they have been convicted in a court and before the conviction has become final. Also, no one is required to prove their innocence in criminal proceedings. The requirement of presumption of innocence must be observed by police officers, prosecutors, judges and other public officials. The Supreme Court has emphasised that it is not compatible with the presumption of innocence if a public authority draws public attention to the accused before a court judgment. The authority possessed by the state may give a different weight in the eyes of the public to information disseminated by a public authority. Therefore, one should be extremely careful with the choice of words and expressions in statements concerning charges.

Disclosure of personal data in the yearbook of the prosecutor's office is an activity in public law. The Chancellor explained that if inviolability of a person's private life has been violated or their honour or good name defamed, under § 9(1) of the State Liability Act they may claim financial compensation for non-pecuniary damage. The protection of honour and good name within the meaning of that provision also includes protection of the presumption of innocence. Also, in disputes over defamation of honour and good name, a distinction should be drawn between statements of fact and value judgments.

The Chancellor explained that journalists (like other private individuals) are indirectly bound by the requirement of presumption of innocence. Exercise of freedom of the press enshrined in § 45 of the Constitution entails duties and liability. Section 17 of the Constitution stipulates that no one's honour or good name may be defamed. Honour and good name can also be protected through civil procedure under the Law of Obligations Act. If someone finds that their honour and good name have been defamed in the media (e.g. through publication of an inappropriate value judgment or untrue statements of fact), they may have recourse to the court. If the court ascertains that a person's honour and good name has been defamed, it is possible to claim compensation for damage.

Under § 146 of the Constitution, the courts are independent in their activities and in discharging their duties and administer justice in accordance with the Constitution and the laws. As the main guarantee for judges' independence, § 147 of the Constitution stipulates that judges are appointed for life. Judges may be removed from office only by a court judgment. Constitutional guarantees enable judges to act independently when delivering a judgment and to administer justice without the fear of sanctions and pressure (e.g. by the media). The Supreme Court has emphasised that if courts have not agreed in their judgments with the version of events put forward by the defence, and the media has published materials about pending criminal proceedings, this does not automatically mean violation of presumption of innocence.

Disclosure of data of people having been in the service of occupation authorities

The Chancellor was contacted by an individual whose name was published in the *Riigi Teataja* gazette, as required by the Procedure for Registration and Disclosure of Persons who Have Served in or Co-operated with Security Organisations or Intelligence or Counterintelligence Organisations of Armed Forces of States which Have Occupied Estonia Act (the Occupation Act). Under the Act, information about service or cooperation must be disclosed in any case if the person did not submit a personal confession to the Internal Security Service within one year of the entry into effect of the Occupation Act (28 March 1995). The Occupation Act clearly and unequivocally lays down the possible consequences of failure to submit a confession. The Occupation Act does not lay down a procedure for erasure of personal data already disclosed.

The Chancellor explained that, prior to disclosure, the individual had the opportunity to examine documents held by the Estonian Internal Security Service proving their service in or cooperation with a security or intelligence organisation. Upon having examined the information, the individual could also have contested the information. The burden of proof of someone's service or cooperation rested on the Internal Security Service. The Chancellor cannot retroactively assess a person's past activity or its proof.

Information about the petitioner's service in the National Security Committee of the Estonian SSR has been public in the Appendix to the *Riigi Teataja* for 20 years. The Chancellor explained that if a person mentioned in the *Riigi Teataja* finds that continued disclosure of the information excessively restricts their right to the inviolability of private life, they should submit a relevant application to the Internal Security Service. If the Internal Security Service concludes that continued disclosure of personal data is justified and the individual's data is not removed from the *Riigi Teataja*, it is possible to file an action with the administrative court.

V. SURVEILLANCE

The Chancellor of Justice verifies whether state agencies that organise interception of phone calls and conversations, surveillance of correspondence, and otherwise covertly collect, process and use personal data operate lawfully.

The purpose of supervision is to ensure that covert measures are taken with justification, i.e. in conformity with legislation and the aim sought, as well as in a manner respecting people's fundamental rights. Even when the actions of the relevant agencies are formally lawful, the Chancellor ensures that people's fundamental rights are reckoned with to the maximum possible extent. This helps to alleviate uncertainty and fear of unjustified surveillance.

In 2019–2020, the Chancellor's advisers checked how the police stations (total 15) of the Police and Border Guard Board (PBGB) had respected people's fundamental rights when carrying out surveillance measures and processing communications and bank data. Also checked were the activities of the Estonian Internal Security Service and the Estonian Foreign Intelligence Service in fulfilling the aims laid down in the Security Authorities Act.

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

Notifying about measures for collecting information, and amendments to the law

Section 44(3) of the Constitution requires that an individual must be notified of a measure carried out (including covertly) in respect of them. Thus, everyone who wishes may access the data held on them by a government agency. Under the law, this right may be circumscribed, inter alia, to protect the rights and freedoms of other people and to prevent a criminal offence. Notification may be postponed only until the above reasons outweigh the restriction on fundamental rights resulting from the measure. However, the Security Authorities Act (SAA) only obliges notifying an individual but does not prescribe a possibility to access the data.

Notifying an individual about the measures carried out in respect of them is laid down by § 29 of the SAA. When assessing its implementation, the Chancellor has found that if an individual cannot be notified immediately a security agency's own effective and efficient procedures (a control system) should ensure that a ground for non-notification exists in actuality. Once the ground ceases to exist the individual should

still be notified about the measure restricting their fundamental rights. Already in 2017 the Estonian Internal Security Service and the Foreign Intelligence Service agreed to revise their guidelines in this regard and to observe this principle in practice.

By judgment of 19 December 2019, the Supreme Court Constitutional Review Chamber (in case No 5-19-38/15) declared unconstitutional the Act amending the Defence Forces Organisation Act (DFOA) adopted on 29 May 2019. The reason was that the Act (specifically § 40) did not lay down effective control over compliance with notifying an individual if the Defence Forces have carried out covert surveillance of the individual under § 54^1(2) clause 2 of the DFOA. The Supreme Court did not support the arguments set out in the application by the President of the Republic that conferring on the Defence Forces the function of surveillance was unconstitutional. The Chancellor reached the same conclusion in her opinion.

In the Chancellor's opinion, this reasoning by the Supreme Court was also directly applicable to § 29 of the Security Authorities Act. The wording of § 29 SAA and § 40 DFOA was identical, and neither of them laid down constitutionally compliant regulation in line with the Supreme Court criteria that would have required verification of reasons for non-notification. On that basis, in a letter sent to the Riigikogu, the Chancellor also asked that, in the course of proceedings initiated for amendment of the DFOA, § 29 of the SAA would also be brought into line with the Constitution insofar as it failed to lay down systematic, regular and independent substantive control of the reasons for non-notification of the measures set out in § 25(1) clauses 1, 2 and 3 and § 26(3) clauses 2, 5 and 6 of the SAA.

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 the text in § 29 SAA was also thoroughly changed. This section now lays down clear grounds for non-notification of a measure for collecting information. Section 1 of the Chancellor of Justice Act was supplemented with subsection (9^1), and a new function was conferred on the Chancellor: to verify 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.

5.1. Control of surveillance files

During inspection visits, the Chancellor's advisers examined surveillance files opened by police stations in 2018–2019 where active proceedings had ended by the time of the inspection. During that period, a total of 115 surveillance files were opened, of which 95 files were inspected.

The Chancellor's advisers assessed the guarantee of fundamental rights and interests of those persons who became objects of covert data collection (i.e. a surveillance measure) in the course of criminal proceedings either as suspects or as 'third parties' (including by chance). The inspection focused primarily on whether, in each specific case, conducting the surveillance measure while collecting information about a criminal offence had been lawful (including unavoidable and necessary), and how the surveillance agencies complied with requirements to notify people about a surveillance measure.

In order to ensure better protection of fundamental rights, the Chancellor made several proposals to the surveillance agencies and the prosecutor's office. For example, she recommended that some police stations should organise training for surveillance officers, so that the officers could update their knowledge of regulation of surveillance measures and of assessing justification for measures, including in terms of guaranteeing people's fundamental rights.

Surveillance authorisations

A surveillance measure is lawful only if the prosecutor's office or the court has issued an authorisation meeting the statutory requirements, i.e. the requirements of form and reasoning. The inspections revealed that, as a rule, surveillance authorisations were reasoned and surveillance was necessary to verify suspicion of a criminal offence. Nevertheless, examination of some surveillance files raised doubts as to whether the information available at that moment (i.e. reasonable suspicion of a criminal offence) was indeed sufficient to warrant collecting evidentiary information through surveillance and thus restrict people's fundamental rights.

Comparison of files examined this year and in previous years shows that reasoning for surveillance authorisations (in particular authorisations issued by preliminary investigation judges) has improved. Special mention should be made of those authorisations containing reasons for the necessity of a surveillance measure, the principle of *ultima ratio*, i.e. a measure of last resort, as well as the effect of measures on the subject of surveillance and third parties linked to them.

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

Some surveillance authorisations issued by the prosecutor's office had not been reasoned in line with the above requirements. Unreasoned authorisations could be found, primarily, in the surveillance files of police stations under the North Prefecture.

Carrying out surveillance

The Chancellor's advisers did not find any surveillance measures that had been carried out without authorisation by a preliminary investigation judge or a prosecutor and without compliance with the conditions set out in the authorisation. In the frame of surveillance files inspected, surveillance had been carried out generally in line with the purpose. However, inspection of some surveillance files in police stations in the North and East Prefectures raised doubts as to whether preparatory actions by the surveillance agency and the prosecutor's office had always been carefully considered, so as to warrant opening a surveillance file to collect evidentiary information through surveillance and thereby restrict people's fundamental rights.

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

Largely thanks to the recommendations given after the Chancellor's earlier inspection visits, this good practice is increasingly prevalent in the majority of police stations.

Notifying a surveillance measure

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

Timely notification protects people's fundamental rights and also ensures the right to contest the lawfulness of surveillance measures for suspects and the accused.

In previous years, the Chancellor's advisers found many cases where no such notification was given or people were notified too late. The situation has now significantly improved. Nevertheless, examination of a surveillance file revealed a case where notifying people had been delayed unjustifiably long (more than a year and nine months). In the remaining cases (eight cases among the files inspected), the delay was mostly between three to nine months.

However, examination of some surveillance files raised doubts that persons had been notified of surveillance too early. Under § 126^{13}(2) clause 1 of the Code of Criminal Procedure, the prosecutor's office may authorise postponing notification of surveillance until the end of pre-trial proceedings in a criminal case if earlier notification

may significantly prejudice criminal proceedings. However, in these cases this was not done, so that those persons on whose criminal activities evidence was to be collected also became prematurely (i.e. in the initial stage of pre-trial investigation) aware of surveillance (and incidentally also of the interest of the police in them).

Also, it cannot be considered justified to identify and notify people whose inviolability of family or private life is not significantly restricted in the course of surveillance. Since identifying such a person (for example by collecting data on them from an information system or database), in turn, restricts the person's fundamental rights, this should only be done in the case of clear and justified need.

Processing of communications and bank data

The Chancellor's advisers also checked whether requests for submission, and subsequent use, of data set out in § 111^1(2) and (3) of the Electronic Communications Act within criminal proceedings (under § 90^1 of the Code of Criminal Procedure) from communications undertakings (Telia, Elisa, Tele2) had been lawful. In the cases checked, requests for communications data had been in line with the purpose and lawful. The required authorisation by the prosecutor's office and unavoidable necessity existed for making these enquiries: for example, it was necessary to first check with a measure less restrictive of fundamental rights whether tapping a specific person's phone was justified or not.

As an aside comment, it might be important to note that a similar legal restriction also applies to processing communications data in other cases. During the emergency situation in spring, the wish was voiced that perhaps the Police and Border Guard Board, the Health Board or another government agency might start monitoring the movement of infected people either via a special mobile application or otherwise. No such blanket monitoring is allowed by law. Mobile phone location data might be used only in very limited cases to identify or counter a grave threat (i.e. a threat to someone's life) and if court authorisation for this exists in misdemeanour proceedings and a prosecutor's authorisation in criminal proceedings.

A body conducting pre-trial proceedings is entitled within criminal proceedings to request banks to submit banking secrets of their clients. This means primarily queries with a view to analysing data on people's bank accounts. Officers in all police stations who had made queries with banks in the frame of criminal cases they were dealing with were able to provide sound reasoning for making the queries. Random checks also affirmed that queries were made relatively rarely and only in criminal cases where it is necessary for the purpose of collecting evidentiary information (e.g. fraud and other acts against property, drug offences, maintenance claims, the need to identify criminal proceeds, or to secure a civil claim).

Inspection visits to security agencies

The Chancellor's advisers reviewed how the Estonian Internal Security Service and the Estonian Foreign Intelligence Service have guaranteed the fundamental rights protection of individuals in respect of whom data are covertly collected by measures laid down in § 25 and § 26 of the Security Authorities Act (e.g. interception, covert surveillance, covert examination of items, phone records, covert entry).

The Chancellor's supervision over the activities of security agencies is extremely important since, under currently effective law and established practice, opportunities are extremely limited for cases of information collection by security agencies to come within the ambit of judicial review by superior courts. For example, the Supreme Court has also not heard any cases related directly to authorisations issued for carrying out measures under §§ 25 and 26 of the Security Authorities Act (e.g. as regards the reasoning for such authorisations). Therefore, it is even more important that authorising and carrying out a measure is thoroughly considered and that this can also be subsequently verified. This precludes the possibility of suspicion of arbitrary action even where judicial follow-up review is essentially absent.

Security agencies have clearly established thorough internal audit procedures over activities carried out under the Security Authorities Act. In-house guidelines set out the duties and liability of officials, as well as overall requirements on how to draw up, register and keep the documents needed to carry out measures for collection of information (including obtaining various approvals). Nevertheless, based on the results of the inspection the Chancellor found it necessary to make some proposals for better protection of individuals' fundamental rights.

Review of information files

The review of information files focused first and foremost on whether carrying out a measure for collecting information was lawful, as well as unavoidable and necessary. The measures set out in § 25 of the Security Authorities Act, which may only be carried out with court authorisation, restrict a person's right to the confidentiality of messages, as well as the right to inviolability of private life, more seriously than several of the covert measures set out in § 26 of the Act, which may be carried out with authorisation from the head of a security agency. Under § 3(2) of the Security Authorities Act, in the event of a choice between several possible measures, the measure that least restricts the fundamental rights of individuals should be chosen. Therefore, every authorisation of a measure for collecting information should enable monitoring whether, prior to issuing the authorisation, consideration was also given to possible alternatives, i.e. using measures that would be less restrictive in terms of fundamental rights.

Opening information files and carrying out measures under §§ 25 and 26 of the Security Authorities Act in the frame of them was justified in all the cases reviewed. Every file contained authorisation either by the administrative court or head of the agency (or person authorised by them). In comparison with authorisations previously contained in information files (i.e. those reviewed in 2017), reasoning for authorisations issued for measures for collecting information has significantly improved (similarly to surveillance authorisations described above). Thanks to very thorough and substantive summaries, information files offered a good overview and enabled understanding clearly why a person's fundamental rights needed to be restricted in a specific case.

5.2. Petitions by persons

Besides the Chancellor's own-initiative and regular supervision, she also has to resolve complaints concerning surveillance measures and, if necessary, verify other publicly raised allegations (e.g. in the media) about illegal or insufficiently reasoned surveillance.

For example, when verifying a petition by the East Tallinn Central Hospital, the Chancellor ascertained that a device found connected to a computer in the hospital had been used to carry out surveillance in the frame of criminal proceedings. The review revealed that the surveillance measure in question had been carried out lawfully, i.e. under a properly reasoned judicial authorisation.

In recent years, the Chancellor has had to resolve petitions in which people complained about notification of surveillance. Due to incomplete notices sent by the security agencies, people could not exactly understand why they had been subjected to surveillance in a particular case, and what surveillance measures affecting them had been carried out and to what extent.

The Chancellor has repeatedly (including during inspection visits) emphasised to the surveillance agencies that informing people about surveillance measures always requires clearly distinguishing whether the particular person was the direct subject of surveillance, or whether they were a so-called third party whose privacy was significantly interfered with by the surveillance measure. This helps the recipient of notification to better understand the circumstances of carrying out surveillance affecting them and decide (including in terms of an appropriate remedy) whether they wish to protect their rights.

During the reporting year, the Chancellor explained to several petitioners the substance and functioning of the legislation laying down possibilities for people to access data collected on them in the course of surveillance (§ 126[14] Code of Criminal Procedure). Inter alia, based on a petition by a law office, the Chancellor had to analyse opportunities by remand detainees and convicted prisoners to access data collected

on them. The analysis also involved checking the constitutionality of § 99(1) (second sentence) of the Imprisonment Act and § 5(1) of "The procedure for notifying about a surveillance measure and presentation of a surveillance file" established by the Government Regulation.

The Chancellor found that both provisions were constitutional since remand detainees were ensured the opportunity to access surveillance data also when they could not personally go to the premises of a surveillance agency. In fact, several possibilities exist to access data: for example, if a person cannot go to a surveillance agency during the three months prescribed, in the case of having a sound reason (which may also include the person's stay in a place of detention) the person may apply to the surveillance agency to restore the deadline to access data collected through surveillance. A person may (also with a sound reason) authorise a third party to examine their surveillance data if that third party presents a notarised power of attorney to that effect. Under § 95(1) of the Imprisonment Act, a person remanded in custody may meet a notary for performance of a notarial act. If a person suspected of a criminal offence or an accused wishes to access the data, surveillance data may also be examined by their attorney. A prisoner can also access their surveillance data in a place of detention if this is allowed by the investigative authority and the place of detention consents to this.

Cooperation with the Security Authorities Surveillance Select Committee of the Riigikogu

During regular meetings with the Security Authorities Surveillance Select Committee of the Riigikogu, the Chancellor provides an overview to members of the Riigikogu about the results of inspection visits and problems found in the course of supervision (including in resolving petitions). Members of the Committee, in turn, can make observations on issues in the field of surveillance.

Based on information received from the Riigikogu Committee, the Chancellor reviewed surveillance measures carried out on the basis of (oral) authorisations in cases of urgency. Specifically, in urgent situations the law allows carrying out a surveillance measure (interception, staging a criminal offence, covert examination of a postal item) by court authorisation issued in a reproducible manner (for example, orally by telephone, assuming that the call is recorded). This may only be done if a threat exists to a person's life, bodily integrity or physical freedom, or to high-value pecuniary benefit, and applying for a surveillance measure or drawing it up in line with formal requirements is not possible in a timely manner. In that case, a written application and authorisation shall be formalised within 24 hours as of commencement of the surveillance measure.

It was found that courts issue urgent authorisations only exceptionally and very rarely. For example, in 2017 only one such authorisation was issued, and none in 2018 and

2019. The prosecutor's office has issued so-called oral authorisations for covert surveillance under § 126^4(2) of the Code of Criminal Procedure somewhat more often: 19 authorisations in 2017, 16 in 2018, and 14 in 2019. The Chancellor's advisers have always thoroughly reviewed the lawfulness of such authorisations (including whether the subsequent written authorisation was formalised in time). No violations of the law have been found.

VI. INSPECTION VISITS

One of the tasks of the Chancellor of Justice is to ensure that people held in places of detention are treated in line with human dignity. To fulfil this task, the Chancellor's advisers carry out mostly unannounced visits to places of detention. The duty of regular inspection of places of detention is laid down by Article 4 of the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

A place of detention as an international concept means a place where a person may be deprived of their liberty and which they cannot leave at will. Under this concept, places of detention include, for example, prisons and expulsion centres for aliens, but also care homes providing 24-hour care and psychiatric hospitals providing involuntary treatment.

The emergency situation established to combat the spread of the coronavirus SARS-CoV-2 also affected organisation of inspection visits. This forced the Chancellor to revise her plans for inspection visits and find possibilities to do the work so as to protect the rights of people held in places of detention while not endangering their life and health. We were successful in this: the Chancellor's supervision of places of detention was not interrupted. During the inspection visits, the Chancellor's advisers used personal protective equipment (masks, face shields, gloves, etc.) – so it was possible to inspect places of detention even when the virus was widespread.

6.1. Places of detention

Prisons

Tartu, Tallinn and Viru Prison are closed cell-based prisons with open prison units. In Estonian prisons, a total of approximately 2400 people are detained, of whom more than 400 people are remand detainees waiting for a court judgment, while the remainder are convicted prisoners serving a sentence. Prisoners include about a hundred women and about ten minors. Also 39 prisoners are serving a life sentence in prison, and about 160 people are in an open prison unit.

During the reporting year, the Chancellor focused attention primarily on open prisons and possibilities of prisoners to be in contact with their family members.

During the reporting year, the Chancellor's advisers inspected three open prisons. The Chancellor noted that, in order to find work and facilitate searching for routes to move between the place of work and the prison, prisoners in an open prison unit would need to use a computer and the internet. Prisoners outside the prison would also need to use a mobile phone, so as to be able to notify the prison, for example, when their return

to the prison is delayed due to an accident or technical failure of a public transport vehicle. Unfortunately, so far prisoners in an open prison still have no possibility to use the internet or a mobile phone, even though the Chancellor already drew attention to the problem in 2016.

In the female prison section of the open prison unit of Tallinn Prison, the Chancellor's advisers found a hostile atmosphere. Immediately after the visit, the prison was asked to closely monitor the situation and help to alleviate tensions between prisoners. The Chancellor also emphasised that if a prisoner is stripped completely for a search, this must always be based on a risk assessment arising from a particular prisoner's behaviour. It is not justified if all prisoners without exception are searched like this when returning from work. This is demeaning to the dignity of prisoners.

The unit for mothers and children in Tallinn Prison, however, left a good impression. Nevertheless, the prison should make an effort to create an environment which is as home-like as possible and protects the health and well-being of children. For example, the children's play corner in the unit could be made safer, more convenient and contribute more to children's development, and going outdoors could be made easier for mothers and children. The Chancellor stressed that officers and staff must always give primary consideration to the interests of children in the unit. During the inspection visit, there was only one mother with a child in the unit, and her opportunities for contact with other adults were scarce. The prison could create more opportunities for substantive communication for the mother and enable her to participate in social programmes and free-time activities. To do this, it must be possible to leave the child in the care of a suitable person.

The Chancellor paid much attention to opportunities for contact with the family during short-term and long-term visits in Tallinn Prison. The prison should not make a prisoner's meetings with the family inconvenient by carrying out unjustified searches and creating obstacles such as glass partitions. Visitors are intimidated by having to fully undress every time for a search. Such a search seriously interferes with everyone's rights, especially the rights of a child, so that it should be justified by specific circumstances. A sound reason might be, for example, that a person has previously tried to smuggle prohibited items into the prison or the prison has obtained information that the person is carrying a prohibited item.

Staff admitting visitors at the first visitor entrance to Tallinn Prison were terse and strict. Communication with children coming for a visit could have been better. Visiting times did not match the public transport schedule, so that visitors had to arrive quite a while before the visit and parents with small children were forced to wait for a long time in the prison.

The Chancellor has traditionally emphasised the fact that a positive experience gained during visits between a prisoner and their family members strengthens family ties and reduces the risk of committing new criminal offences.

Time and again, the Chancellor has to deal with complaints that a person is forced to wait for a court judgment for a long time in prison. In one case a petitioner had been held in custody for more than four years. The Chancellor reminded the prison that, in order to reduce the harmful effects of long custody pending trial, the prison must offer meaningful activities outside the cell to these people. That is, detainees should be given an opportunity to work, acquire an education, participate in social programmes, do sports, etc. If possible, a person who has spent a long time in custody pending trial should not be placed in a cell alone.

Police and Border Guard Board detention facilities

Among the detention facilities of the Police and Border Guard Board, the Chancellor inspected four police detention centres during the reporting year: the detention centres of Valga and Võru police station in the South Prefecture, the detention centre of Rakvere police station in the East Prefecture, and the Tallinn police detention centre. As usual, the Chancellor checked the living conditions in police detention centres. Although many detention centres have been renovated and refurbished, some police detention centres, such as the detention centre in Valga, are still in a poor state of repair, and the Chancellor has repeatedly drawn attention to the poor living conditions there. Such cells may only be used short-term. No exercise yard meeting requirements exists in Valga police detention centre or in the relatively new Võru police detention centre, while the exercise yard in Rakvere police detention centre has no benches. Forced ventilation in the Võru police detention centre needs to be improved. The Chancellor recommended that, with a view to ensuring better safety, Rakvere police detention centre should consider putting Plexiglass in windows in ordinary cells in order to protect windows from being broken.

At the conclusion of each inspection visit, it had to be underlined that if a cell is under 24-hour video surveillance its justifiability needs to be assessed on a case-by-case basis. Activities in the hygiene corner of a cell may not be visible to others, and even police officers must have a compelling need to see the hygiene corner. In Tallinn police detention centre it was found that when a detainee is searched in the admission room and is undressed for this purpose, those activities may be caught in the range of vision of a video camera and of a male officer. That activity must be justified and may not be done in a manner demeaning of a detainee's dignity.

In Tallinn police detention centre, detainees cannot speak on the phone so that they are not overheard. In the Chancellor's opinion, it would be good if detainees could also make their essential family or work calls without a one-day advance notice and

exceptionally also on another day in addition to the days of week designated for this. A possibility should also be found that those detainees whose next of kin cannot send them a call card to the detention centre could also acquire a call card with their own money with assistance from the Police and Border Guard Board. In some police detention centres, detainees cannot read national daily papers even though the law entitles them to this.

On several occasions, the Chancellor also had to check the arrangement of provision of medical care in the detention facilities of the Police and Border Guard Board. Applications for a doctor's appointment submitted by detainees should not be seen by any other staff apart from medical professionals. An appointment with a medical professional should always take place outside the hearing range of third parties and, as a rule, should also not be observed by a police officer. A medical professional must have an overview of medication given to a detainee by a guard upon instruction by the medical professional. When investigating a complaint, the Chancellor reached the conclusion that access to medical care may be impeded in Tallinn police detention centre. No effective information exchange took place between the staff of the detention centre and medical professionals, so that information about a detainee with health problems admitted to the detention centre did not move sufficiently quickly.

Under § 3(3) of the Government Regulation No 40 of 6 December 2013, in procuring medication prescribed for an applicant for international protection or a person subject to expulsion, the needs of the person and reasonable use of money are observed. The Chancellor was asked to verify the constitutionality of that provision. She concluded that the provision could be interpreted in a constitutionally compliant manner. When procuring medication, the primary consideration should be an assessment by a medical professional as to whether the specific medication is necessary, i.e. whether a medical indication for it exists. The principle of reasonable use of money can be interpreted so that from medicines containing active substance(s) prescribed to an alien by a medical professional the medicine which is best in terms of price and availability is procured. An alien may not be deprived of medication with active substance(s) prescribed by a medical professional if that medication is necessary for provision of a service on the list of healthcare services of the Health Insurance Fund.

6.2. Healthcare services

During the reporting period, the Chancellor inspected four healthcare institutions: the department of child psychiatry of the psychiatric clinic of Viljandi Hospital; the psychiatric clinic of Pärnu Hospital; Wismari Hospital; and the psychiatric department of the South Estonian Hospital. Problems were to a large extent the same as had been noted in previous years: the treatment environment needs to be improved, use of means of restraint should be better documented, and the necessity for video surveillance should be weighed more carefully. Several hospitals also needed to be

reminded that if a person does not agree to stay in hospital they can be held against their will only in compliance with the rules for involuntary psychiatric care.

The Chancellor asked Viljandi Hospital to properly record all instances of restraint in the department of child psychiatry and enter them in a separate register. The psychiatric clinic of Pärnu Hospital was recommended to justify the need for use of means of restraint clearly and with the required regularity.

The Chancellor also asked all the hospitals inspected to improve the treatment environment. Viljandi Hospital must offer young people in the department of child psychiatry more opportunities for sports outdoors in the yard and acquire play facilities for children in the yard. The psychiatric clinic of Pärnu Hospital should change the furnishings in the acute treatment unit and the unit for patients with unstable remission, so as to be able to offer a therapeutic environment to the patients. The Chancellor asked Wismari Hospital to offer patients more diverse opportunities for spending free time and for therapeutic activities. The psychiatric department of the South Estonian Hospital was reminded that it should be possible to lock the toilet doors and that letter boxes for patients' proposals and complaints should be placed in the department. Portable devices that can be used to call assistance should be acquired for staff in the South Estonian Hospital.

Wismari Hospital and the South Estonian Hospital had to be reminded that if a doctor does not allow a patient to leave the hospital at will, a decision on involuntary treatment must always be drawn up on this. A patient receiving treatment voluntarily must be able to leave a hospital at will. In the recommendations sent to Viljandi Hospital, the Chancellor emphasised that if a patient who is a minor does not agree to treatment or if means of restraint need to be used because of their illness, a decision on involuntary treatment must be drawn up on this.

Pärnu, Wismari and the South Estonian Hospital had problems with use of excessive video surveillance and notification of video surveillance. In general rooms and all wards of the psychiatric clinic of Pärnu Hospital, video surveillance with image recording is used. In Wismari Hospital and the psychiatric department of the South Estonian Hospital, some wards are under video surveillance. Constant video monitoring of a patient may excessively interfere with their privacy. Therefore, video surveillance in a ward may only be used if this is unavoidably necessary in view of a patient's health condition. Patients must also be properly notified of video surveillance.

6.3. Care homes

General care homes

During her whole term in office, the Chancellor has helped to make sure that a decent life and the opportunity to receive competent care and assistance is ensured to people who are no longer able to cope on their own at home, due either to poor health or an unsuitable living environment. This kind of assistance is offered in general care homes. Most residents in general care homes are elderly people, but also younger people may end up in a care home as a result of illness or injury. According to data from the Ministry of Social Affairs, 13 048 people used the general care service in 2019. Estonia has approximately 180 general care homes with over 9000 places. At the end of 2019, 8878 people were living in general care homes.

In October 2019, the Chancellor organised a conference on the well-being and rights of elderly people. The debates at the conference dealt with problems of organisation of care, issues of care of patients with a dementia diagnosis, and information was offered on modern technological solutions that could be used in care homes.

During the reporting year the Chancellor's advisers inspected the activities of three care homes providing the general care service: OÜ Häcke Kohtla-Järve Care Home, Tammiste Home and Taheva Sanatorium. In connection with the spread of the SARS-CoV-2 virus, the previous plan for inspection visits had to be changed. Inspection visits also focused on compliance with precautionary measures for combating the spread of the infectious disease.

The year 2020 brought several changes to general care. Since 1 January 2020, all general care homes must have an operating licence, and the requirement of education for care workers also became applicable. As of 2020, the nursing care service in general care homes is financed by the Health Insurance Fund. Two years ago the Chancellor expressed concern that healthcare services were not sufficiently accessible to residents of care homes. The nursing care service financed by the Health Insurance Fund brings healthcare services closer to care home residents and helps to ensure consistent monitoring of the health of these people. A medical nurse was employed by all the care homes inspected during the reporting year.

Heads of the care homes inspected considered staff training and compliance with preparation requirements for carers to be important issues. Following the example of management, acquiring new knowledge and skills is also valued by staff. This helps to develop values that respect the residents of care homes and to improve service quality. Good cooperation exists between care homes and educational institutions, and training in the workplace is also offered.

The main problems in care homes relate to ensuring decent living conditions and privacy, the number of staff, proper preparation of care plans, unlawful restriction of people's freedom of movement, and scarcity of opportunities for spending free time. Many of these problems have already been known in previous years.

Residents in general care homes are sometimes locked in their living room or another room not suitable for seclusion. The law does not allow this and, moreover, this poses a risk to the health of those secluded. A general care home service is voluntary, it is provided at a person's own request and a person may not be held in a general care home against their will.

A major problem in all the care homes inspected is shortage of staff, which can in particular be felt in the evening and at night. Although the Social Welfare Act does not say how many carers must be at work when providing the general care service, the law requires that an operator of a care home must ensure sufficient staff numbers, so that in view of staff preparation and workload it is possible to offer people the necessary care and assistance. When planning staff numbers, it is necessary to assess how much assistance and attention the residents of a care home need, and also consider other circumstances (particular features of buildings, the existence of an assistance call system, etc.). Care home residents are in a vulnerable situation due to their poor health and/or advanced age. Therefore, in a judgment delivered in 2019, the Supreme Court emphasised that the operator of a care home has an elevated duty of care in respect of residents. If staff are overburdened they do not have sufficient attention for all care home residents (for example, to empty bedpans and change diapers without delay), which may lead to inhumane treatment.

A general problem is that care plans are not properly filled out. A care plan is an effective tool for staff in their day-to-day work, but for this the plan must be filled out clearly, thoroughly and with careful consideration. A care plan must offer easy access to information about a resident's ability to cope, as well as activities planned for preserving or improving a person's health. A care plan should also describe what activities could be offered to a person with a view to making their days more meaningful. The Chancellor recommended that, inter alia, the explanatory memorandum to the Social Welfare Act, explaining the principles of drawing up a care plan, could be consulted while preparing and assessing a care plan.

Special care homes

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

The 24-hour special care service is provided to 2241 people in 47 locations. During the reporting year, the Chancellor's advisers carried out an inspection visit to Vääna-Viti Home operated by AS Hoolekandeteenused, and also inspected the activities of the non-profit association South-Estonian Special Care Services Centre, which provides a 24-hour special care service, inter alia, to people with a severe, profound or permanent mental disorder with unstable remission. An inspection visit was also carried out to Taheva Sanatorium which provides a special care service as well as a general care home service.

There is an increasing wish to offer people with mental health disorders more of a home-like living environment, and many special care homes have moved to smaller family-house types of buildings. For example, Vääna-Viti Home operates in this kind of building. New family homes were also built for 43 residents of the South-Estonian Special Care Services Centre. These houses built in Võru town have home-like living conditions, and people with challenged mobility can move around more easily in these houses.

One of the main problems in special care homes in recent years is shortage of staff. It is not rare that even though a care home has the statutorily required number of activity supervisors this is not sufficient to take care of people with an increased need for care and assistance and people with complicated mental disorders or to offer an individual approach and ensure a safe living environment. Activity supervisors who spend most time dealing with residents must also cook and clean the rooms in addition to caring for people. In several care homes, in the evenings and at night the staff member on duty must move between different units of the care home, so that some residents are temporarily left without supervision.

In line with the requirements entering into force at the beginning of 2020, to work as an activity supervisor providing special care it is no longer merely sufficient that the person has registered for training. The necessary training must in any case be completed. Unfortunately, several activity supervisors in the institutions inspected had not completed the training required by law. Untrained staff might not know how to guide and support the development of people in their care or how to cope with agitated people. The Chancellor recommended that the necessary training be quickly arranged.

The freedom of movement of a person receiving the 24-hour special care service under a court ruling may only be restricted in a situation of danger (see the Social Welfare Act). That person may be placed in a proper seclusion room for up to three hours until arrival of the ambulance or the police. However, not all care homes comply with this requirement, and the freedom of movement of residents is restricted inadmissibly. Due to absence of a proper seclusion room, agitated people have been taken to calm down in their own room or another room not adjusted for seclusion. This is not safe. When

documenting a person's placement in a seclusion room, some care homes have failed to record the required data based on which it is later possible to verify whether placement in the seclusion room was justified. The Chancellor reminded the care homes that the freedom of movement of a person receiving the 24-hour special care service under a court ruling may only be restricted for a brief period by placement in a seclusion room compatible with the requirements, and also explained once again the requirements for documentation.

In care homes providing the special care service, patients are sometimes given medication not mentioned in the treatment scheme prescribed by a doctor. The Chancellor's advisers have also found in care homes medication of patients who had already left the care home, or medication left over due to a change in the treatment scheme, even though such medication should have been properly destroyed. The Chancellor explained to the care homes that strict rules for handling medication have to be complied with. Care homes must also ensure nursing care to the extent required by law, and activities carried out while providing nursing care must be properly documented.

To end on a positive note: observations made during inspection visits allow for the conclusion that special care institutions increasingly think how care home residents could spend their time meaningfully and so that it is contributing to their development. More opportunities for activities are offered (such as hobby groups, plots for gardening, work-related activities), as well as enabling residents to actively participate in community life. Care homes should make even more effort to involve people in dynamic activities and activities contributing to development of work skills, which would help residents spend time by engaging in their preferred activities.

The inspection visit to Tallinn Children's Home is covered in the chapter "Children and young people".

VII. CHILDREN AND YOUNG PEOPLE

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

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

7.1. Children and parental care

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

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

Unfortunately, restrictions on movement imposed due to the spread of Covid-19 caused additional tensions between separated parents and impeded communication between a child and the separated parent (read, in more detail, in the chapter "Rule of law in an emergency situation").

National family mediation system

On several previous occasions, the Chancellor has drawn the attention of ministries to the fact that in resolving a dispute between parents counselling of parents and intermediating their agreements is of primary importance.

As a positive development, at a Cabinet meeting on 9 January 2020 the Government decided to support a proposal by the Minister of Population Affairs to prepare a national family mediation system. According to the explanation by the Minister of Population Affairs, a national family or parental mediation system would be created to enable reaching agreements with a view to the well-being of children where the parents are separated. According to the Minister, the family mediation system is intended to be prepared by February 2021.

During the reporting period, the Chancellor's advisers participated in several debates on the national family mediation system organised by the Ministry of Social Affairs, the Ministry of Justice, and the Minister of Population Affairs. The advisers emphasised that in resolving child-related disputes it is important that relevant counselling services are made available to all parents because long-term conflict between the parents is damaging to the children. Prior to having recourse to the court, disputing parents should be referred to a person intermediating agreement. This makes it possible to achieve cooperation between parents and reduce the number of court disputes.

Enforcement of court orders regulating access arrangements between parent and child

The Minister of Justice asked for the Chancellor's opinion on amendments to the Family Law Act and other Acts concerning enforcement of court orders regulating access arrangements between parent and child. In June 2019, the Chancellor submitted observations on the intention to prepare this Draft Act. In her reply to the Minister of Justice, the Chancellor pointed out that several problems raised earlier are still unresolved. For example, the Draft Act does not offer a solution to problems related to compulsory enforcement of access arrangements in the evenings, at weekends and on public holidays.

The Draft Act envisages creating the institution of an 'access caretaker' but the rights and duties of an access caretaker are still not sufficiently clearly defined. The Chancellor recommended that the explanatory memorandum to the Draft Act should explain the principles of cooperation between an access caretaker and a bailiff, as well as allocation of roles between an access caretaker and a child protection worker.

The solutions suggested in the Draft Act are closely linked to the family mediation system planned by the Ministry of Social Affairs and the Ministry of the Interior, so that it is necessary to contemplate how these issues could be resolved in an integrated manner.

The role of city government

The Chancellor was contacted by a mother who found that Pärnu City Government had violated the rights of herself and her child since it had not guaranteed the mother's access to the child who was living separately. The Chancellor concluded that Pärnu city had violated the requirements of the Child Protection Act by not having offered effective measures to assist the child and support communication between mother and child.

The Family Law Act stipulates that disputes between parents over the right of custody and the right of access are resolved by the court. However, this does not mean that the

role of a local authority in ensuring a child's well-being is limited only to submitting an opinion to the court in this dispute. Under the Child Protection Act, a local authority, within its competence, must support a parent or the person raising a child in ensuring the child's rights and well-being. Thus, during and after a court dispute between parents a local authority must also support and counsel parents, if necessary, with a view to ensuring the child's well-being. A local authority knows what services and support can be offered to parents in their city, town or rural municipality (e.g. family counselling, therapy, parental skills training, and the like). As a rule, the court does not deal with these issues. Nor does a bailiff deal with these issues in the process of compulsory enforcement of access arrangements.

Certainly, the responsibility for ensuring a child's well-being and concluding agreements concerning the child lies primarily with the parents. A local authority's possibilities to influence the parents are limited. However, if parents have been unable to cooperate with each other for a longer period and this damages the child it is important that the local authority should use all statutory measures to protect the rights of the child. For example, a precept may be issued to a parent. Among other things, a precept can be used to oblige a parent to take the child to an appointment with a psychologist or to therapy.

The Chancellor criticised Pärnu City Government in that, while assessing the child's need for assistance, the city never analysed how being deprived of one parent might damage the child. In the situation where a child has become alienated from a separated parent, restoring the relationship may be stressful for the child but losing a parent may be even more damaging to the child's development.

An opinion to the court from a childcare institution

The Chancellor was asked whether a school may give the court an opinion on a child (and a parent) in a dispute over the right of custody, and as to the legal effect of that document.

The Chancellor explained to the parent that, under the Family Law Act, when hearing matters concerning a child the court must make a decision primarily with a view to the interests of the child. To assess the interests of the child, the court may collect evidence on its own initiative. Thus, there is nothing unusual about a court requesting information from a school or kindergarten when hearing a dispute concerning a child. Of decisive importance in drawing up the reply is what the court specifically asked the school or the kindergarten for. In a matter concerning a child, it may be unavoidable that by describing the circumstances related to the child the school also covers issues concerning the relationship between child and parent, i.e. provides information on the parent. The court may also ask the school for information about a parent's participation in resolving school issues. This kind of information may be significant, for example, if a

parent seeks limitation of the other parent's right to decide on issues concerning the child's education.

An opinion from the school is one piece of evidence among others. The court assesses all evidence in the aggregate and no piece of evidence has predetermined weight for the court.

Parental consent

The Chancellor was asked whether a child may travel abroad if one of the parents refuses to consent to this. Unless otherwise decided by the court, parents have equal rights and duties in respect of their child. On that basis, parents with the joint right of custody must reach agreement on matters concerning the child (including on travel abroad).

No certified consent of the other parent is required at the border when departing Estonia with a child; however, such consent may be required at the border of the transit or destination country. Therefore, to ensure smooth border-crossing it is essential that parents should resolve their disagreements before the child's travel. If one of the parents refuses to consent to the child's travel abroad, the other parent may apply to the court seeking the exclusive right to decide on these issues. In the situation where parents live separately or otherwise do not wish to exercise the right of custody jointly in the future, the parent with whom the child is residing may apply to the court for partial or exclusive transfer of the right of custody to that parent.

The Chancellor also resolved a complaint where a Police and Border Guard Board (PBGB) official had prohibited the petitioner from departing Estonia together with relatives who were minors because the adult was not in possession of the parent's written consent. The PBGB admitted that the official had been mistaken since legislation does not require possession of a parent's written consent. If necessary, an official must ascertain a parent's consent by using other possibilities.

The Chancellor was asked to investigate the question whether, if the authorities (PBGB and embassies) issue personal identity documents to children upon an application by only one parent, this could facilitate child abduction. A document for a person under 15 years old or an adult with restricted active legal capacity is issued to a legal representative of the document user. The laws do not require that parents should jointly apply for documents for their child. Thus, an authority issuing a document may proceed from the assumption that the parent applying for an identity document for their child has the consent of the other parent. However, if necessary, an administrative authority must verify whether there is any indication that documents are applied for without the other parent's consent or that issue of documents may prejudice the interests of the child.

The allowance for families with many children

Separated parents have disputes not only over raising or maintaining a child or having access to the child but also over which parent is entitled to child allowances. The state must have a fair and constitutionally based solution for these situations.

The opinion submitted to the Supreme Court dealt with the possibility of obtaining the allowance for families with many children if a family with many children is made up of children of a blended family. The Chancellor found that, under the Constitution, the state is not entitled to deprive some children in a blended family of an allowance because the other parent of their sibling does not agree to give up family benefits or use them by taking turns.

7.2. Alternative care

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

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

Many children under alternative care wish to maintain contact with their biological parents, relatives and other next of kin. This wish must be humanely understood and respected. Maintaining contact and ties with their next of kin is a child's right. Unfortunately, problems often arise in arranging communication because the values and principles of upbringing of a child's next of kin and those of their alternative care family may be very different. In these situations, it is necessary to take into account the interests and rights of all those concerned and find a solution which is in the best interests of the child. The right of access between a child and their biological parents may only be restricted by the court.

The right to contact of a child in a family house

The Chancellor was also asked about the possibilities to restrict contacts between a child in alternative care and other people close to the child.

In response to the question whether a family house may prohibit a child from communicating with a former family parent of theirs, the Chancellor said that under the Family Law Act a child's legal representative determines the third persons with whom the child may be in contact. Certainly, the legal representative must also hear and take into account the child's opinion.

As a rule, the legal representative of a child in alternative care is the rural municipal, town or city government where the child resides. If the rural municipal, town or city government finds that communicating with the former family parent is in the child's interests, the family house cannot prohibit communication. However, the rural municipal, town or city government should coordinate the specifics of communication (e.g. how, where, when and how often contact is allowed) with the family house, since the staff of the family house are the child's actual carers and thus best informed about the child's day-to-day living arrangements.

The right to the continuing care service

The Chancellor was asked whether the Social Welfare Act was treating young people who had been in alternative care unequally by stipulating that the decisive factor for obtaining the continuing care service was whether, after the end of studies, the young person decides to enter conscript service or continue studying. Specifically, a person subject to the conscript obligation can choose whether to find a place for continuation of studies even before conscript service and take academic leave for the period of conscript service or not to choose the place of further studies before conscript service. Young people making that different choice are in a legally different situation. Those groups are distinguished from each other by the fact whether a young person decides to enter a school before or after conscript service. It is true that a young person who has taken up studies again may also decide to enter conscript service immediately at the beginning of the studies, so that both young people may reach conscript service at the same time.

The law also lays down a possibility that a rural municipality, town or city may ensure the continuing care service to those young people up to 21 years old who are not studying and received alternative care or were under guardianship until becoming an adult. The explanatory memorandum to the Draft Act (489 SE) amending the Social Welfare Act and other related Acts says that a city, town or rural municipality may use support allocated from the state budget also for providing service to those young people.

The Chancellor found that even though the petitioner's concern about supporting young people could be understood, the Riigikogu has the right to decide to what extent and for what purpose to support young adults who have been in alternative care.

Support for guardianship families

The Chancellor was asked whether guardianship families and foster families should be treated equally and the same amount of support paid to them. The Chancellor explained that treating guardianship families and foster families differently is allowed since these families are not exactly in the same situation.

A foster family is a service provider with whom the city, town or rural municipality enters into a contract for provision of the alternative care service to a child deprived of parental care. However, by becoming a guardian a person assumes full responsibility for the child under guardianship and decides independently how best to arrange the child's life. At the same time, the Chancellor's Office has drawn the attention of the Ministry of Social Affairs to the fact that guardianship families need more state support than now. However, the amount of support to guardianship families depends on Riigikogu social policy decisions and the state's financial possibilities.

The alternative care network

In order to contribute to systematic development in the field of alternative care, the Chancellor's adviser participates in the work of the alternative care network convened through the Ministry of Social Affairs. This is an unofficial working group of the child protection council, meeting a couple of times a year. During meetings, topical issues of alternative care are discussed and information is shared on development of the field. During the reporting period, the discussions focused on how to take better account of the interests of the child when a child moves from one alternative care provider to another. Alternative care providers shared their experience about coping with the emergency situation and also discussed what could be done better.

7.3. Kindergarten and school

Also during this reporting year the Chancellor received a considerable number of letters about problems related to activities of kindergartens and schools. Several issues recur from year to year – for example, people ask about obtaining a kindergarten place within a reasonable time and the conditions for receiving the childcare service offered as a substitute service instead of a kindergarten place.

During the last year, problems have arisen where a local authority offers a family a place in a kindergarten too far from the family's residence and which the family cannot use due to its location. A local authority is required to offer a family a kindergarten place within its service district. However, the problem is that since the whole local authority territory may form one service district, that area is very large in some places after the administrative reform.

With regard to schools, it may be noted that conflicts at school often start from insufficient or inept communication between the school and the parents. The last reporting year was special in the sense that schools and kindergartens had to operate for several months in the conditions of an emergency situation. Naturally, this raised questions for people, a more detailed overview of which is in the chapter "Rule of law in an emergency situation".

Availability of and conditions for the kindergarten and childcare service

Several people complained about replacement of the kindergarten service with the childcare service. A closer look revealed that local authority legislation regulating eligibility for the kindergarten service and its replacement in the form of the childcare service was not in conformity with the law. For example, the Chancellor reviewed the relevant legal act in Rae rural municipality and made a proposal to lay down a constitutionally compliant fee for a childcare place in the event of replacing a place in kindergarten with a place in childcare, so that the fee would not disadvantage the parent of a child attending childcare in comparison to the parent of a child in kindergarten. The Chancellor also proposed that the municipality should lay down a procedure for replacing a kindergarten place with a childcare place that would be compatible with the Constitution.

The Chancellor also analysed the legal acts of several other local authorities and found similar problems (see a proposal to Kiili rural municipality and a proposal to Lääne-Harju rural municipality). Based on the Chancellor's proposal, these municipalities have already either amended their legislation or plan to do so in the near future.

Having examined the organisation of kindergarten and childcare services in several local authorities, the Chancellor concluded that similar problems may also exist in arrangements in place in other local authorities. Therefore, the Chancellor sent a circular to all local authorities, explaining how the kindergarten service and the childcare service are regulated under the law, and what possibilities exist for local authorities to organise these services lawfully.

Under the Preschool Childcare Institutions Act, a local authority must fulfil its statutory task to ensure all applicants a place in a preschool childcare institution. A clear and unambiguous procedure must be laid down for granting a place. Among other things, it is necessary to contemplate and clearly regulate the procedure for replacing the kindergarten service with the childcare service when a child is one-and-a-half to three years old. The Chancellor explained that although local authorities generally give financial support for use of the childcare or private kindergarten service, parents often have to pay more for the childcare service than they would pay for a place in a

(municipal) kindergarten which the family applied for but which the local authority did not ensure.

However, requesting a higher fee for a place in childcare or a private kindergarten, or imposing additional conditions for obtaining support, is not always prohibited. Everything depends on the legal framework in which a local authority supports the use of the childcare and private kindergarten service: whether this is done to fulfil the local authority's statutory duty or whether this involves so-to-say voluntary service provision and support.

The Chancellor asked local authorities to review the existing procedure for ensuring and supporting the childcare and private kindergarten service and, where necessary, to amend the legislation.

Kindergarten location

A parent contacting the Chancellor explained that the rural municipality offered their child a place in a municipal kindergarten located so far from the family's residence that using the service offered to them would cause the family unreasonably heavy financial expense as well as require an unreasonable amount of time. The Chancellor explained that, under the law, a municipal council approves the service district of a childcare institution. In doing so, the whole territory of the local authority may be assigned as the service district for preschool childcare institutions. The law does not define the criteria based on which a service district should be determined, including how large any one service district may be.

However, the Chancellor acknowledged that if taking a child to a kindergarten and back requires an unreasonable amount of time and excessive transport costs, it may happen that in actuality the family cannot use the kindergarten place. This raises the question of *de facto* availability of the kindergarten service and guaranteeing rights laid down by law. The Chancellor recommended that the parents should have recourse to the administrative court to protect their rights.

The obligation to take a child to the kindergarten

The Chancellor was asked whether a kindergarten worker may oblige a parent to take their child to the kindergarten. The Chancellor explained that no general compulsory kindergarten attendance exists in Estonia, but a child protection worker may issue precepts to a person raising a child with a view to protecting a child in need of assistance and to oblige the person to cooperate with the child protection worker.

Since kindergarten facilitates a child's development in several ways – it is important to communicate and play with children of the same age, and thereby acquire social skills

– attending kindergarten may be useful for a child's development. If a child protection worker obtains information that a child is attending neither kindergarten nor childcare, and the child's development does not correspond to the child's age, the child protection worker must – on the basis of the Child Protection Act – assess whether the child and the family need assistance. If assessment of the need for assistance shows that the child's well-being is endangered and the child needs assistance, the child protection worker is obliged to intervene. To ensure the child's well-being, it may be necessary that the child should attend kindergarten.

The Child Protection Act obliges parents to cooperate with a child protection worker if it is found that the child needs assistance. If parents refuse to cooperate, a child protection worker may issue a precept to parents requiring them to take the child to kindergarten. The parents must comply with the precept.

Rest time in a kindergarten, provision of first aid, and cooperation between a kindergarten and the family

A kindergarten asked for the Chancellor's explanations concerning children's rest time, provision of first aid to a child, and cooperation with parents. The kindergarten explained that the rest period in the kindergarten was at 13–15, during which a child may choose between sleep or quiet activities in the group room. By agreement with a parent, a child has a 30-minute rest in bed, and if the child does not fall asleep during that time they may stay awake for the remaining rest time. In the opinion of the kindergarten, such a wish by the parent does not take into account the child's well-being since it does not allow the child themselves to choose whether to have a longer sleep time or an opportunity not to go to bed at all.

The Chancellor explained that, under the Minister of Social Affairs regulation, from four years of age on, a child should be enabled to choose between a nap and another quiet activity during rest time. Everyone has a different need for sleep and it is not possible to generalise how much sleep a six-year-old child needs during the daytime. Some children at this age do not wish to sleep at all during the day, nor should they be forced to do it. Whether a child needs any daytime sleep is primarily for the parent to assess, and the parent and the kindergarten must reach an agreement as to rest time arrangements.

The kindergarten also asked whether they may decline to use an adrenaline pen if a child with a nut allergy goes into anaphylactic shock. The Chancellor explained to the kindergarten that anaphylaxis is a serious life-threatening allergic response, and in the case of its onset merely administering antihistamine is not sufficient but epinephrine must immediately be injected into muscle to halt aggravation of symptoms. After this, an ambulance must be called. This approach is compatible with the requirement of provision of first aid in a kindergarten. If the kindergarten withdraws from an

agreement concluded with the parent and does not use an adrenaline pen, then anaphylactic shock may endanger the child's life. The Chancellor noted that everyone having received the relevant guidance is able to use an adrenaline pen, and this does not in any way endanger the person providing aid. The Chancellor underlined that a child with a nut allergy is also entitled to attend a kindergarten for their place of residence, and the kindergarten must create conditions for this.

With regard to cooperation between a kindergarten and parents, the Chancellor explained that parent and kindergarten must cooperate with a view to ensuring the child's well-being, based on the premise that the child must be of primary importance. A parent may make proposals to a childcare institution. A kindergarten must always asses a parent's wish in terms of the child's well-being and, in doing so, always respecting the requirements laid down by legislation. A parent is also entitled to be informed of activities concerning their child, be it drinking water during a field trip or distributing sweets in the kindergarten.

The Chancellor suggested that, in a conflict situation, it might be worthwhile to organise a round table discussion, also involving another specialist who would help to find a solution (e.g. a clinical psychologist) apart from the parent and a representative of the kindergarten. A solution might also be to transfer the child to another group, but this can only be done in considering the child's well-being and in cooperation with the parent. In doing so, the child should also be heard. The Chancellor agreed with the kindergarten that if a parent does not act in the interests of the child, cooperation with child protection workers is needed to understand whether the child's well-being is at risk. The Chancellor explained to the kindergarten that absence of cooperation between the kindergarten and a parent cannot be the basis for excluding the child from kindergarten.

Support of a speech therapist in kindergarten

The Chancellor was contacted by a parent with a concern that their child needed the assistance of a speech therapist but the rural municipality's kindergarten had not offered it to them. Nor had the parent received assistance from the rural municipality government. The Chancellor found that the municipality had violated the rights of the child by failing to ensure the child the assistance of a speech therapist in the kindergarten. Under the Preschool Childcare Institutions Act, a rural municipality as manager of the kindergarten must create possibilities for children to obtain, if necessary, the assistance of a speech therapist, which must be organised by the director of a kindergarten.

The Chancellor explained to the rural municipality that the child is entitled to speech therapy in the kindergarten if this was recommended to the child during a check in the kindergarten. After receiving the recommendation, the parent need not contact any

other specialist. It also cannot be considered a solution if the kindergarten recommends that a parent themselves find a speech therapist. The problem is also not resolved by suggesting that the parent apply for income-based health support from the municipality.

The child is entitled to assistance immediately when it has become clear that they need it. The assistance of a speech therapist must be offered in the kindergarten and for free. The child might remain without assistance if the kindergarten organises speech therapy outside the kindergarten. In justified cases, speech therapy may also be offered outside the kindergarten if this is in the interests of the child and takes account of the parent's possibilities and working life.

The director of the kindergarten explained that the kindergarten had so far not managed to hire a speech therapist. The rural municipality explained that, in autumn 2020, it is planned to open three support centres which also employ a speech therapist. Until then, the petitioner's child was ensured the assistance of a speech therapist outside the kindergarten at the municipality's expense.

Reprimand and transfer of a pupil to another class

The Chancellor was contacted by a parent who disagreed with the school director's decree by which their child had been punished with a reprimand and transferred to a parallel class.

The Chancellor found that the reprimand had been lawful. However, that part of the decree by which it was decided to transfer the pupil to another class had been unlawful, since the school did not have the parent's permission for this. Transfer to another class is not a sanction allowed under the Basic Schools and Upper Secondary Schools Act (BSUSSA). Thus, transferring a pupil to another class based on a school's unilateral decision is not allowed. Besides sanctions, support measures applicable under the conditions and procedure laid down by the BSUSSA may be used in respect of a pupil. The list of support measures in the Act is non-exhaustive, containing only examples. The sample list does not contain transfer to another class, nor is such a support measure mentioned in any other provision of the BSUSSA.

Although a support measure is not a punishment, applying a measure may interfere with fundamental rights. Therefore, a school may apply support measures only under the conditions and procedure laid down by law. Depending on the support measure, one of the conditions for applying the measure is parental consent. This is needed where parents have an important role in supporting the child's development (e.g. a development conversation, admission to an extended-day group). The Chancellor found that if a support measure and the conditions and procedure for applying it have not been laid down by law, the school may apply such a measure only by agreement

with the parent and child. Otherwise, the school would be treating the child and parents as objects of public power, which would amount to a discretionary decision, which is prohibited under the Constitution.

The Chancellor recommended that the school should annul the decree to the extent it concerns the pupil's transfer to another class. The Chancellor also recommended that, in the future, the school should indicate in a decree how applying a sanction can be contested. The school informed the Chancellor that it had annulled the relevant part of the decree and would in the future indicate in its decrees the possibilities for appealing them.

Organisation of field trips by a school

During the reporting year, on several occasions the question arose whether a school was organising field trips in compliance with the law. Parents contacting the Chancellor explained that the school had required parents to provide co-financing for a curriculum-related field trip and that a pupil had to be in a lesson while fellow pupils were on a field trip.

Although in these specific cases no violation by the school could be ascertained (assertions made by the petitioners and the school diverged), the Chancellor recommended that, in the future, the school should ensure that financing of field trips should take place in compliance with the Basic Schools and Upper Secondary Schools Act. That is, no co-financing from parents may be required for curriculum-related field trips. Parents may be asked to pay for extracurricular field trips, but participation in such field trips is voluntary. Voluntary support to a school, including donations, must take place in compliance with the principles of donation. First of all, no parent or child should feel a direct or indirect obligation to finance an event.

The Chancellor recommended that the school should explain to parents whether a field trip is curriculum-related or extracurricular. This ensures uniform understanding of the opportunities for financing a field trip and pupils' obligations to engage in studies. If a field trip is curriculum-related, a child need not engage in studies while others are on a field trip. If the school simply offers an opportunity for pupils to be in a lesson, parents must also be clearly informed of this.

The Chancellor also drew the attention of the school to the fact that a meeting of parents is not competent to decide that pupils not participating in an extracurricular field trip/excursion must engage in studies. Such a decision has no legal force. A parent may only express the wish regarding their own child's participation in lessons, but not decide for other parents and children.

One more petition received by the Chancellor concerned organisation of field trips by a school. With reference to one specific instance, the petitioner wrote that since the school field trip had been organised for an educational purpose, the school should have paid for this but parents were also asked to pay.

In her reply to the petitioner, the Chancellor first explained the organisation of field trips as it is laid down by law. Activities organised by a school are divided into curriculum-related and extracurricular. A school may decide itself whether to also organise studies within the curriculum in the form of field trips which are mandatory for pupils. Extracurricular activities support curriculum-related activities but participation in them is voluntary for pupils.

With regard to the specific field trip, the Chancellor found that it was a voluntary extracurricular field trip. Unfortunately, the teacher had provided misleading information to the parents that participation in the field trip was mandatory. Nevertheless, the school and the rural municipal government explained to the petitioner that the field trip was voluntary. Organising the trip had been initiated by parents. A museum visit is indeed educational in substance and helps to develop pupils' social skills, but it should be taken into account that a school cannot finance all the desired field trips. Therefore, cooperation between parents and the school is important, so that children could take part in different activities.

The Chancellor explained that if a pupil cannot participate in an extracurricular field trip or another event due to lack of money, the school in cooperation with the rural municipality could find possibilities to help the family so as to enable the pupil to participate in the event.

Restrictions on pupils' movement and study load in an upper secondary school

The Chancellor was asked to explain whether an upper secondary school may restrict pupils' access to their belongings by locking cloakrooms, and whether a school may make a lecture held after classes mandatory.

The Chancellor found that by locking cloakrooms the school prevented adult pupils from leaving the school since pupils could not collect their outercoats. Controlling and impeding the movement of an adult pupil does not comply with the Basic Schools and Upper Secondary Schools Act. A pupil's movement may only be restricted if a legal basis for this exists (§ 34 Constitution). An adult pupil's movement may only be controlled to ensure the security of pupils and school staff. In order for the school's activities to be lawful, the Chancellor recommended that the school should amend the provisions in its internal rules concerning the prohibition on leaving the school during the school day. The Chancellor also recommended that, in the future, the school should

not prevent adult pupils from leaving the school building unless this is related to ensuring security.

The school replied to the Chancellor that clauses concerning the ban on pupils leaving the school during the school day were now removed from the internal rules. The school also promised to take into account in the future the Chancellor's recommendation not to prevent adult pupils from leaving the school building unless this is related to ensuring security.

The Chancellor explained further that the school may organise lectures and other activities to support studies and the school may decide whether to make those events mandatory for pupils. On that basis, the school was entitled to organise a conference for special branches of study partially during an elective subject course.

Electing a school board of trustees

The Chancellor was contacted by a parent because they believed that electing the school board of trustees had not been in line with the Basic Schools and Upper Secondary Schools Act or the procedure for forming the school board of trustees established by the owner of the school. The parent also asserted that electing the members of the school board of trustees had not been public, transparent or involving the parents.

In a recommendation sent to the school, the Chancellor found that in some respects the school had erred against principles of good administration in electing the board of trustees. Those shortcomings could have been avoided if the whole process of election had been more thoroughly prepared and parents better informed. Therefore, in the future the school should give parents timely and detailed explanations as to electronic election of the board of trustees and give more time for putting up candidates as well as for voting.

With regard to electing the board of trustees, the petitioner also asked the Chancellor to assess the constitutionality of the procedure (regulation) for formation and operation of the board of trustees established by the owner of the school. Under the regulation, the board of trustees need not include representatives of the school's graduates or representatives of organisations supporting the school. However, the Basic Schools and Upper Secondary Schools Act stipulates that, inter alia, representatives of school graduates and organisations supporting the school must also be elected to the board of trustees.

Under the law, the board of trustees is formed and its rules of procedure are established in accordance with the procedure laid down by the owner of the school. The Basic Schools and Upper Secondary Schools Act does not authorise the owner of a school to

establish a different composition of a board of trustees than laid down by law. Moreover, the regulation also imposed substantive restrictions on who may be elected as representatives of graduates and organisations supporting the school, even though the law does not authorise the owner of a school to establish such restrictions. Furthermore, overstepping the powers amounts to a conflict with the principle of legality under the Constitution. On account of conflict with the Constitution, the Chancellor made a proposal to the city to adopt a new regulation compatible with the Constitution.

The Chancellor recommended that in the regulation the city should lay down with sufficient clarity and detail the electronic form for electing representatives of parents to the board of trustees if the municipal council believes that that form of election is admissible in electing the board of trustees. The Chancellor found that organising an electronic election without relevant regulatory arrangements may lead to conflict with the right to procedure and organisation arising from § 14 of the Constitution. Choosing between the forms of election allowed under the regulation may also be delegated to the director.

The owner of the school replied to the Chancellor that the composition of the school board of trustees was changed and that representatives of graduates and of an organisation supporting the school were invited to join the board of trustees. The owner of the school further explained that a discussion was initiated with heads of educational institutions to amend the procedure for formation and operation of boards of trustees with the aim of establishing a new regulation applicable for forming a board of trustees as of the beginning of the new school year.

Fee for a pupil's card

The Chancellor was asked to assess whether a school has the legal right to charge a fee for re-issue of a pupil's card. Several schools in Tallinn charge a fee for re-issue of a pupil's card.

In a recommendation sent to Tallinn, the Chancellor noted that by charging a fee for re-issue of a pupil's card the schools were in breach of the Basic Schools and Upper Secondary Schools Act under which a pupil is entitled to receive a pupil's card for free. A pupil's card is intended as proof of being a pupil, primarily outside the school, for example to obtain a travel fare concession on public transport. A pupil's card with additional functions also has this basic function. This fact is not changed by the title of a pupil's card (such as a pupil's e-card) or the material (plastic) from which the card is produced. Nor may a fee be charged for re-issue of a pupil's card due to expiry of the validity period of the card. If different services at school are linked to a chip card, such a card should also be ensured to a pupil free of charge so as to enable them to enjoy those rights, regardless of whether that card is the pupil's card or another chip card.

The Chancellor asked Tallinn city to review the practice in municipal schools and ensure that pupils receive a pupil's card free of charge, regardless of the reason why they apply for it. The city affirmed that, in the future, pupils would receive a new pupil's card for free.

7.4. Children and young people with special needs

The Chancellor has been contacted by several parents whose children have not received the necessary support at a kindergarten or school. Unfortunately, the statutory right (under the Preschool Childcare Institutions Act and the Basic Schools and Upper Secondary Schools Act) to obtain assistance to the necessary extent and from a competent support specialist and immediately when a child's need for assistance appears is still not guaranteed in reality in Estonia. According to the opinion of the Advisory Chamber of People with Disabilities, one of the most burning issues needing to be resolved is support (including the availability of support specialists) to pupils with special educational needs.

The Chancellor has drawn the attention of the authorities to the fact that government agencies must verify whether local authorities ensure statutorily required assistance to children. By exercising their supervisory competence, government agencies ensure the functioning of the system and that those in need obtain the assistance promised them by law. The Supreme Court has also emphasised (in judgment No 5-18-7) that realisation of fundamental rights and compliance with the Constitution must be guaranteed by the legislative power. That is, the relevant regulatory arrangements for providing assistance must exist in laws and sufficient money must be allocated to perform a function, supervision over that performance must be exercised, and persons entitled must be ensured effective remedies to protect their rights.

The Supreme Court *en banc* has held that the state may not let a situation develop where the availability of essential public services depends to a large extent on the capacity to provide assistance by the rural municipality, town or city where a person resides.

The Chancellor has reminded the authorities that they must perform the functions laid down by law. The Social Insurance Board must exercise supervision in the field of child protection as well as social services; the Ministry of Education and Research is tasked with verifying the activities of kindergartens and schools.

Support for children with special needs in kindergarten and school

Parents should not need to fight for their child to be able to enjoy the opportunities guaranteed by law. An example of such a fight is a petition by a parent complaining

that their kindergarten-age child did not receive the necessary assistance. Several agencies discussed how to organise provision of a support person service if money from the European Social Fund is no longer available for this, or if the rules do not enable using money from the Fund to provide the service.

The duty of local authorities to provide assistance is laid down by law and this does not depend on availability of money from the European Social Fund (see also Supreme Court judgment No 5-18-7).

Consensus was also sought as to the most suitable kindergarten group for a child, and whether support for a child in kindergarten should be offered by a support person, teacher or other kindergarten staff member. Essentially, the dispute was also over whether it is the social system or the educational system that is required to provide assistance. While disputes were ongoing, a child in need of assistance was left without assistance.

A round table debate involving all the relevant specialists was organised so as to avoid losing sight of the child's need for assistance among all the debates. As a result, it was concluded that, until no other solution ensuring assistance is found, the child must receive a necessary support person. The Chancellor reminded the local authority that a local authority is responsible for assistance to a child both in a kindergarten as well as in providing social services, and in situations causing dispute must find the best solution for the child. The General Part of the Social Code Act, the Social Welfare Act, and the Child Protection Act in combination stipulate that a local authority must always proceed from the best interests of the child and agencies must cooperate in providing assistance.

The good thing is that there is awareness of problems and systemic solutions to them are being sought. In January, the Ministry of Education and Research organised a seminar on support services with attendance of specialists from the Estonian Association of Social Pedagogues, the Estonian Union of Special Educators, the Estonian Association of Speech Therapists, and the Estonian Association of School Psychologists, as well as the Foundation Innove and the Office of the Chancellor of Justice. The topic of inclusive education was also covered by several media publications. The Chancellor's adviser Juta Saarevet participated in the television programme „Suud puhtaks" which focused on inclusive education, and the debate also continued in newspapers. Juta Saarevet also gave a seminar at Tartu University for students taking the subject of "SHHI.03.046 Collaboration networking for children with special educational needs" which focused on legal issues related to inclusive education, be they day-to-day implementation problems or choices made in law-making.

The opportunity for children with special educational needs to obtain the necessary support was also endangered during the emergency situation. Under clause 1 of

Government Order No 77 of 13 March 2020, ordinary instruction in educational institutions was suspended and distance learning was applied. Thus, children with special educational needs and their parents also had to cope with studying at home. Since teaching children with special educational needs and their coping at school needs methodological support for which parents might lack special skills, this was a complicated task. Under clause 1.2 of the Order, the Government or the head of the emergency situation had to decide on measures to be applied in respect of instruction of pupils with special needs, but no such measures were established during the emergency situation. Nevertheless, guidelines on organising instruction of pupils with special educational needs were drawn up by the Ministry of Education and Research. The guidelines provided clarity that some children could continue instruction in ordinary institutions, but also affirmed the fact that, in general, children with special educational needs were also being schooled at home.

It is quite understandable that, in order to prevent the spread of the coronavirus, human contact had to be reduced; however, there was a risk that some children with special educational needs would be left without assistance if no support from outside the family was provided. In the guidelines, the Ministry of Education and Research pointed out that, besides educational support services, a pupil in need of support and their family can also obtain assistance from the local authority for their residence which can offer a child a support person or childcare service if necessary. This was a pertinent reference. However, in terms of combating the virus, it is debatable whether there is any difference as to who has immediate contact with a child: an educational specialist or a social sphere specialist. In the interests of development of a child, it might have been better if activities under the guidance of an educational specialist already known to the child had continued. How the choice that was made affected the development of children and the situation of families remains to be seen in the future.

Establishing a child's disability

In autumn 2019, the Social Insurance Board changed the practice for establishing a disability, so that some disabled children did not have their disability established. The change of practice is also reflected in statistics. Parents of disabled children found that, because of the change, children could be left without the necessary assistance (see also articles by Anneli Habicht „Ringmäng puudega lapse ümber" [Ring dance around a child with disability], „Puue - kas on või ei ole..." [Disability – is or isn't there one]; article by Kadri Tammepuu, article by Kirsti Vainküla). The Chancellor was asked whether such practice was lawful.

Since some services and benefits that children needed were linked to establishment of a disability, some children were also deprived of the assistance they needed.

In its initial reply the Ministry of Social Affairs explained that children are not deprived of the necessary assistance because local authorities are also obliged to help those children in the case of whom no disability has been established. However, the Ministry conceded that the motivation (and also the capability) of local authorities to provide assistance to a child depends on whether a child has been determined as having a disability since the number of disabled children is taken into account when allocating money to local authorities.

The situation of children suffering from fenylketonuria proved to be especially difficult. To stay healthy, they need an expensive special diet but it was not possible to grant financial aid to them unless the disability had been officially determined. Without the expensive special diet, the children develop irreversible and progressive health damage, resulting in disability. A situation where the health of a child has to be ruined in order to become eligible for assistance is inadmissible.

Based on an application by the Estonian Fenylketonuria Association, the Chancellor explained the gravity of the situation to policymakers as well as implementing authorities. Fortunately, both the Riigikogu as well as the Ministry of Social Affairs understood the need for change. The Riigikogu adopted the necessary legislative amendment authorising payment of aid to children suffering from rare diseases whose disability had not yet been established to prevent the onset of disability. While the amendment was pending in the Riigikogu, the Social Insurance Board took individual decisions by expanding interpretation of the law and granting aid to children suffering from fenylketonuria, while not establishing their disability.

Although the amendment provided a solution for some children suffering from certain rare diseases, there are still children with various other diagnoses in whose case a less severe disability or no disability at all is established compared to the earlier system. Here, too, the issue is that if a disability is officially established the child will be entitled to certain essential services and aid, but if no disability is established they will be deprived of the necessary assistance (e.g. children suffering from diabetes).

Policymakers should first understand the purpose of establishing a disability. It is certainly not a stamp confirming the disability, but rather the assistance, services and sometimes financial support that the child needs. Often, a child's diagnosis shows what assistance the child might need. The amendment driven by concern for children with fenylketonuria moved in the right direction because there is no need to subject a child to the process of establishing a disability if assistance can be provided on the basis of information (diagnosis) available about the child.

In its letter, the Ministry of Social Affairs indicated that the whole support system, including funding, of children with special needs is currently being analysed. Initially,

the analysis was expected to be completed by February 2020 but due to the emergency situation the deadline was extended.

Working parents of a disabled child

The Chancellor was asked whether it was constitutional that a local authority did not pay a carer's allowance to a carer who was working. The petitioner pointed out that parents of disabled children are also concerned about losing their health insurance if they go to work, operate as sole proprietors or on the basis of a contract under the law of obligations. Since a disabled child often needs more care than can be provided by someone in full-time employment, people wish to work part-time.

The Chancellor explained that if a parent who had been granted carer´s allowance becomes employed (including part-time employment) the local authority would cease to pay social tax for that person and, as a result, the person would no longer have health insurance. If an adult or carer of a child works even part-time, the part-time employment should entitle them to health insurance. The employer of a part-time employee is obliged to pay at least the minimum rate of social tax for a part-time employee, which makes employing part-time employees relatively expensive. It is true that this, in turn, may prove to be an impediment to employing parents of children with special needs. Work on the basis of a contract under the law of obligations might be a flexible alternative for parents of children with special needs but this working arrangement does not necessarily guarantee them health insurance either, because entitlement to health insurance depends on payment of the minimum amount of social tax.

The Chancellor asked the Ministry of Social Affairs to consider the possibility of establishing measures to support employment of parents of disabled children. A model for this could be a measure used by the Unemployment Insurance Fund in the frame of which the Fund helps to pay social tax for employees with reduced capacity for work, thus facilitating their participation in the labour market.

The Ministry of Social Affairs replied that they were in the process of working on a solution to the problems of family carers. According to the Ministry's assessment, the benefit should include all people bearing the burden of a carer and working part-time. This, however, presumes that in addition to a precise definition of family carers and the target group, the state must also ensure the rest of the support system (supportive services that would enable people to return to the labour-market, etc.), which besides granting a tax incentive would also facilitate better reconciliation of work, care and family life. Thus, it can be concluded from the explanations by the Ministry of Social Affairs that finding a solution will take time.

Children and health

In the field of healthcare, a topical issue is still as of what age a child may independently make decisions concerning their health. In obtaining other healthcare services a young person's right to decide independently depends on their ability to reason which is assessed by a healthcare professional, whereas a parent's consent is always needed to obtain psychiatric care.

Psychiatric and psychological care

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

The Chancellor asked the Minister of Social Affairs to consider amending § 3 of the Mental Health Act so that a young person under 18 years of age who is sufficiently mature and capable of deliberation would themselves be entitled to give informed consent to receiving psychiatric care. The Minister of Social Affairs agreed with the Chancellor's reasoning and promised to take the Chancellor's proposal into account when amending the Mental Health Act.

The Riigikogu faction of the Social Democratic Party initiated an amendment to the Mental Health Act that would resolve the problem indicated by the Chancellor. Regrettably, proceedings of the Draft Act in the Riigikogu Social Affairs Committee got stuck and will continue during the next reporting period.

The issue of parental consent is also topical in providing psychological care to young people. During the reporting period, the Chancellor was asked for advice by a parent living separately from their child and who was dissatisfied that the other parent went to a psychologist's appointment with the child without the first parent's consent. The Chancellor explained that, under the Family Law Act, the parent with the right of custody is the child's legal representative, and parents with the joint right of custody also have the joint right of representation. If a parent is representing a child independently, the other parent's consent is assumed. That is, if one parent goes to a psychologist's appointment with the child the psychologist may assume the other parent's consent. However, if the other parent informs the psychologist that no relevant agreement between the parents exists, the psychologist cannot assume the other parent's consent.

The activities of a psychologist, including a psychotherapist, are not regulated by legislation in Estonia. Therefore, also no rules exist as to who may call themselves a psychotherapist or a counsellor. Laws also do not lay down supervision over specialists providing psychological counselling. Therefore, when contacting a counsellor it is important to make sure whether they have professional education or have been awarded the occupational qualification of a psychologist. The existence of occupational qualification can easily be verified on the website of the Estonian Qualifications Authority at the sub-page "Otsi kutsetunnistust". At the same time, counsellors not having the occupational qualification of a psychologist are not prohibited from offering the psychological counselling service. This is a service in private law where the clients themselves have to make sure that the counsellor is competent.

During the emergency situation, the Chancellor was contacted by experts on the mental health of infants and pointed out that recommendations on supporting the mental health of children during the crisis intended for parents of schoolchildren were not quite suitable for parents of infants. However, infants also need the support and assistance of parents in order to cope well with the effects of the crisis. Since materials intended for infants were scarce, the Estonian Association for Mental Health of Infants and the Children's and Youth Rights Department of the Chancellor's Office prepared recommendations to parents of babies and infants for supporting their children in the emergency situation.

Dental care

The Chancellor was also asked about organisation of dental care for children. One parent enquired, for example, why it was not possible for a disabled child to obtain dental treatment under anaesthesia within a reasonable time in Tallinn. Following the Chancellor's intervention, the Health Insurance Fund checked the availability of dental treatment under anaesthesia more generally. After several verification phone calls, a representative of the Health Insurance Fund was convinced that Tallinn Children's Hospital was not complying with the requirements for keeping a treatment queue because those wishing to register for treatment were not enabled to register for an appointment but were asked to call back later. The Health Insurance Fund drew the attention of Tallinn Children's Hospital to these shortcomings.

7.5. Protection of children's data

Children in the media

During the reporting year, the Chancellor was repeatedly contacted about disclosure of children's data and consequent possible violations by the media. When publishing materials about violations of law, cases of ill-treatment, court cases, and accidents, a

journalist must consider whether identifying a particular victim (or also an alleged offender) is absolutely necessary and what kind of suffering this may entail for those concerned. It is important to keep in mind that, depending on the specific circumstances, a child may be recognisable even if their name or face is not disclosed.
The Chancellor was contacted by an individual about whom an article written on an emotional and personal topic had been published in the press. The petitioner was concerned whether a person's right to privacy, as well as the well-being of children growing up in the family, could be sacrificed in coverage of their suffering. The financial interests of a media publication and people's curiosity do not outweigh people's right to private life. Unless the criteria set out in § 4 of the Personal Data Protection Act are fulfilled and the person so wishes, coverage of a person's private life in the media is not allowed.

The Chancellor was also contacted in a dispute where a media publication had published a news story on a specific school dealing with a conflict among the school staff, but the article also mentioned a specific pupil's marks and academic progress. Although the Chancellor cannot supervise the activities of a private media publication, it had to be emphasised that, in general, disclosing information about a child's private life is inadmissible. Even in the event of an internal conflict within an educational institution, ensuring a peaceful learning environment for children must be given priority. The school must create a safe learning environment for pupils. Children must be ensured the support of the school as well as the home in day-to-day studies and in overcoming difficulties encountered in this process, which is not possible without well-intentioned cooperation between all parties.

In media coverage of cases involving children, the best interests of the child must be placed first. Data of victims who are minors are not generally disclosed. Certainly, primary responsibility for ensuring a child's well-being rests with the parents, who decide whether to consent to an interview with the child or to disclosure of the child's data. However, a journalist must consider whether to publish the material even when a parent has consented to disclosure of the child's data, because media coverage might not necessarily be in the best interests of the child. Several good examples exist showing how potential problems in the field of social or child protection can be treated in the media without identifying children involved in the case.

On several occasions, the Chancellor has met with representatives of media organisations and journalists and explained the importance of respect for the inviolability of a child's private and family life. On several occasions, the Chancellor has also contacted a specific publication or media organisation with a request to remove material violating the rights of the child from the internet. Mainly, the Chancellor's request was complied with.

Disclosure of sports day results

Last autumn, some public excitement was caused by the Chancellor's opinion on disclosure of results of a school sports day. Legally, physical education (and a sports day as part of that subject) form part of the compulsory national curriculum, and therefore the results achieved in that subject are just as important as marks received in mathematics or foreign languages. Under the Basic Schools and Upper Secondary Schools Act, learning outcomes may not be disclosed to third parties without the consent of the child, their parents or guardian.

Since pupils with the best results in mathematics and best essay writers are often acknowledged in schools, the Chancellor recommended that schools should lay down in their internal rules how those achieving best results at a school sports day could also receive well-deserved attention and recognition. The Chancellor's opinion did not concern those sports competitions in which children participate voluntarily.

7.6. Prevention and promotion

The Chancellor's tasks also include raising awareness of the rights of children and strengthening the position of children in society as active participants and contributors. As Ombudsman for Children, the Chancellor organises analytical studies and surveys concerning children's rights, and on that basis makes recommendations and proposals for improving the situation of children. The Ombudsman for Children represents the rights of children in the law-making process and organises a variety of training events and seminars on the rights of the child.

In order to encourage and support children to analyse and understand the substance of their rights and duties, an advisory body to the Ombudsman for Children has been established at the Chancellor's Office, comprising representatives of children's and youth organisations. During the reporting year, the advisory body to the Ombudsman for Children discussed issues related to work by young people. Most young people participating in the discussion had some work experience. Several young people had a positive experience but some had also encountered unpleasant situations at work: for example, an employer refused to enter into a contract with the young person, or the working conditions were not safe for young people. Despite this, all young people wished to continue working and earning money during school holidays. However, for young people it is important that the work should correspond to their age and capabilities, that the working conditions are safe and that employers respect the law. Hearing young people's experience and opinions provided useful information for the analysis of work by school-aged young people prepared for the Ministry of Social Affairs during the reporting period.

During the reporting period, several hundred young people from different places in Estonia visited the Office of the Chancellor of Justice. The Chancellor's advisers introduced to young people their rights and duties and the work of the Ombudsman for Children. The advisers also held lectures in schools where they met with pupils, teachers and parents. During meetings with pupils, discussions focused on the topic of the rights and duties of the child. During meetings with parents and specialists, the Danish film "Hold Me Tight" was viewed, and together with psychologists it was discussed how to notice children in need of assistance, how to support a child in need of assistance and their family, and what possibilities for assistance exist in Estonia. Additionally, cooperation meetings were held with the Estonian National Youth Council and the Association of Estonian Student Representative Bodies (EÕEL).

A Chancellor's adviser participated as a mentor in the young people's crisis hackathon "Hack the Crisis – Youth". In the hackathon – organised online – young people had an opportunity to offer innovative solutions to problems emerging during the crisis. The title of the best idea was given to a portable home office called "Muna" [The Egg] which has electric power supply and internet connection and is sound-proof and weather-proof – you may roll it to your home yard or into the forest. Young people had wonderful ideas how to improve online learning, sporting opportunities and communication with each other during the crisis.

In addition to holding meetings, the Chancellor's advisers wrote articles on the rights of the child. The special edition of the journal *Sotsiaaltöö* published articles on the awareness of children and adults about the rights of the child and attitudes related to rights, the rights of the child in disputes between parents concerning the rights of custody and access, as well as protection of the rights of the child in enforcing court rulings on access arrangements. An article in the journal *Märka Last* was published on the age and responsibility of children through the eyes of adults.

During the reporting period, focus was also on introducing the rights of child patients. In cooperation with the Estonian Paediatric Association, a conference on child-friendly healthcare was organised on 31 October 2019 with presentations delivered by the Chancellor's advisers Kristi Paron and Andres Aru. The Chancellor's adviser Kristi Paron gave lectures on the autonomy of child patients for members of the Estonian Medical Students' Association and students of social work at Tallinn University. She also dealt with legal aspects related to vaccination of children at a discussion day organised on 18 October 2019 by the Estonian Medical Association with the aim of improving vaccination coverage of the population.

The Chancellor's Office continues contributing to systematic solution of problems in the field of child protection by training specialists. The Chancellor's advisers regularly train child protection and social workers, and during the reporting year also offered training on the rights of the child to attorneys and students of youth work.

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

During the reporting year, the parliament's Foresight Centre and the Chancellor's Office organised the seminar "Child well-being Indicators: current situation in and possibilities for describing the situation of children" in the Riigikogu. Researchers and specialists working with children discussed the possibilities and bottlenecks of measuring the well-being of Estonian children. Speakers at the seminar emphasised that a comprehensive overview of the situation of children is needed: this helps to prevent problems and support the all-round development of children. Social scientists speaking at the seminar emphasised the importance of the role of children themselves, as well as the importance of hearing the opinion of children. When assessing the well-being of children, it is important to take into account the opinions expressed by children themselves as this provides a better overview of their situation. The speakers criticised the scarcity of child-centred statistics in mainstream statistics and pointed out the fragmentation of data on children. Experts also pointed out that, in order to obtain a better overview of the situation of children, it is essential to agree on indicators to be observed in assessing the well-being of children, and to regularly update the indicators. Alongside objective information, it is also important to reflect opinions of children themselves as regards their opportunities and situation.

Based on the need to obtain a better comprehensive overview of the situation of children, and in view of the recommendation to Estonia by the UN Committee on the Rights of the Child to publish annual statistical surveys on the rights of children, the Children's and Youth Rights Department of the Chancellor's Office in cooperation with several agencies and organisations compiled statistics and studies related to the rights of children and published them on the homepage of the Chancellor of Justice. The published data concern family life, children's health, their opportunities to acquire education, hobby education, and to work, and spend free time. The data also deal with the issues of security and violence, living standards and coping, and the principles of child-friendly proceedings and equal treatment.

Also this year the children's and youth film festival 'Just Film', held as part of the PÖFF Film Festival, included a programme on the rights of children, prepared in cooperation between Just Film, the Chancellor of Justice, the Ministry of Justice, the Ministry of Social Affairs, the Social Insurance Board, the Police and Border Guard Board, and the Estonian Union for Child Welfare. This year, the programme on the rights of children featured already for the ninth time. Screening of selected films was followed by debates with experts and well-known personalities discussing the films together with viewers. To increase the interest of young people with Russian mother tongue, more and more films in the programme have also been translated into Russian. This year, several debates following the films were also held in Russian. A total of 2932 cinema lovers went to see the films within the special programme on the rights of children.

The Ombudsman for Children can further contribute to making society more child-friendly by recognising good people who have done something remarkable either together with children or for children. The merit awards event „Lastega ja lastele" [With and For Children], which was brought to life by organisations championing the interests of children, was held for the seventh time in 2020. On the International Day for the Protection of Children, the President of the Republic and the Chancellor of Justice recognised those who have significantly contributed to the well-being of children through their new initiatives or long-term activities. Also a television programme was made featuring this year's merit awards event, screened on 1 June on the public *ETV* channel.

7.7. Inspection visits to childcare institutions

Inspection visit to Tallinn Children's Home

The Chancellor inspected one family house in Tallinn Children's Home. The inspection revealed that some children often did not stay in the family house. Resolving such situations is extremely complicated. Family parents need knowledge to be able to effectively support each child with a crisis or traumatic experience. The Chancellor recommended that family parents should actively participate in training events. Apart from notifying the police, family parents themselves should also try to seek contact with a child who has left the family house and to show that people at the house are worried about the child. The Chancellor also recommended that the family house, in cooperation with the city government as guardian of the children, should offer children the necessary counselling and therapy. This, too, could help children better adapt to life in the family house and stay at the house.

The inspection revealed that some children had asked the family parent to lock them in their room so as not to be disturbed by other children at night. Children could not lock or unlock the door of their room from the inside. The Chancellor found that the wish of the staff to ensure the safety of all children could be understood but locking

the door of a room without the child being able to unlock it from the inside is not a suitable way to resolve this problem. In a locked room a child's life and health may be at risk, for example if a fire breaks out or the child has a sudden fit of illness. Rather, if necessary, the family house could install a type of lock which a child can lock themselves while in the room (for example, a thumb turn lock) but which the family parent can open from the outside.

Inspection visit to the department of child psychiatry of the psychiatric clinic of Viljandi Hospital

During the reporting year, the Chancellor inspected the department of child psychiatry of the psychiatric clinic of Viljandi Hospital. The Chancellor asked Viljandi Hospital to properly record all instances of restraint in the department of child psychiatry and enter them in a separate register. In the recommendations sent to Viljandi Hospital, the Chancellor emphasised that if a patient who is a minor does not agree to treatment or if means of restraint need to be used because of their illness, a decision on involuntary treatment must be drawn up on this. The Chancellor also asked Viljandi Hospital to improve the treatment environment: to offer young people in the department of child psychiatry more opportunities for sports outdoors in the yard and acquire play facilities for children in the yard.

VIII. CITIZENS AND ALIENS

During the reporting year, the issue of citizenship by birth of people having acquired Estonian citizenship under the Tartu Peace Treaty, and of their descendants, continued to be topical. The Chancellor of Justice dealt with the issue of the legal status of people who acquired Estonian citizenship on the basis of the Tartu Peace Treaty but did not return to Estonia in the 1920s. The Police and Border Guard Board had previously recognised the descendants of these people as citizens by birth but later changed its position.

8.1. Citizens

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

The Director General of the Police and Border Guard Board (PBGB) affirmed to the Chancellor that those people who have already been identified as Estonian citizens by being descendants of the optants would also be treated as Estonian citizens by the PBGB in the future. That is, they are issued with the identity documents of an Estonian citizen regardless of whether their ancestor settled in Estonia or not. This ensures the protection of trust and legal certainty and takes account of the person's expectation that the current administrative act would remain in force. Since 2020, the PBGB has also informed the courts about its change of administrative practice.

The Estonian state still does not recognise as citizens any new applicants who have only now expressed the wish to obtain Estonian citizenship as a descendant of an optant and whose ancestor did not settle in Estonia. Interpretation of the conditions for acquiring citizenship under the Tartu Peace Treaty is a complicated legal issue. Historical sources indeed indicate that in the 1920s and 1930s the Estonian state considered optants who had remained in Russia as being Estonian citizens. However, recent case-law proceeds from the interpretation that persons who did not settle in Estonia within a year after being accepted as citizens, or did not do so later, failed to complete the optation process and did not become Estonian citizens under Article IV of the Tartu Peace Treaty. The Supreme Court Administrative Law Chamber confirmed that interpretation by judgment delivered on 2 March 2018.

The Chancellor explained that the Estonian Constitution does not allow depriving someone of citizenship acquired by birth. This may not be done even if a person holds the citizenship of another country besides Estonian citizenship. Unfortunately, erroneous explanations have been given either by PBGB officials or the persons themselves have become confused when reading the provisions of the Citizenship Act (see, e.g. § 3(1) of the Act).

A petition received by the Chancellor revealed that often a difference of opinion has arisen between the PBGB and a person as to whether that person acquired citizenship by birth or by naturalisation. Often, the PBGB has made two decisions in one and the same administrative act: notifying the person that the PBGB deems them not to be a citizen by birth, and that the person is deemed to have lost their citizenship because they hold another citizenship. In that situation, a person is focused to prove their citizenship by birth and cannot make a conscious choice whether to give up the other country's citizenship. The Chancellor recommended that the PBGB should first resolve the issue of citizenship by birth and only then decide on depriving the person of citizenship. For example, a decision on the basis for acquiring citizenship can be drawn up as a preliminary administrative act.

Several petitions concerned renewal of documents of an Estonian citizen. For example, in the course of renewal of documents, the PBGB has announced that they have previously mistakenly identified the person as having citizenship by birth but in actuality the person does not hold Estonian citizenship. The Chancellor has previously said that once the state has already recognised someone as an Estonian citizen by birth, that decision cannot automatically become null and void. Recognition as a citizen amounts, in essence, to issuing an administrative act confirming that the person is an Estonian citizen. That decision has legal force until it is changed. However, when changing or annulling an administrative act, the principle of protection of trust must be observed (see the Chancellor's recommendation of 17 June 2019 to the Director General of the PBGB). Identification of citizenship status must take into account the principles of legitimate expectations and legal certainty.

In law-making, most questions were caused by an amendment of the Citizenship Act by which a new ground for children to apply for citizenship under a simplified procedure was laid down (Draft Act 58 SE). The majority of children in the target group cannot realistically obtain Estonian citizenship before reaching the age of majority because they have Russian citizenship from which minors are not released. In comparison: under other grounds laid down in the Citizenship Act, children can obtain Estonian citizenship even when they have the citizenship of another country. They must renounce the citizenship of the other country at the latest upon reaching 21 years of age if they wish to maintain their Estonian citizenship. The issue of compliance with the principle of equal treatment arose since the distinction does not apply to this target

group. The Chancellor noted that in proceedings of the Draft Act it is the task of the Riigikogu to ascertain all the relevant circumstances and to assess whether the restrictions resulting from the Draft Act are justified. However, the adopted law did not resolve the problem of the majority of the target group of the regulatory provisions.

Another remaining unresolved problem is that the Government delays with making decisions on citizenship applications where an application concerns exceptionally granting citizenship to a convicted person. The Chancellor's Office has explained that in such a situation the person should protect their rights in court.

Identity documents and digital identity

Several petitions sent to the Chancellor concerned applying for identity documents. By now, at least a partial solution has been found to the problem where for a long time the PBGB did not issue new identity documents to a person where a dispute was pending with the person on the circumstances of their acquisition of Estonian citizenship. In that situation, the PBGB had started issuing to those persons documents with a shorter period of validity.

The Chancellor drew the attention of the PBGB to the fact that, in today's society, identity documents are indispensable and problems related to them must be resolved swiftly and in line with the principles of good administration. The ID card is the only mandatory identity document which enables using the state's e-services. Nowadays, digital ID is indispensable for many essential procedures and activities. The state itself also directs people to increasingly use electronic channels. Alternative means (such as Mobile-ID or Smart-ID) are not accessible to everyone, and using alternative means might also not be possible because of disability. Moreover, a person is not obliged to obtain other means enabling electronic identification.

People complained about problems arising in replacing a non-functioning ID card. There have been cases where an ID card chip becomes locked for technical reasons. In that case, the PBGB replaces the card for free. However, an expert analysis of the ID card must be carried out before it can be replaced by way of guarantee. For this, the ID card must be handed over to the PBGB and the person cannot use the card as an identity document either. It may take up to a month to replace a card by way of guarantee, although as a rule it is replaced much faster. Nevertheless, in the meantime a person may encounter various problems due to lack of an identity document.

The Chancellor asked the PBGB to find a solution to replace dysfunctional ID cards as quickly as possible. The PBGB promised to inform people that in practice they would receive a new ID card by way of guarantee within a week or two. The PBGB also promised to consider the possibility of returning the original ID card to the holder as soon as the initial expert analysis was completed and until such time as a new card was

made available. The Chancellor could not agree with the PBGB's position that a person cannot apply for compensation of the state fee if they apply for a new ID card before the results of the expert analysis become available.

The Chancellor was also contacted about a case where the ID card of a petitioner's next of kin could continue to be used even after death. This situation is unlawful. The PBGB is liable for possible damage under the State Liability Act. However, the PBGB affirmed that it had taken steps to avoid repetition of that error. The Information System Authority also initiated proceedings to investigate the case. The result of the proceedings is not yet available.

Several petitions concerned the form of dealings with the authorities. In some cases, the problem was the requirement of mandatory electronic procedures, while in other cases the problem was, conversely, the absence of electronic procedures. The situation was exacerbated by the fact that during the emergency situation it was not possible to make a physical visit to many authorities because they were either closed to the public, some people had to stay in isolation, the borders were closed, or the person wanted to avoid public places due to the risk of the virus.

For example, several of the state e-services did not function with the Smart ID (e.g. suspension of activities as a sole proprietor in the commercial register) and, at the same time, no paper documents could be submitted either. Submission of documents in electronic format is generally practicable and simplifies procedures, but in line with the principle of freedom of form (§ 5 Administrative Procedure Act) this should not be the only possibility to manage affairs. Also those without the possibility for electronic dealings must be able to obtain services from the state. The Centre of Registers and Information Systems explained that work on development of possibilities for using the Smart-ID (including digital signing) was under way but the development would still take some time.

People complained to the Chancellor that the PBGB did not enable using the photograph available in the database when applying for identity documents during the emergency situation. The Chancellor found that the PBGB had acted lawfully. She suggested that the Riigikogu should consider possibilities how to issue documents electronically to as many people as possible during an emergency situation (see the chapter "Rule of law in an emergency situation").

Measures put in place to prevent the spread of the virus also frustrated those wishing to submit an application for marriage. The law requires that an application for marriage must be submitted personally in a vital statistics office, its validity cannot be extended, and a new application for marriage must also be submitted personally by the parties. The only exception is remote authentication by a notary, but since one of the prospective spouses lived abroad and did not have Estonian identity documents it was

also not possible to use this procedure. So it happened that because of restrictions during the emergency situation some people were deprived of the possibility to marry when they wished. The Chancellor found, however, that such restrictive rules were compatible with the Constitution.

The Chancellor was asked to investigate whether the fact that the authorities (PBGB and embassies) issue personal identity documents to children upon an application by only one parent could facilitate child abduction. A document for a person under 15 years old or an adult with restricted active legal capacity is issued to a legal representative of the document user. The laws do not require that parents should jointly apply for documents for their child. Thus, an authority issuing a document proceeds from the assumption that the parent applying for the document has the consent of the other parent. However, if necessary, it should be verified whether there is any indication that documents are being applied for without the other parent's consent or that issue of documents may prejudice the interests of the child.

The Chancellor also received a letter about an incident where a PBGB official had prohibited a person from departing Estonia together with relatives who were minors because the adult was not in possession of the parent's written consent. The PBGB admitted that the official had been mistaken since legislation does not require possession of a parent's written consent to cross the border. If the parent's consent needs to be ascertained, an official must use other possibilities for this.

8.2. Aliens

A major gap in legislation was found in that laws did not lay down compensation for unfounded deprivation of liberty where a person's detention was authorised by a court but a higher court later overturned the previous decision. Under the State Liability Act, compensation for damage may only be claimed if a judge committed a criminal offence in the course of judicial proceedings. This problem has so far concerned applicants for international protection but may also concern people detained on other grounds; special regulation is in place only for offence proceedings.

According to the Chancellor's assessment, it is incompatible with the Constitution and the European Convention on Human Rights that the laws fail to regulate compensation for damage for unfounded deprivation of liberty outside proceedings for an offence. So far, the court has resolved this on a case-by-case basis, by identifying the respondent and deciding on the amount of compensation. This, however, does not substitute for the duty to regulate the grounds and procedure for compensation of damage by law. The Ministry of Justice informed the Chancellor that plans had been made to amend the State Liability Act to resolve the problem, but no relevant Draft Act has yet been initiated.

An Estonian citizen and their foreign spouse found themselves in a difficult situation after having married in Estonia and wishing to apply for an Estonian residence permit. The spouse's country of citizenship did not recognise a marriage contracted abroad, so that it was not possible to replace the identity documents there. Therefore, the person's surname entered in the passport differed from the name taken upon marriage. The PBGB officials explained to the spouse that in that situation a residence permit in Estonia could not be applied for. However, after submission of objections the application for a residence permit was accepted for processing.

The Chancellor had to deal with a case where the PBGB did not suspend expulsion proceedings for the period when the person submitted a repeat application for international protection and their expulsion was prohibited under the law until the relevant court decision. The PBGB explained that if a valid precept to leave the country exists in respect of an individual and they obtain a legal basis for temporary stay in Estonia, the PBGB suspends enforcement of the precept until the ground for legal stay in Estonia ceases to exist. The PBGB said that it would change its practice and, in the future, an administrative act would be drawn up on suspension of enforcement of a precept to leave the country, which would also be introduced to an applicant for international protection.

A petition received by the Chancellor revealed that often an individual is not notified of imposition of a ban on their entering Estonia. Under the Obligation to Leave and Prohibition on Entry Act, the Ministry of the Interior is not required to deliver to the affected person a decision on imposition of a ban on entry, but the decision is deemed to be communicated to that person after it has been published on the website of the Ministry of the Interior (§ 33^2(1) of the Act). General principles of administrative procedure must also be observed when imposing a ban on entry. General principles of law require that a person must be notified if an administrative authority has made an individual decision restricting their rights. The Supreme Court has acknowledged that if a ban on entry is not notified to an alien then, depending on circumstances, this may disproportionately restrict the alien's rights, in particular if the person is staying in Estonia and considering the consequences of imposing a ban on entry (Supreme Court Administrative Law Chamber judgment of 23 September 2019, No 3-16-2088, para. 15).

When the borders were closed due to the emergency situation, problems with aliens staying in Estonia or wishing to return here also became more frequent. These issues have been covered in the chapter "Rule of law in an emergency situation".

Name issues

The Chancellor's assistance was sought by an alien who had married an Estonian citizen but could not replace her documents abroad since that country did not recognise this

marriage. The petitioner wished to take back her maiden name: the same as entered in her foreign passport. However, the Estonian Names Act does not enable this. The Chancellor found that, under the Constitution, a foreign citizen is entitled to take back their name used prior to marriage if that name is also entered in their identity document issued by the foreign country. The Ministry of the Interior also conceded that the restriction was not justified and made the necessary amendment to the new Draft Names Act. This, however, did not resolve the problem of the specific individual.
The name issue has also arisen in resolving filiation disputes where the court annuls the record on the child's father. In practice, this means that, together with amendment of the record on the child's father, the child's surname also changes in the register. The Ministry of the Interior considered this a good solution because, unless the court resolves the child's name issue together with resolving the filiation case, when changing the name later the child must pay a large state fee. It is astonishing, however, that this way an adult's surname in the register is also changed without their knowledge and against their will.

The Chancellor's Office is of the opinion that a name is an essential part of a person's identity and this may not be changed automatically. Under the law, changing a name in a filiation case is based on the relevant court judgment. An administrative authority should not change a person's name without their own consent or the consent of their legal representative, unless the court has made a decision concerning the name. The Ministry of the Interior asked the courts that in the frame of a filiation case the name issue should also always be resolved.

Implementing the Registered Partnership Act

People are still concerned that the Registered Partnership Act is in force without the necessary implementing legislation. Therefore, some notaries refuse to conclude registered partnership contracts with foreign citizens whose data have not been entered in the population register.

The Chamber of Notaries has explained that due to the absence of implementing legislation it is not possible to verify whether the necessary preconditions for entering into a registered partnership contract are fulfilled. However, recently Harju County Court found that even in the case of entering into a registered partnership contract with a foreign citizen the fulfilment of these preconditions can be verified (see Harju County Court order of 8 June 2020 No 2-20-5958).

The Registered Partnership Act does not lay down a limitation on the citizenship of people entering into a registered partnership contract. Under the law, at least one of the partners must reside in Estonia. Entering into a registered partnership contract is the only possibility for same-sex partners to legally register their family life. This is

necessary, inter alia, to apply for a residence permit entitling the applicant to settle with their partner.

Implementation of the Registered Partnership Act also arose during proceedings of the Draft Foreign Service Act (45 SE). Members of the Riigikogu asked the Chancellor whether it was compatible with the Constitution if the law lays down social guarantees (allowance for spouse and covering expenses) for the spouse of an official in the foreign service but not their *de facto* partner.

The Chancellor explained that the Constitution does not require that an unregistered partner accompanying a diplomat in the foreign service should be given the same social guarantees as laid down for a diplomat's spouse. However, social guarantees stipulated for family members of diplomats must extend to their registered partners. The President of the Republic refused to promulgate the said Act because it failed to take into account the rights of registered partners.

IX. EQUAL TREATMENT

Equal treatment is one of the fundamental principles enshrined in the Constitution. Under § 12(1) of the Constitution, everyone is equal before the law. No one may be discriminated against on the basis of ethnicity, race, colour, sex, language, origin, age, religion, political or other views, property or social status, or on other grounds.

Under the Chancellor of Justice Act, the Chancellor carries out checks over conformity of legislation with the Constitution and laws as well as over the activities of representatives of public authority. The Chancellor also arranges conciliation proceedings in the case of discrimination disputes.

During the reporting period, the Chancellor resolved 11 petitions with complaints against discrimination. This year, the Chancellor did not initiate any conciliation proceedings.

The Chancellor received a complaint about a job interview during which the employer had first asked the person applying for employment about the number of children and their age and then if the child had any grandparents. After having heard that the child was six years old and the grandparents were not residing in Estonia the employer refused to carry on with the job interview.

The Chancellor explained that it was illegal to ask for such data during a job interview and people had the right to refuse to reply to such questions. Under § 11(1) and (2) of the Employment Contracts Act, an employer may not ask a person applying for employment questions that concern their children or family responsibilities. Under § 6(2) clause 1 of the Gender Equality Act, the activities of an employer shall be deemed to be discriminatory if the employer overlooks a person applying for employment or treats a person applying for employment less favourably in any other way compared with other persons applying for employment due to performance of family obligations. The petitioner did not wish to initiate conciliation proceedings.

Several petitions concerned different treatment based on age. In one of the petitions the Chancellor was asked if it was discrimination based on age if a newspaper advertisement indicated that only people under 64 years of age were invited to participate in a training course. In the Chancellor´s opinion, applying such an age limit was in fact unjustified. The organiser of the training course explained that the course had in fact been open to everyone who was active on the labour market or wished to return to the labour market irrespective of being older than 64 years of age. The training course had not been intended for economically non-active old age pensioners. So it would have been appropriate if the advertisement had specified the target group of the course without mentioning the age limit. The organiser of the course removed the age limit from the notice of the training course published on their webpage.

A petitioner complained that the authorities had refused to issue them a driver´s medical certificate due to their age. However, it turned out that assessment for a medical certificate based on a condition that the applicant suffered from had been the ground for refusal in the given case but not age.

The state has still not aligned the hearing requirements laid down for prison officers and related restrictions with the Constitution and European Law. Tartu Court of Appeal initiated constitutional review court proceedings in respect of Government Regulation No 12 ("Health requirements for prison service officers and the procedure for health checks, and the substantive and formal requirements for a health certificate"). The requirements laid down in the Regulation do not enable assessment of whether poor hearing is an impediment to a prison officer´s work and whether it can be compensated by a hearing aid. The Supreme Court decided to ask the Court of Justice of the European Union for a preliminary ruling on the question.

The Chancellor of Justice submitted her opinion to the Court of Justice of the EU in which she held that national provisions stipulating that a prison officer's hearing deficiency below the required minimum level deprived them of the right to be employed in the prison service without having first assessed whether this could be compensated by a hearing aid were incompatible with European law. It is known that similar restrictions have not been laid down for people with poor eyesight, as they can use glasses or contact lenses when carrying out their duties at work.

The Chancellor was asked why there was a difference in the rules that apply to payment of superannuated pensions to police officers and persons on active service of the Defence Forces. On 1 May 2019, an amendment to the Police and Border Guard Act entered into force under which police officers are paid a full superannuated pension even when an officer continues work in the police service. Military servicemen were not afforded the same opportunity. The Chancellor noted that this decision had been a deliberate and considered choice of the Riigikogu, not an error. Everyone may have recourse to the court for protection of their rights.

9.1. Protection of the rights of people with disabilities

The Riigikogu ratified the Convention on the Rights of Persons with Disabilities and its Optional Protocol on 21 March 2012. In doing so, Estonia assumed the obligation to promote the opportunities of persons with disabilities to participate fully and independently in society. Under Article 4 of the Convention, States Parties must undertake all appropriate legislative, administrative, and other measures for the implementation of the rights set out in the Convention.

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

During the reporting year, further work was carried out by the Advisory Council of People with Disabilities convened by the Chancellor. At its meeting held at the Estonian Academy of Arts on 16 October 2019, the members of the Advisory Council had a joint discussion with representatives of the Estonian Academy of Arts on accessibility challenges and the possibilities for taking the needs of people with disabilities into account in higher education institutions.

The Advisory Council ranked the most important problems to guide the Chancellor in her future work in this area:

1. Checking service quality (supervision).
2. Simplifying the procedure for determining the degree of severity of disability.
3. Providing better support for pupils with special educational needs (including the help of support specialists).
4. Reducing the burden of family carers.

The Office of the Chancellor of Justice has forged close cooperation with the Estonian Chamber of Disabled People and its member organisations which represent the rights of disabled people. The Head of Disability Rights of the Chancellor has been invited to speak in a podcast as well as at numerous meetings of the Estonian Chamber of Disabled People. In addition, an audio description of a concert held to celebrate Estonia's Independence Day was produced in cooperation with the Chamber. Furthermore, the adviser to the Chancellor is a party to discussions on a project for state one-stop shops (local centres to provide public services) implemented by Riigi Kinnisvara AS (a real estate development and management company established for the management of state real estate) and to the work of the Accessibility Task Force established by the Government Office.

Work has also been done in collaboration with several other associations and chambers. For example, the Head of Disability Rights of the Chancellor was invited to speak at an event celebrating People with Disability Day organised by the Tallinn City Board of Disabled People. There was a joint discussion on the accessibility of e-government with the Estonian Association of the Blind, the Estonian Chamber of Disabled People, and the Information System Authority. The shortcomings of the system for making hearing aids available were discussed with the Estonian Association of the Hard of Hearing. The results of the discussion were taken into account in drawing up a memorandum sent to the National Social Insurance Board. On 14 August 2020, at the invitation of the Human Rights Centre, the Head of Disability Rights participated in

a panel discussion of the Opinion Festival "International obligations: can I also benefit from them?".

Exhibition

An international exhibition of contemporary art "Disarming language: disability, communication, rupture" was held at Tallinn Art Hall from 13 December 2019 to 24 February 2020. It was produced in cooperation with the Office of the Chancellor of Justice, Tallinn Art Hall and the Argos centre for audio-visual arts in Brussels. The exhibition was curated by Christine Sun Kim and Niels Van Tomme.

One of the objectives was to raise awareness of the issues surrounding disability. The curators brought together the work of artists, graphic designers, writers and activists provoking thought about whether and how disability can have an impact on language and communication as well as reminding everyone of their own responsibility in enabling social inclusion of people with special needs.

This exhibition turned into much more than merely another addition to transient art. In the process of arranging the exhibition, Tallinn Art Hall was transformed into a venue which became accessible, providing both physical access as well as access to information. Since then, the Art Hall has been offering more guided tours in sign language or with audio description. Estonian sign language has been added to the selection of languages for virtual exhibitions.

Reporting on implementation of the Convention

Under Article 35 of the Convention on the Rights of Persons with Disabilities, States Parties submit reports to the Committee on the Rights of Persons with Disabilities on measures taken to give effect to obligations under the Convention and on the progress made.

Estonia was expected to report in March 2020 to the Committee on the Rights of Persons with Disabilities as to progress made in implementing the Convention. The necessary preparatory work for the Geneva meeting was carried out but the meeting had to be postponed due to the COVID pandemic. A new date for the meeting has not yet been set. The first progress report submitted by Estonia dated back to 2015, so there has been a considerable time lag between drawing up and discussing the report.

About accessibility in general

Under Article 9 of the Convention on the Rights of Persons with Disabilities, States Parties must take appropriate measures to ensure access by persons with disabilities to all aspects of life on an equal basis with others. Accessibility is viewed as a

prerequisite for people with disabilities to benefit from public goods and services on an equal basis with others and to be able to access the labour market.

So far, accessibility has not been very high on the agenda of policymakers. So the Order of the Government establishing the Accessibility Task Force was a welcome development. Responsibility, which had become dispersed among different executive agencies, now lies with the Government Office. This gives us hope that commonly agreed solutions will be found to problems which have persisted for many years.

The Task Force is responsible for mapping the state of play and problems in all major environmental and social spheres, including access to public buildings and authorities as well as to public spaces in general (shops, cultural and recreational institutions, sports facilities, etc.), to public and private services (banking, telecommunication and audio-visual services, etc.), to e-services, housing and means of transport. Furthermore, the Task Force is tasked with developing policy guidelines and solutions which help us move towards a society, public space and services accessible to all within a ten-year timeframe.

The mere fact that the Task Force is composed of representatives from different organisations and sectors will give Task Force discussions the added value of raising situational and overall awareness. As a representative of the Chancellor, the Head of Disability Rights is involved in the work of the Task Force.

Public transport

Under Article 9 of the Convention on the Rights of Persons with Disabilities, States Parties shall take appropriate measures to ensure access for persons with disabilities to transportation on an equal basis with others. Accessible public transport, i.e. transport that can be used by everyone independently, is a precondition which enables people with disabilities to participate in social life.

Although under § 10(1) clause 1 of the Public Transport Act public transport is intended for use by everyone, and its organisation must also take into account the mobility needs of persons with disabilities, most public transport is still not accessible.

The Chancellor made a proposal to the Riigikogu to amend the Public Transport Act. Unfortunately, the parliament has not yet been able to revise the law. Meanwhile, several tenders have been finalised, but unfortunately also on terms that do not ensure that available buses are accessible to all passengers. Public service contracts for the carriage of passengers by bus are often awarded for a period of 6–8 years and it is very difficult, sometimes even impossible, to amend the terms of a contract already awarded and still running. As a result, even if people understand that buses should be accessible to everyone wishing to use them, it will take years before the current contracts come

to an end and new tenders can be organised on new terms. This means that every new tender will carry a great responsibility towards future passengers.

For instance, on the island of Saaremaa, a new bus company started to operate on the basis of a contract which stipulated that only some buses had to be accessible. For people with reduced mobility this means, first, that it would take them longer to plan a journey in advance and, among other things, it will make them worry about how to get back home if, for some reason, they miss an accessible bus. Non-accessible public transport will also increase demand for social transport. The Transport Adviser to the Saaremaa Rural Municipality confirmed that most people with reduced mobility resort to social transport in their municipality.

We remain concerned that the replacement buses used by Elron to replace trains due to repair works carried out on some railway sections are not accessible to wheelchair passengers. As a result, those passengers with reduced mobility who usually take the train are forced either to resort to social transport or cancel their journey altogether.

According to information published on the Elron website, accessible replacement transport is guaranteed to everyone who submits a request three working days in advance. According to the Elron representative, they try to find solutions to reduce the waiting time. For instance, accessible replacement transport is guaranteed to people who take the train every day and these frequent travellers need notify the carrier only once. According to the Elron representative, the availability of buses on the rental market accessible to wheelchair passengers is limited and the number of potential wheelchair passengers is also low.

Logically, the fleet of available accessible rental buses would increase if the fleet of accessible buses serving regular lines increased because occasional services are often carried out with vehicles which are no longer serving regular lines. This offers an opportunity to every contracting authority to contribute to improving the situation of people with disabilities.

A Public Transport Working Group under the Accessibility Task Force led by the Government Office has started work on policy recommendations on how to solve the problems of public transport. It has become clear that there is no comprehensive overview about the proportion of accessible buses serving regular lines in Estonia. Yet, in shaping public transport policy the argument has been used that accessible buses are costly and their traffic characteristics are worse compared to conventional buses.

Work carried out to date by the Accessibility Task Force gives rise to hope that the myth that accessible public transport is costly and low-floor vehicles get stuck on gravel roads will be dispelled. This expectation was reinforced at a joint meeting between representatives of the Road Administration, the North Estonia Public Transport Centre,

bus companies, the Estonian Association of Persons with Reduced Mobility, the Estonian Association of the Hard of Hearing, the Estonian Association of the Blind, the Estonian Chamber of Disabled People and the Office of the Chancellor of Justice held at the Estonian Chamber of Disabled People on 11 August 2020. The meeting reached consensus that any future public procurement for awarding regular service contracts should ensure that buses serving regular lines in Estonia are accessible to all.

The Supreme Court has emphasised (judgment no 3-16-1191, para. 8.2) that international agreements ratified by the Riigikogu must be respected. If necessary, the state is obliged either to adopt or amend national legislation.

Sign language and audio description

Under Articles 9 and 21 of the Convention on the Rights of Persons with Disabilities, to enable persons with disabilities to participate fully in all aspects of life access must be ensured to them, on an equal basis with others, to information and communications, including information and communication systems. It is obvious that without the aid of audio description a blind or partially sighted person will not be able to fully experience a theatre performance, for instance. The same applies to a deaf person without the help of a sign language interpreter. The state must find ways of providing interpretation.

The reporting period may be regarded as ground-breaking for the spread of audio description and sign language. Under the leadership of the Estonian Chamber of Disabled People, interpretation was provided at the Song and Dance Celebration in the summer of 2019. As usual, the speech by the President was interpreted into Estonian sign language at the President´s reception on 24 February 2020. As an innovation, an audio description, produced in cooperation with the Estonian Chamber of Disabled People, the Estonian Public Broadcasting Company, the Office of the President and the Office of the Chancellor of Justice, was provided at the concert for the President´s reception. Jakob Rosin, Head of the Estonian Association of the Blind and Juta Saarevet, Head of Disability Rights of the Chancellor, spoke about the importance of audio description on the "Vikerhommik" radio programme on Vikerraadio radio station.

At the time of the corona lockdown it became clear that important press conferences and speeches at the Riigikogu had to be interpreted into sign language. The availability of remote Estonian sign interpretation (sign language interpretation via Skype) improved. Previously, sign language interpretation had been available during normal working days and working hours only but during the emergency situation the daily working hours were extended. Additionally, the sign language interpretation service was made available at weekends as well. A proposal to extend the working hours of the remote interpretation service was made by a member of the Advisory Council of People with Disabilities convened by the Chancellor. This improved access by deaf

people with a command of Estonian sign language to information, healthcare as well as, for instance, to the state helpline 1247 (on the coronavirus). In addition, some information was also made available in Estonian sign language on the kriis.ee website.

The state one-stop shops project

The state one-stop shops project (*riigimaja* in Estonian) led by Riigi Kinnisvara AS and the Ministry of Finance helps bring different public authorities located in separate buildings under one roof in each county. The accessibility of buildings has become an important component of state one-stop shops. The aim is to build user-friendly, easy-to-move-around buildings designed from the perspective of people´s actual needs rather than national minimum standards only.

The whole process of envisaging state one-stop shops has given a significant opportunity to learn new ways of doing things and, as a result, Riigi Kinnisvara AS has become the champion of the topic. The state one-stop shop project is a win-win project for any future tenant of Riigi Kinnisvara AS.

A good example was set when a passenger lift was installed in the building of the Office of the Chancellor in cooperation with Riigi Kinnisvara AS, the building owner. This experience conveys an encouraging message to fellow possessors of buildings under heritage conservation: even such historic buildings can be converted into buildings which take the needs of persons with disabilities into account.

Participation in law-making

The principle of including persons with disabilities in the decision-making process about their well-being is fundamental to protection of the rights of persons with disabilities. Following the work of the Riigikogu, an impression may be conveyed that sometimes people with disabilities learn about a legislative amendment affecting them before the draft is adopted, but this is not always so. Thus, they do not always get an opportunity to express their opinion about draft legislation. Sometimes they hear about a proposed legislative amendment incidentally, from a familiar member of the Riigikogu, for instance. An alternative would be to constantly follow the Draft Legislation Information System of the Government and the Riigikogu – which is clearly labour-intensive and time-consuming and can be difficult for people with certain types of disability.

The process of amending the Railways Act (SE 47) offered a bad example of disregarding people with disabilities. The Government submitted a Draft Act amending the Maritime Safety Act to the Riigikogu. In the course of the legislative proceedings, an amendment to the Railways Act on the rights of passengers with disabilities was inserted. Although the Chamber of Disabled People managed to form their opinion

about the amendment and send it to the Parliament, the time had run out to take the substance of their opinion into account.

Such cases could be avoided if the rules of legislative procedure were complemented by a clause that any legal provision that changes the living conditions of people with disabilities shall not reach the decisive phase in the legislative procedure of the Parliament unless the stakeholders concerned have had an opportunity to submit their opinion and present/defend it at a parliamentary committee meeting, for instance.

Access to local authority premises

The Chancellor was asked to asses whether it was lawful that people with special mobility needs have no access to premises of Valga Rural Municipal Council and Government. It turned out that lack of accessibility made it impossible for a rural municipal council member in a wheelchair to work on an equal basis with others, so that the possibility to participate in local politics was restricted.

It is not lawful that the premises of local authorities are partially non-accessible for people with reduced mobility. The Chancellor asked Valga Rural Municipal Government to keep her regularly informed of progress made in improving the situation.

The Rural Municipal Government acknowledged the problem and promised to start looking for solutions, while noting that the local authority simply could not afford to upgrade the buildings to meet the required standards.

It is understandable that renovating the buildings may prove to be expensive, technically complicated and time-consuming, but reconstruction of the buildings is not the only way how to ensure access to municipal council and government working premises. The municipal council and government are also entitled to change their working arrangements and relocate to premises accessible to people with special mobility needs.

The Office of the Chancellor carried out a survey among local authorities, asking whether and to what extent the premises of municipal councils and governments were accessible. Out of 79 local authorities, 59 sent their replies to the questionnaire. 52 percent of the respondents noted that the premises of their local municipal council were fully accessible for persons in a wheelchair. 48 percent noted that full access was not possible. The survey also revealed, for example, that only 2 percent of municipal council halls had loop-amplifiers.

Availability and quality of services to the hard of hearing

At the request of the Estonian Audiological Society, the Chancellor assessed the quality and availability of the hearing aid supply service provided by the Social Insurance Board. Under the law and the Statute of the Social Insurance Board, the Board has been tasked with ensuring that all national services are well targeted.

The hard of hearing will get the necessary help only if sufficient financial resources have been made available to purchase hearing aids and the quality of the service is good: each user should be guaranteed an appropriate hearing aid and the right to have the hearing aid adjusted during its lifecycle.

According to estimates, every fifth resident of Estonia is suffering from hearing loss and their proportion in the population is expected to rise in the future. In principle, there has so far been no supervision of this aid (service). An extensive monitoring exercise, followed by analysis of the results and staff training should be the starting point for much needed comprehensive planning of this area in the future. For instance, Estonia could start training audiology specialists, establish qualification requirements for specialists who assess the quality of hearing aids and set up hearing centres independent of equipment sellers.

The Chancellor suggested that next year the Social Insurance Board should carry out a comprehensive audit (supervision) of the service to assess service quality and verify whether the service fulfilled the expectations of users and the state.

9.2. Children and young people with special needs

Support for children with special needs in kindergarten and school

The Chancellor has been contacted by several parents whose children have not received the necessary support at a kindergarten or school. Unfortunately, the statutory right (under the Preschool Childcare Institutions Act and the Basic Schools and Upper Secondary Schools Act) to obtain assistance to the necessary extent and from a competent support specialist and immediately when a child's need for assistance appears is still not guaranteed in reality in Estonia.

According to the opinion of the Advisory Council of People with Disabilities, one of the most burning issues needing to be resolved is support to children with special educational needs (including the shortage of support specialists).

The Chancellor has drawn attention to the fact that government agencies must verify whether local authorities ensure statutorily required assistance to children. By exercising their supervisory competence, government agencies ensure the functioning

of the system and that those in need obtain the assistance promised them by law. The Supreme Court has also emphasised (judgment No 5-18-7) that realisation of fundamental rights and compliance with the Constitution must be guaranteed by the legislative power. That is, the relevant regulatory arrangements for providing assistance must exist in laws and sufficient money must be allocated to perform a function, supervision over that performance must be exercised, and persons entitled must be ensured effective remedies to protect their rights.

The Supreme Court *en banc* has said that the state may not let a situation develop where the availability of essential public services depends to a large extent on the capacity to provide assistance by the rural municipality, town or city where a person resides.

The Chancellor has reminded the authorities that they must perform the functions laid down by law. The Social Insurance Board must exercise supervision in the field of child protection as well as social services; the Ministry of Education and Research is tasked with verifying the activities of kindergartens and schools.

Parents should not need to fight for their child to be able to enjoy the opportunities guaranteed by law. An example of such a fight is a petition by a parent complaining that their kindergarten-age child did not receive the necessary assistance. Several agencies discussed how to organise provision of a support person service if money from the European Social Fund is no longer available for this, or if the rules do not enable using money from the Fund to provide the service. The duty of local authorities to provide assistance is laid down by law and this does not depend on availability of money from the European Social Fund (see also Supreme Court judgment No 5-18-7). Consensus was also sought as to the most suitable kindergarten group for a child, and whether support to a child in kindergarten should be offered by a support person, teacher or other kindergarten staff member. Essentially, the dispute was also over whether it is the social or the education system that is required to provide the assistance. While disputes were ongoing, a child in need of assistance was left without assistance.

A round table debate involving all the relevant specialists was convened so as to avoid losing sight of the child's need for assistance among all the debates. As a result, it was concluded that, until no other solution is found, the child must receive a necessary support person. The Chancellor reminded the local authority that a local authority is responsible for assistance to a child both in a kindergarten as well as in providing social services, and in such situations causing dispute must find the best solution for the child. The General Part of the Social Code Act, the Social Welfare Act, and the Child Protection Act in combination stipulate that a local authority must always proceed from the best interests of the child and agencies must cooperate in providing assistance.

The good thing is that there is awareness of problems and systemic solutions to them are being sought. In January, the Ministry of Education and Research organised a seminar on support services with attendance of specialists from the Estonian Association of Social Pedagogues, the Estonian Union of Special Educators, the Estonian Association of Speech Therapists, and the Estonian Association of School Psychologists, as well as the Foundation Innove and the Office of the Chancellor of Justice. The topic of inclusive education was also covered by several media publications, and the Head of Disability Rights of the Chancellor's Office, Juta Saarevet, participated in a television programme „Suud puhtaks" which focused on inclusive education, and the debate also continued in newspapers. Juta Saarevet also gave a seminar at Tartu University for students taking the subject of "SHHI.03.046 Collaboration networking for children with special educational needs" which focused on legal issues related to inclusive education, be they the day-to-day implementation problems or choices made in law-making.

The opportunity for children with special educational needs to obtain the necessary support was also endangered during the emergency situation. Under clause 1 of Government Order No 77 of 13 March, ordinary instruction in educational institutions was suspended and distance learning was applied. Thus, children with special educational needs and their parents also had to cope with studying at home. Since teaching children with special educational needs and their coping at school needs methodological support for which parents might lack special skills, this was a complicated problem. Under clause 1.2 of the Order, the Government or the head of the emergency situation had to decide on measures to be applied in respect of instruction of pupils with special needs, but no such special measures were established during the emergency situation. Nevertheless, guidelines on organising instruction of pupils with special educational needs were drawn up by the Ministry of Education and Research. The guidelines provided clarity that some children could continue instruction in ordinary institutions, but also affirmed the fact that, in general, also children with special educational needs were being schooled at home.

It is quite understandable that, in order to prevent the spread of the coronavirus, human contact had to be reduced; however, there was a risk that some children with special educational needs are left without assistance if no support from outside the family was provided. In the guidelines, the Ministry of Education and Research pointed out that, besides educational support services, a pupil in need of support and their family can also obtain assistance from the local authority for their residence which can offer a family a support person or childcare service if necessary. However, in terms of combating the virus, it is debatable whether there is any difference as to who has immediate contact with a child: an educational specialist or a social sphere specialist. In the interests of development of a child, it might have been better if activities under the guidance of an educational specialist already known to the child had continued.

Establishing a child's disability

In autumn 2019, the Social Insurance Board changed the practice for establishing a disability, so that some disabled children were found to have no disability. The change of practice is also reflected in statistics. Parents of disabled children found that the change might leave their children without the necessary assistance (see also articles by Anneli Habicht „Ringmäng puudega lapse ümber" [Ring dance around a child with disability], „Puue - kas on või ei ole..." [Disability – is or isn't there one]). The Chancellor was asked whether such practice was lawful.

Since some services and benefits that children needed were linked to having their disability officially established, some children were also deprived of the assistance needed by them.

The Ministry of Social Affairs in its initial reply explained that children are not deprived of the necessary assistance because local authorities are obliged to help also those children in the case of whom no disability has been established. The Ministry conceded, however, that the motivation (and also the capability) of local authorities to provide assistance to children depends on whether a child has been determined as having a disability since the number of disabled children is taken into account when allocating money to local authorities.

The situation of children suffering from fenylketonuria proved to be especially difficult. To stay healthy, they need an expensive special diet but it was not possible to grant financial aid to them unless the disability had been officially determined. Without the expensive special diet, the children develop irreversible and progressing health damage, resulting in disability. A situation where the health of a child has to be ruined in order to become eligible for assistance is inadmissible.

Based on an application by the Estonian Fenylketonuria Association, the Chancellor explained the gravity of the situation to policymakers as well as implementing authorities. Fortunately, both the Riigikogu as well as the Ministry of Social Affairs understood the need for change. The Riigikogu adopted the necessary legislative amendment authorising payment of aid to children suffering from rare diseases whose disability had not yet been established to prevent the onset of disability. Until the amendment was pending in the Riigikogu, the Social Insurance Board took individual decisions by expanding interpretation of the law and granting aid to children suffering from fenylketonuria, while not establishing their disability.

Although the amendment provided a solution for some children suffering from certain rare diseases, there are still children with various other diagnoses in whose case a less severe disability or no disability at all is established compared to the earlier system. Here, too, the issue is that if a disability is officially established the child will be entitled

to certain essential services and aid, but if no disability is established they will be deprived of the necessary assistance (e.g. children suffering from diabetes).

Policymakers should first understand the purpose of establishing a disability. It is certainly not a stamp confirming the disability, but rather the assistance, services and sometimes financial support that the child needs. Often, a child's diagnosis shows what assistance the child might need. The amendment driven by concern for children with fenylketonuria moved in the right direction because there is no need to subject a child to the process of establishing a disability if assistance can be provided on the basis of information (diagnosis) available about the child.

In its letter, the Ministry of Social Affairs indicated that the whole support system, including funding, of children with special needs is currently being analysed. Initially, the analysis was expected to be completed by February 2020 but due to the emergency situation the deadline was extended.

University student with special needs

A student at the University of Tartu turned to the Chancellor with a complaint that the university had not made the necessary adjustments in its teaching practices and the teaching staff did not take medical certificates into account and questioned the accuracy of medical certificates. The student said that on numerous occasions they had been asked to explain their personal health problems and ensuing special needs, which had felt very unpleasant.

In the spring of 2019, the advisers to the Chancellor had assessed the learning environment of students with special needs at the University of Tartu and suggested amendments to the teaching arrangements. In the course of the evaluation, the advisers were told that regular training was provided to teaching and other university staff members about how to ensure smooth teaching of students with special needs. For instance, a leaflet is available containing information about how to support students with special needs. The leaflet serves as guidance to teaching staff about the proper treatment of students with special needs.

The leaflet states clearly that a member of the teaching staff (or any other university staff member) who does not have a solution to a problem that emerges is entitled to turn to an adviser specialised in working with students with special needs. The Chancellor recommended that the petitioner should contact the adviser in charge of students with special needs. The adviser is competent in resolving issues concerning members of the teaching staff who have made a mistake by not adapting teaching arrangements as appropriate.

Working parent of a disabled child

The Chancellor was asked whether it was constitutional that a local authority did not pay a carer's allowance to a carer who was working. The petitioner pointed out that if parents of disabled children go to work, operate as sole proprietors or on the basis of a contract under the law of obligations, they would lose their health insurance.

The Chancellor explained that if a parent who had been granted carer´s allowance becomes employed (including part-time employment) the local authority would cease to pay social tax for that person and, as a result, the person would no longer have health insurance. If an adult or a carer of a child works even part-time, the part-time employment should entitle them to health insurance. The employer of a part-time employee is obliged to pay at least the minimum rate of social tax for a part-time employee, which makes employing part-time employees relatively expensive. It is true that this, in turn, may prove to be an impediment to employing parents of children with special needs. Work on the basis of a contract under the law of obligations might be a flexible alternative for parents of children with special needs but this working arrangement does not necessarily guarantee them health insurance either, because entitlement to health insurance depends on payment of the minimum amount of social tax.

The Ministry of Social Affairs explained that they were in the process of working on a solution to the problem of family carers.

9.3. Access to e-Estonia

By acceding to the Convention on the Rights of Persons with Disabilities, Estonia undertook an obligation to ensure to persons with disabilities access to information and communication on an equal basis with others, including access to information and communications systems and public services.

It is characteristic of Estonia that to a large extent communication with the state takes place through electronic channels. Introduction of ever new e-services means, inter alia, that some services are from the start developed only as e-services and the same service is not available by any other means at all. If IT development fails to pay sufficient attention to all users (including users with special needs), it is inevitable that new solutions are introduced that cannot be used by everyone. This excludes some people, thereby violating their rights.

For many people with disabilities, e-government means a convenient opportunity to independently communicate with the state and fulfil their duties. With the help of the ID card, they visit an online bank, order food, books and commodities from the e-shop to be delivered to their home, enter into contracts, operate as members of the board

of an association, etc. However, if something happens with the electronic identity of these people – forgetting the password, the card getting locked, software is renewed so that is no longer interoperable with the screen reader, etc. – they also lose independent access to the state and the services offered by it.

Sometimes people turn to the Chancellor with such complaints. There have been cases where an ID card chip becomes locked for technical reasons. In that case, the Police and Border Guard Board (PBGB) replaces the card for free. However, an expert analysis of the ID card must be carried out before it can be replaced by way of guarantee. For this, the ID card must be handed over to the PBGB and the person cannot use the card as an identity document either. It may take up to a month to replace a card by way of guarantee, although as a rule it is replaced much faster. Nevertheless, in the meantime a person may encounter various problems due to lack of an identity document.

The Chancellor asked the PBGB to find a solution to replace dysfunctional ID cards as quickly as possible. The PBGB promised to inform people that in practice they would receive a new ID card by way of guarantee within a week or two. The PBGB also promised to consider the possibility of returning the original ID card to the holder as soon as the initial expert analysis was completed and until such time as a new card was made available.

It is of utmost importance that the developers of all websites and mobile apps intended for people to use the services of the state and local authorities, or in fact all public services, should take accessibility requirements into account. In Estonia, the Data Protection Inspectorate is tasked with supervising compliance with the requirements. The Inspectorate must control whether public websites and mobile apps genuinely meet the requirements of accessibility. Every agency needs additional money in order to carry out the duties assigned to it. Unfortunately, money is tight. The Data Protection Inspectorate promised, however, to launch supervision of compliance with accessibility requirements already in 2020.

The Estonian Association of the Blind complained to the Chancellor that the blind could not use the National eBooking System (to book, change or cancel a doctor´s appointment). The Association wanted to know whether the contracting authority had actually placed an order for a system which could be used with the help of screen readers, whether somebody had verified if such requirement had been fulfilled and when the National eBooking System would become accessible to the blind. The adviser to the Chancellor contacted the representative of the Health and Welfare Information Systems Centre who promised to resolve the problem by ordering further developments to ensure accessibility and add the necessary requirements to the procurement specifications.

9.4. Organisation of social services

Petitions received by the Chancellor reveal that problems still exist with availability of social services. The first to suffer are people with disabilities who are unable to participate in the life of society without receiving the necessary service.

Supreme Court judgment No 5-18-7 (December 2019) was a major milestone in which the Court confirmed that local authorities were obliged to organise social services for local people. In particular, the Supreme Court upheld an application by the Chancellor to declare several provisions of Narva City regulations on mandatory social services invalid.

The Supreme Court ruled that the state and local authorities may share the functions of provision of social services. The court noted that the ultimate responsibility for organising social services lies with the parliament and settled the case on that premise. With regard to that issue, one Supreme Court justice wrote a dissenting opinion. Based on earlier Supreme Court case-law, the justice wondered whether the obligation of a local authority stemmed from the fact that it was an inherent task of a local authority or whether it was a legal obligation imposed on it by the state. The justice also raised the issue whether the provisions on funding rural municipalities, towns and cities and provisions of the Social Welfare Act were in breach of the right of rural municipalities, towns and cities to receive sufficient money from the state for provision of social services. In the view of the dissenting justice, the Supreme Court was not in a position to adjudicate the Chancellor's application without having first answered these questions.

In the course of constitutionality review of the provisions of Narva City Council regulations, the Supreme Court agreed with the Chancellor that: (1) issues of organising social services fall under the exclusive competence of municipal councils, (2) all services must be governed by regulation(s), (3) a municipal council may restrict fundamental rights only if a statutory legal basis for this exists, and (4) no conflict with statutory provisions may arise. That means, inter alia, no restrictions can be imposed to exclude the grant of assistance to people who have a statutory entitlement to receive assistance, or to provide less assistance than prescribed by law.

The Court also highlighted some important issues which the Riigikogu must take into consideration when regulating the organisation of social services. For example, it pointed out that appropriate rules should be laid down by law. The Court noted that with a view to effective protection of fundamental rights it is vital that the rules laid down by the parliament are sufficiently precise about how rural municipalities, towns and cities can determine the level of contribution charged from those who apply for assistance (including how to take into account the financial situation of those in need

and that of their families and the extent of their maintenance obligation) and in which cases the obligation to pay for the services passes to the local authority.

The Supreme Court pointed out that § 5(3) of the Social Welfare Act did not have any regulatory effect. Sufficient funds are needed to fulfil a task: the state cannot allow a situation to arise where the availability of critical public services varies, depending to a large extent on the capacity of the local authority of the person's place of residence or location. If local authorities are not capable of providing services at a sufficiently good level, people's fundamental rights might be left without protection. Supervision must be arranged over performance of a function. In addition, effective possibilities should be created for people to assert their rights.

The Chancellor sent a circular to rural municipalities, towns and cities explaining the Supreme Court judgment. In addition, the Head of Disability Rights of the Chancellor and a Supreme Court analyst clarified the positions of the Court in the journal *Sotsiaaltöö*. The Chancellor's advisers paid a visit to the city of Narva and town of Põlva where they introduced the judgment. A radio programme called „Reporteritund" also provided a platform for discussion of social protection issues.

X. SOCIAL SECURITY

10.1. Ability to cope

The emergency situation established due to the spread of SARS-CoV-2 put many people's ability to cope under question. It also made us think about how secure we actually are for occasions when earning a livelihood to the previous extent is not possible, quick realisation of assets is not conceivable or financially reasonable, but when we have no considerable savings with the help of which to survive a difficult (lingering) period.

The Chancellor of Justice often has to answer the question whether an individual should be entitled to state support. This is natural, and the Constitution also promises people support during difficult times, equal treatment, protection of property, and respect for legitimate expectations. The state must have a constitutionally based response as to why it assists someone on one occasion and does not on another. For example, in an opinion sent to the Supreme Court the Chancellor found that the state has no constitutionally based convincing answer why some children in blended families should be left without support because the other parent of their sibling does not agree to give up family benefits or use them by taking turns.

Often people also ask about the amount of support: how much assistance should the state give someone? Is giving someone less than others allowed, or should someone be given more? On the one hand, these are political choices in which the Chancellor cannot or even may not intervene. On the other hand, it is also clear that even in the case of such a sensitive social issue decided on the political level the Constitution sets limitations and says that the Riigikogu is not infinitely free in its decision-making.

One such limitation is human dignity. In an opinion to the Supreme Court concerning a ban on deducting from a person's income the expenses incurred on prescription medication when deciding on a grant of subsistence benefit to the person, the Chancellor pointed out that the state has violated the Constitution if no minimum necessary means of subsistence are ensured to an individual. The Supreme Court also held that no justification can be found for failure to ensure the minimum necessary means of subsistence. This would result in degradation of human dignity and would distort the essence of the right enshrined in § 28(2) of the Constitution. In a significant ruling, which unfortunately did not receive wider public attention, the Supreme Court further explained that the Riigikogu enjoys a broad margin of appreciation in defining what should be considered as 'need' in terms of subsistence, and an even broader margin of appreciation in deciding how assistance should be ensured.

Nevertheless, the court may review the sufficiency of measures of assistance and intervene in the event of an obvious discrepancy between what was established by the

Riigikogu and what is required by the Constitution. That is, if the subsistence level is set too low as compared to actual circumstances, or if the types, extent and procedure for provision of assistance as a whole fail to ensure that the assistance stipulated by law prevents the need from arising.

In her opinion the Chancellor noted that ensuring all the necessary prescription medication to a person for the sum intended as subsistence benefit should be treated separately. So far, people both with or without health insurance have received assistance for buying medication from a local authority or through charity (e.g. the cancer treatment foundation). The Supreme Court said that, in view of the subsistence level and the assistance provided or offered to the applicant by public authorities (including local authority support, food aid distributed through the Estonian Food Bank, and European Union food aid), there is no reason to conclude that the applicant had suffered need. Yet it is probable that expenses incurred for prescription medication (similarly to satisfying some other essential need) may be so large as to result in a person's destitution. The court noted that, in such a situation, the public authorities may not forget that under § 14 of the Constitution a person suffering need in terms of subsistence must be ensured the right to state assistance (§ 28(2) Constitution).

The Chancellor was asked to verify whether the Riigikogu decision to reduce the amount of work ability allowance of persons with partial or no capacity for work during the months when the person himself or herself is earning sufficient income was constitutional as well as compatible with the UN Convention on the Rights of Persons with Disabilities. The Chancellor explained that under the Constitution as well as international law the state should assist people in a more difficult situation but to what extent and how the state provides assistance is decided by the Riigikogu. In addition to the work ability allowance, the state has stipulated various support and other measures to assist those who have incurred additional expenses due to their disability and/or reduced capacity for work. Sufficiency of assistance and support can be contested on the basis of legal arguments only if those in need of assistance have been generally and manifestly left in difficulty.

In another case concerning reduction of the work ability allowance, the petitioner asked the Chancellor whether reduction of their work ability allowance was correct if their income earned in Germany was low in view of the living standard there. The Chancellor explained that the Constitution allows reducing the work ability allowance if an individual themselves is able to earn income. Reduction of the work ability allowance is compatible with European Union rules.

The Chancellor was also asked to verify whether the Unemployment Insurance Fund had acted lawfully when withholding sums from the work ability allowance based on instruments of seizure issued by bailiffs, and whether the Code of Enforcement Procedure which authorises this is constitutional. In February 2020, the Unemployment

Insurance Fund launched a new information system enabling withholding sums from the work ability allowance based on several instruments of seizure issued by a bailiff. As a result of implementing the information system, people were left with less money in their hands than allowed by law. The law does not allow the Unemployment Insurance Fund to withhold sums based on more than one instrument of seizure or to make payments to several bailiffs from a debtor's work ability allowance. From March 2020, instruments of seizure are executed one by one, i.e. the next instrument is not executed before execution of the previous one is complete.

According to the Chancellor's assessment, the Code of Enforcement Procedure which enables withholding sums from work ability allowance is compatible with the Constitution. Enforcement proceedings give priority to the legitimate interest of the claimant; yet the legitimate interest of the debtor – i.e. their right to a dignified life – must also be taken into account. Work ability allowance constitutes income which supplements or replaces a person's income from work. As a rule, work ability allowance cannot be seized but in exceptional cases this is possible to a limited extent. If over a longer period no payments to satisfy a claimant's claim can be obtained from a person receiving work ability allowance, since the person has no other assets, seizing part of the work ability allowance may be fair depending on the type of claim and amount of income. Under the law, a bailiff must find a fair balance between the interests of the claimant and the debtor, as well as a solution appropriate in each particular case.

10.2. 21st century work

The current unemployment insurance system deprives of financial assistance the majority of people who have lost work-related income. For years the state has paid unemployment insurance benefit only to a third of those registered as unemployed in the Unemployment Insurance Fund. The remaining unemployed are not entitled to benefit because they do not meet all the requirements imposed on entitlement to benefit. Two years ago the Chancellor contacted the Riigikogu Social Affairs Committee and the Minister of Health and Labour with a proposal to update the unemployment insurance system. The fact that the current system has become outdated was affirmed by urgent amendments induced by the corona crisis, which legalised so-called 'gigs' (i.e. very short-term jobs).

During the emergency situation, the Chancellor received a fair number of enquiries about the conditions for entitlement to unemployment insurance benefit (e.g. unemployment benefits in the case of termination of a contract of mandate). Inter alia, it was found that if a person loses their main job but they have a natural person business account then they are not entitled to apply for unemployment insurance benefit. The Chancellor drew the attention of the Riigikogu Social Affairs Committee to the fact that depriving a person of unemployment insurance benefit merely because they have a natural person business account is very similar to the problem of

unemployment insurance of members of boards of companies, which the Supreme Court adjudicated in 2017. In that judgment, the Supreme Court held that a person may not be deprived of unemployment insurance benefit if they lose their work-related income while all the other insurance conditions are fulfilled.

The Riigikogu resolved the issue raised before by the Chancellor concerning calculation of the amount of unemployment insurance benefit. Namely, based on the formula set by the Riigikogu the unemployment insurance benefit of a person having worked in Estonia or also in another European Union member state could turn out to be significantly smaller than the person's contribution to the Estonian unemployment insurance system would have presumed. The Riigikogu supplemented the Unemployment Insurance Act with § 9(1[1]).

During the reporting year, issues were also raised by the conditions for obtaining the business start-up subsidy stipulated in the Labour Market Services and Benefits Act. The Chancellor received complaints that business start-up subsidy was not granted to persons who own or, during six months prior to applying for subsidy, owned part of a general or limited partnership or more than 50 per cent of another company. Thus, subsidy cannot be applied for by those entrepreneurs who operate only seasonally – for example, only in summer – but who would like to start another business that would also keep them active during the remaining months of the year.

Under § 28(2) of the Constitution, the state is obliged to ensure social protection to an individual in the event of unemployment but the Constitution does not specify the measures used to ensure that protection. The state must assist a person who has become unemployed but the state may choose to whom and what kind of assistance it provides. First, the Riigikogu has created an unemployment insurance system based on compulsory insurance entitling an unemployed person to apply for unemployment insurance benefit. Second, labour market benefits and services are offered which help an unemployed person to find work and promote their work-related development. The law lists several services (§ 9 Labour Market Services and Benefits Act) but an unemployed person need not receive all of them. Each service has its purpose and target group whose return to work the service promotes.

10.3. Organisation of social services

During the reporting year, the Supreme Court satisfied the Chancellor's application to repeal several provisions in Narva City Council regulations on mandatory social services. The fact that this was a significant judgment is also demonstrated by the Supreme Court press release and an opinion article published by a Supreme Court justice.

The Supreme Court ruled that the state and local authorities may share the functions of provision of social services. The court noted that the ultimate responsibility for organising social services lies with the parliament and settled the case on that premise. With regard to that issue, one Supreme Court justice wrote a dissenting opinion. Based on earlier Supreme Court case-law, the justice wondered whether the obligation of a local authority stemmed from the fact that it was an inherent task of a local authority or whether it was a legal obligation imposed on it by the state. The justice also raised the issue whether the provisions on funding rural municipalities, towns and cities and provisions of the Social Welfare Act were in breach of the right of rural municipalities, towns and cities to receive sufficient money from the state for provision of social services. In the view of the dissenting justice, the Supreme Court was not in a position to adjudicate the Chancellor's application without having first answered these questions.

In the course of constitutionality review of the provisions of Narva City Council regulations, the Supreme Court agreed with the Chancellor that: (1) issues of organising social services fall under the exclusive competence of municipal councils, (2) all services must be governed by regulation(s), (3) a municipal council may restrict fundamental rights only if a statutory legal basis for this exists, and (4) no conflict with statutory provisions may arise, i.e. no restrictions can be imposed to exclude the grant of assistance to people who have a statutory entitlement to receive assistance, or to provide less assistance than prescribed by law.

The Court also highlighted some important issues which the Riigikogu must take into consideration when regulating the organisation of social services. For example, it pointed out to the Riigikogu that appropriate rules should be laid down by law. The Court noted that with a view to effective protection of fundamental rights it is vital that the rules laid down by the parliament are sufficiently precise about how a local authority can determine the level of contribution charged from those who apply for assistance (including how to take into account the financial situation of those in need and that of their families and the extent of their maintenance obligation) and in which cases the obligation to pay for the services passes to the local authority.

The Supreme Court also pointed out that § 5(3) of the Social Welfare Act did not have any regulatory effect. Sufficient funds are needed to fulfil a task: the state cannot allow a situation to arise where the availability of critical public services varies, depending to a large extent on the capacity of the local authority of the person's place of residence or location. If local authorities are not capable of providing services at a sufficient level, people's fundamental rights might be left without protection. Supervision must be arranged over performance of a function. In addition, effective possibilities should be created for people to assert their rights.

The Chancellor sent a circular to rural municipalities, towns and cities explaining the Supreme Court judgment. In addition, a Chancellor's adviser and a Supreme Court analyst clarified the positions of the Court in the journal *Sotsiaaltöö*. The Chancellor's advisers paid a visit to the city of Narva and town of Põlva where they introduced the judgment.

Petitions sent to the Chancellor show that people and local authorities have been confused by the Minister of Social Protection Regulation No 4 of 26 February 2018 on "The physical adaptation of dwellings of disabled people", established on the basis of § 14 of the European Union Budget Period 2014–2020 Structural Assistance Act. Because of this support measure aimed at local authorities, it is often forgotten that the right of a disabled person to adaptation of their dwelling is stipulated by the Social Welfare Act and that the service is one of the mandatory services organised by a local authority. Therefore, a rural municipal, town or city government must always assess a disabled person's need for assistance in the aggregate, even when a person applies to the local authority only for adaptation of their home. If a person has applied for specific adaptations, a local authority must take a position in its administrative act on whether the applicant is entitled to those adaptations. The decision must be made within a reasonable time (see the Chancellor's opinion).

The fact that rural municipalities, towns and cities have problems with observing the principle of good administration was also demonstrated by a case concerning termination of a local authority's mandatory social service. Specifically, a rural municipality stopped paying for provision of the service without informing the person under care or their carer about this. A closer look revealed that the rural municipality itself was also unable to justify with certainty the circumstances of having done so. Since the rural municipality did not issue a written administrative act and the person was not notified about the decision, the administrative act establishing care remained in force, as did the care agreement which the municipality had concluded with the carer until the need for care ceased to exist. Based on the same agreement, care had been provided to the person during the whole period. The Chancellor asked the rural municipality to consider the possibility of making payments to the carer retrospectively. The rural municipality paid the money withheld to the carer.

The Chancellor was contacted by the father of an adult disabled son who needed explanations as to what service his child was entitled to and to what extent, and whether the necessary services laid down by law had been provided to him. It was found that the father had applied to the Social Insurance Board to receive the necessary services. Having examined the administrative act issued by the Social Insurance Board, the Chancellor recommended that, in the future, the Social Insurance Board should draw up its official decisions so that a person understands their rights and options. Since the decision by the Social Insurance Board essentially repeated the provisions of the law, the scope of the service to which the petitioner's son was entitled still remained

unclear based on the letter sent by the Board. The Board should have justified the scope of the service provided to the petitioner's son.

10.4. Reform of mandatory funded pensions

At the beginning of 2020, the Riigikogu adopted the Act on reform of mandatory funded pensions laying down the right for people to withdraw from the so-called second pension pillar before reaching retirement age and, on certain conditions, to withdraw the money collected in the pension pillar. Inter alia, people get the opportunity to independently invest their assets in the second pillar by using a pension investment account to this effect.

The reform has generated a lively debate in society, including a dispute over the constitutionality of the law. The Head of State refused to promulgate the law and referred the issue to the Supreme Court. The Supreme Court Constitutional Review Chamber referred the application by the President of the Republic to the Supreme Court *en banc* which held its session on 4 August. At the time of writing this overview, the Supreme Court *en banc* had not yet delivered its judgment.

It is not surprising that the reform of funded pensions has caused such a lively debate. It might be recalled that even before adoption of the Funded Pensions Act there was a heated debate over whether this kind of pension system supported by three pillars was right. The Chancellor has also received numerous petitions concerning funded pensions: people are dissatisfied with pension fund management charges or performance, and questions have also been raised, for instance, in connection with the duty to enter into pension contracts and the amount of disbursements.

Since this is a very fundamental and forward-looking issue decided a long time ago and affecting almost the whole of society, the broad debate on it and review of its constitutionality by the Supreme Court is extremely important. Questions which the Court needs to assess relate mostly to the constitutionality of different aspects of withdrawal of the money collected in the second pillar. The Chancellor submitted her opinion to the Court, concluding that the Act on reform of funded pensions is incompatible with the Constitution.

The President of the Republic first raised the question concerning the amount of future pensions and found that, after reform of so-called funded pensions, they would no longer correspond to the level required by the Constitution. The Chancellor found that even though the amounts of pensions immediately after the reform might not be insufficient, it cannot be claimed that they would remain precisely on the same level even without the funded pension. The reason is that the Riigikogu has not significantly changed the State Pension Insurance Act simultaneously with the reform. Since social protection of the elderly would diminish (without any sound reason) as a result of the

reform, this is not compatible with the Constitution or international law binding on Estonia.

Withdrawal of money from the second pension pillar also has an adverse effect on the rights of other pension fund unit-holders who wish to continue collecting money for the pension in the second pillar. Those unit-holders have made their choice in the knowledge that no large amount of money can be withdrawn at once from second-pillar pension funds. Thus, the Court will be assessing the constitutionality of interference with the fundamental right to property and legitimate expectations of second-pillar unit-holders. Also at issue is the constitutionality of different treatment of people who have joined the mandatory funded pension and those who have not: the first group would obtain the possibility of immediate access to the funds collected to the pension fund on account of social tax, whereas the second group would not have that possibility. Another issue to be considered is whether interference with the freedom of entrepreneurship and legitimate expectations of insurers is constitutional. The Riigikogu justifies giving the right of free disposal of pension assets to those having joined the second pillar by the argument that pension fund units are a person's own property over which they should be able to decide freely. However, the mechanism for acquiring pension fund units has been created precisely for the purpose of collecting money for a pension. Allocation of four per cent of social tax to the second pillar instead of to the state pension insurance was justified by the fact that the money would be used to pay a pension in the future.

Allowing withdrawal of the social tax collected by the second pillar prior to the reform has no substantial purpose. The mandatory funded pension could also be made voluntary so that the changes would not extend to assets collected before the pension reform. According to the Chancellor's assessment, the regulation on withdrawal from pension contracts is also not constitutional. Insurers and policyholders could not foresee these changes and they had reason to expect that the contractual relationship would continue to a significant extent on conditions under which the contracts were concluded.

10.5. Healthcare

Due to the corona crisis, the Chancellor dealt extensively with healthcare issues, concerning for example the prevention and control of infectious diseases or protection of the rights of women about to give birth. The Chancellor intervened when on 26 March 2020 the Health Board sent a letter to the Estonian Dental Association and the Estonian Private Healthcare Institutions Association, in which the Board ordered that, in connection with continuation of the spread of Covid-19 and the need for rational use of personal protective equipment, dentists and medical specialists in private healthcare institutions should stop providing planned medical care (including

laboratory services and issuing health certificates) and limit services to emergency care only.

Although the Health Board letter intended to impose restrictions and duties on individuals, the letter was not formulated as an administrative act in line with the requirements of the Administrative Procedure Act. Moreover, the addressees of the letter were not notified of those restrictions (professional associations within the meaning of the law do not treat people). The legal basis of the restrictions imposed by the Health Board remained unclear, nor did the letter contain a reference to possibilities to contest the order.

The Chancellor found that, even during an emergency situation, the freedom of enterprise of businesses cannot be restricted arbitrarily, without a clear and logical justification and in a manner that does not enable understanding precisely who the addresses of the restriction are and what their duties are.

Of course, the Chancellor also dealt with other healthcare issues during the reporting year. For example, the Chancellor enquired why it was not possible for a disabled child to obtain dental treatment under anaesthesia within a reasonable time in Tallinn. Following the Chancellor's intervention, the Health Insurance Fund checked the availability of dental treatment under anaesthesia more generally. After several verification phone calls, a representative of the Health Insurance Fund was convinced that Tallinn Children's Hospital was not complying with the requirements for keeping a treatment queue because those wishing to register for treatment were not enabled to register for an appointment but were asked to call back later. The Health Insurance Fund drew the attention of Tallinn Children's Hospital to these shortcomings.

The Chancellor sent an opinion to the Supreme Court on whether it was compatible with the requirement of equal treatment if the state guarantees health insurance only to a dependant's spouse but deprives a dependant's registered partner of this. The Supreme Court agreed with the Chancellor, affirming that spouses and registered partners have a similar maintenance obligation in respect of each other. The Court found that even though the Riigikogu enjoys broad decision-making competence in social policy issues, due to different treatment the effect on registered partners is significant since, because of this, they are deprived of health insurance and pension insurance payments. When investigating the issue the Ministry of Social Affairs has found that expanding the range of people receiving benefit would not be too expensive for the state.

The Chancellor analysed why recipients of the doctoral student allowance are paid less temporary incapacity for work benefit than those working on the basis of an employment contract. The reason is that, unlike wages, payment of a doctoral student allowance may continue even when the recipient falls ill or is on maternity leave. Thus,

the recipient of a doctoral student allowance need not lose the benefit due to illness, unlike an employee who would lose wages.

XI. LAND AND MONEY

The business environment is diverse. Therefore, this chapter covers agricultural support and related proceedings, land use conditions, construction and planning, as well as access to basic payment services, and financial supervision.

The selection of the Chancellor's activities during the reporting year 2019–2020 below mostly highlights topics about which the Chancellor was contacted more often than previously. Often, problems are so complex that, in order to achieve a result, they need to be dealt with over several years in a row. The last reporting year is characterised, in addition to a thorough analysis of the pension system (read in the chapter on "Social security"), by a considerably increased number of petitions concerning problems of agriculture and rural life. Estonian farmers are patient and peaceful, they do not wish to argue with the state or simply have no time for this. However, information received while resolving petitions by farmers shows an increase of bureaucracy in this field.

Another range of issues that has emerged concerns access to payment services and financial supervision. Combating money laundering is undoubtedly an important activity but it cannot disregard people's fundamental rights. How to ensure that a bank does not rashly close a person's bank account? How could and should potential disputes between a bank and a client be resolved? These questions are also important in combating money laundering because leaving someone without a bank account with the aim of combating money laundering does not resolve problems but rather creates new ones. In dealings without a bank account, more transactions are conducted in cash, the source and use of which is significantly more difficult to control than use of a bank account.

Certainly, the Chancellor has also not overlooked issues concerning taxation and economic activities or the environment, but conclusions on those topics can be drawn in a year's time.

11.1. Public space

The role of rural municipalities, towns and cities

Rural municipalities, towns and cities have a substantial role in designing public space and also in using some public resources. Local authorities organise spatial planning, issue design specifications, building permits and occupancy permits, and carry out construction supervision. They must also ensure that an environment suitable for local people is preserved.

Often different and opposing interests clash in designing public space. A local authority must protect the public interest while also taking into account people's fundamental

rights. Finding a compromise that satisfies everyone may be difficult and sometimes even impossible. This makes it all the more important to observe the rules laid down by law and make a well-considered and justified decision.

The Chancellor has had to explain the binding nature of a detailed spatial plan. A detailed spatial plan is binding in its entirety: once its implementation has started, all its conditions must be complied with. A detailed plan may be the result of difficult compromises, and some conditions may have been inserted in a detailed spatial plan to protecting persons' interests. Certainly, not all the conditions in a detailed spatial plan are necessarily to the liking of a developer. However, in all the proceedings within its competence a local authority must ensure compliance with the detailed spatial plan. Sometimes it may take years from the moment of establishing a spatial plan to implementing it. If vital needs or interests have changed over time, the detailed spatial plan also has to be amended or declared partially invalid. As an exception, to the extent specified by law a detailed spatial plan may also be amended by design specifications issued in an open procedure.

Although laws and regulations provide a list of documents that may be required in applying for a building permit or occupancy permit, this does not mean that all those documents should always and absolutely be requested. The Chancellor is of the opinion that those documents should be requested that correspond to the purpose of the proceedings, and reasons for requesting them should also be given if necessary. No relief from the duty of reasoning can be provided even if a rural municipality, town or city establishes administrative rules regulating the work of its officials and listing the documents required in proceedings for a building and occupancy permit. The general principles of administrative procedure must be respected in proceedings for building and occupancy permits, and the proceedings must be organised in line with the purpose, effectively, as simply and swiftly as possible, and by avoiding any unnecessary expense or inconvenience. All procedural steps arranged by a rural municipality, town or city and all the requirements imposed on persons within the proceedings must be lawful, appropriate, necessary and proportionate. It has to be understood that compliance with each requirement generally requires additional time and often also money. It is incompatible with the principle of good administration if unjustified requirements lead to additional costs.

When issuing a building permit, it should also be considered whether and what requirements need to be imposed to protect the rights of others. Construction may entail various nuisances: for example noise, which cannot be avoided. According to the Chancellor's assessment, a condition may be attached to a building permit to restrict the timeframe of causing noise and/or compel use of measures to reduce noise. Issuing a building permit need not be limited to merely taking account of the regulation on night-time peace laid down in § 56(2) of the Law Enforcement Act. For instance, noisy construction work in the vicinity of an educational institution may be restricted so that

it disturbs instruction as little as possible. Such an additional condition in a building permit also means that § 56(1) and (2) of the Law Enforcement Act would not be applied (as set out in § 56(3) clause 2 of the Act).

Real estate developments affect consumption of common water resources, and if no directions are given in real estate development the living environment may deteriorate. Even now there is a shortage of good-quality drinking water in some places in Estonia. Ground water reserves are limited and must be used economically. Therefore, a local authority should not promote use of ground water for irrigation.

Building regulations

Under previous laws, local authorities were also allowed to rely on their own regulations in building and planning activities. For example, rural municipalities, towns and cities are allowed by law (§ 19(4) of the Building Act; § 5 of the Planning Act) to lay down their own building regulation. Inter alia, regulation of planning and construction law procedures under a municipality's regulation was allowed, including setting procedural deadlines.

Current laws lay down procedural issues with sufficient detail, so that rural municipalities, towns and cities no longer need to establish their own rules. The Riigikogu has changed the legislative provisions on deadlines as well as procedure, i.e. some previously existing procedures no longer exist (for instance, written consent procedure, simplified proceedings for a spatial plan). Therefore, building regulations can no longer be implemented in compliance with the law: they may be misleading and reduce legal clarity. On that basis, the Riigikogu laid down by the Act on Implementing the Building Code and the Planning Act that by 1 July 2017, at the latest, rural municipalities, towns and cities had to bring their building regulations into line with the laws. Most rural municipalities, towns and cities have complied with this duty, yet the Chancellor had to issue a separate precept on this to several local authorities (Tõrva rural municipality, Kastre rural municipality, Räpina rural municipality, Otepää rural municipality, Mustvee rural municipality, Rakvere rural municipality, Kehtna rural municipality, Narva-Jõesuu town, Võru rural municipality, Raasiku rural municipality, Keila town, Ruhnu rural municipality, Jõhvi rural municipality, Maardu town). Most rural municipalities and towns have complied with the Chancellor's recommendation and brought their building regulations into line with the law. In many cases, amending the building regulations has been delayed due to the administrative reform.

Local authorities' right of self-organisation still allows them to regulate certain issues of planning and building law. Primarily, this includes the right to regulate the working arrangements and competence of rural municipal, town and city agencies and officials. Legislation established by rural municipalities, towns and cities must be in conformity

with the law. Under Tallinn city building regulation, the city may require submission of a draft before a building design (i.e. prior to applying for a building permit) and may process it at its own discretion. The Chancellor made a proposal to the city to amend the building regulation because laws do not prescribe such a procedure preceding the building permit procedure. The Chancellor found that the draft procedure was not transparent, its result was not foreseeable, and it made the process of obtaining a building permit unjustifiably burdensome and time-consuming. The law prescribes a planning procedure so as to exert a significant influence on the spatial development in a city.

Toleration compensation for utility networks and remuneration paid on expropriation

The Chancellor has often been asked about the so-called 'toleration' payment for utility networks located on someone's immovable but belonging to another person. Primarily, people's petitions have been motivated by the legislative amendment entering into force on 1 January 2019, under which toleration compensation depends on the purpose of land use and on the type of utility network located on the land. For example, the law no longer lays down a periodic toleration payment for tolerating an electric power cable line located on commercial land and residential land. The law proceeds from the premise that even though a cable line on such a land unit interferes with the right to property, as a rule this does not preclude using the land for its current designated purpose. This solution is compatible with the Constitution.

To construct some buildings or sites in the public interest, it is inevitably necessary to expropriate land in private ownership. The Acquisition of Immovables in Public Interest Act has been in force for a short period (as of 1 July 2018) and the practice of implementing and interpreting it is still developing. Although regulatory provisions promote expropriation of land based on agreement and also lay down compensation in the case of agreement, it is inevitable that sometimes no agreement is reached. Primarily, this is prevented by different understanding of the value of land to be expropriated.

The Chancellor has received complaints that the price offered for expropriation does not cover the business income envisaged in the owner's business plan and lost due to expropriation. The income envisaged in the business plan is, first and foremost, a forecast which might never become a reality. The Constitution does not enable the conclusion that the Acquisition of Immovables in Public Interest Act should necessarily contain different regulatory provisions and require mandatory compensation of lost income envisaged in a business plan. The law lays down the procedure for resolving these disputes: if a person disagrees with the price offered for expropriation of land, they should have recourse to the court. This is also stipulated by § 32(1) of the Constitution.

The owner's home may be located on land to be expropriated in the public interest, so the law provides for a possibility of additional compensation if agreement is reached. The wording of the law does not specify the conditions for paying that compensation. For example, it is not clear whether the owner themselves should live in the dwelling subject to expropriation or whether the owner's family members could also be entitled to additional compensation regardless of whether they form a common household with the owner or are a separate family. The fact that the law does not specify the conditions for paying additional compensation does not render the law unconstitutional.

11.2. Rural entrepreneurship

Life in rural areas remains and develops only thanks to people who are willing to live in the countryside, and engage in farming or other entrepreneurship there. Communication with the authorities, including applying for support and verification procedures should not become unnecessarily burdensome.

Work in the fields generally begins in spring and ends in autumn. During that time, farmers have to be mostly active in the fields, sheds and pastures, not sitting at a computer and filling out forms sent by government agencies. Therefore the Agricultural Registers and Information Bureau (PRIA) should not force a farmer to check their parcels and maps literally in springtime. In the same way, an official from the Veterinary and Food Board should not come to a livestock shed to count sheep at the busiest time when animals are giving birth. This kind of ill-considered organisation of work most of all affects small producers who cannot hire a separate person to manage paperwork and work at the computer. Agencies must better take into consideration farmers' day-to-day work, so that the state's inability to plan work would not impede legitimate entrepreneurship.

Review of support applications must proceed from the purpose of support. The executive cannot arbitrarily and without a legal basis impose additional conditions on applicants for obtaining support. The conditions for support must be fit for purpose and must be capable of fulfilment.

For example, § 7(7) of the Minister of Agriculture Regulation contains the requirement that the keeper of an animal must submit data to the register of farm animals within seven days.

So if one farmer sells to another a herd of several hundred animals, the new owner must enter several hundred animals in the register of farm animals within seven days. According to farmers, it is not possible to fulfil this requirement within seven days unless the seller of the herd previously carries out the necessary steps for this in the

register. At the same time, the new owner of the herd may lose agricultural support if the entry in the register is late. When setting the conditions for support, the Ministry of Rural Affairs should take better account of cases occurring in reality and real-life circumstances.

In the course of an inspection by PRIA, a checklist for fields is filled out manually on the spot about the circumstances that a PRIA specialist found in the field, and photographs are taken. Only after the on-the-spot check would PRIA ascertain shortcomings found in the fields, draw up a checklist on this and send it to the applicant farmer for examination. PRIA checklists are drawn up as a table which is difficult to read, and so a farmer often does not understand what problem exactly PRIA is raising. Farmers are paid support through a decision made on the basis of the checklist. Therefore, a farmer must clearly understand what exactly PRIA is reproaching them for. The checklist should also describe the consequences that the shortcomings ascertained may bring about. The farmer must also receive clear information as to how and during what period they can submit their objections prior to the making of a decision.

The Chancellor has also received information that PRIA is not always ready to hear farmers during extra-judicial challenge proceedings. The Administrative Procedure Act and the principle of good administration stipulate that a person must always be given this opportunity and a reasonable hearing must be substantive and not a mere formality. For a farmer looking for an explanation from PRIA a meeting with PRIA lawyer is not sufficient. A PRIA official with substantive knowledge of land cultivation, growing arable crops, etc., should also be present at the meeting. Probably, the discussion and dispute are substantive and highly practical, so that the reasoning and objections should also relate to the particular case and be substantive.

PRIA's practice of amending administrative acts is also not compatible with the principle of good administration. An administrative act that has already been contested and is partially amended cannot be annulled in its entirety so as to newly adopt it in a partially unamended form. If a contested administrative act is annulled and readopted in a partially amended form the person would in fact have to contest the readopted administrative act for the second time. The administrative act which actually annuls the previous administrative act cannot be entitled as an amendment of the administrative act either, as this would be misleading. In particular, if an administrative act issued in respect of many persons is substantively amended only, for example, in respect of person A. If persons B and C have completed the mandatory extra-judicial challenge proceedings and filed a complaint with the court, they should again contest the same administrative act and complete the administrative challenge proceedings before having recourse to the court.

Several problems have arisen in connection with granting use of state land. Under the Land Reform Act, usufruct of state-owned arable land could be transferred to a family

member only if the family member operated as a sole proprietor. This was so even if the family member was engaged in agricultural production in the form of a private limited company or public limited company. Due to this statutory requirement, in that case the generation taking over agricultural production had to begin operating as a sole proprietor. This kind of arrangement brought about the obligation to keep accounts for two different types of entrepreneurship. The Chancellor made a proposal to the Riigikogu Rural Affairs Committee to consider amending the law. The Riigikogu has already amended the Land Reform Act and the problem should now be resolved.

Another problem that arose is also related to usufruct contracts. For years, many tenants of arable land have been able to apply for agricultural support from PRIA. However, during the past year PRIA has changed its administrative practice and now refuses to pay support to producers who for years have cultivated state-owned arable land on which usufruct has been established and which usufructuaries have leased to them. PRIA is also reclaiming previously paid support from producers.

PRIA explained the change of administrative practice by the fact that a check of area payments and payment applications revealed problems with land use rights. However, it is incomprehensible why PRIA had not noticed those problems before as the arable lands in question have belonged to the state since as long ago as the land reform. Farmers who have been cultivating these lands for years cannot understand how the state, having paid them support for cultivating state-owned arable land, has now suddenly found that paying the support is no longer possible and is reclaiming the support previously paid.

With regard to all area payments, the requirement applies that to be eligible for support a legal basis for land use must exist. PRIA interprets this so that if the applicant is not a usufructuary of state land but is only on the basis of a lease contract cultivating arable land subject to usufruct, then no support can be applied for that land. At the same time, legislation does not specify what a legal basis for land use means in terms of applying for support. Nor is it specified that state-owned arable land on which a usufruct has been established and which has then been leased is not deemed eligible for support. Previous administrative practice has created a legitimate expectation in the applicants that the state agrees with cultivation of its arable land subject to usufruct even if this takes place on the basis of a contract of lease entered into with the usufructuary.

Such an abrupt change of administrative practice without amending legislation is not compatible with the principles of good administration, legal certainty or legitimate expectations. In its decisions PRIA must take into account the fact that the agency as the representative of the state had to have at its disposal information on state-owned arable land on which usufruct had been established. The administrative court must now

assess whether PRIA decisions based on which support paid in previous years is reclaimed from farmers are lawful.

Problems still exist with cadastral records of lands, which has resulted in violation of people's right to property. For years, the state has carried out land reform in a manner that has allowed lack of clarity concerning boundaries of immovables, and so the state must now deal with the consequences in a way that does not violate persons' right to property. If activities are carried out without precisely knowing the boundaries of an immovable, it may happen that, for instance, a cycle and pedestrian track is built on someone else's land or trees are cut down from someone else's plot.

Land surveyors cannot be held responsible for shortcomings in an administrative authority's earlier technical capability or work arrangements either. If previously inspection procedures could not be carried out with sufficient thoroughness, now a possibility should be reckoned with that the state will have to organise control measurements at its own expense.

The state must also respect people's fundamental right to property when planning roads, registering forest notifications or carrying out supervision over hunting.

11.3. Banking

Access to payment services

Several people and companies have complained to the Chancellor that banks had restricted their use of basic payment services (internet bank, card payments and ATM) or closed their bank account and refused to open a new account.

Undoubtedly, this puts these people and companies in a difficult situation as without a bank account it is impossible, for example, to pay for utilities or make other necessary payments. Economic activities of companies have essentially stopped after closure of their bank accounts, or they even have to close down completely.

Closing a bank account also restricts a person's right of recourse to the court to protect their rights. State fees must be paid by bank transfer, or a person may also need paid legal assistance and a payment channel to make that payment. Moreover, hasty closure of bank accounts neither promotes the state's economic development nor increases social well-being.

The desire of banks to mitigate possible risks can be understood. The fight against money laundering must be systematic. However, it is not legitimate if under cover of this people are deprived of access to basic payment services and legal remedies, thereby creating a new basis for their social and economic exclusion.

In a memorandum to the Minister of Finance, the Chancellor noted that the requirements of combating money laundering may not be used as a pretext to ignore financially less attractive persons (including, for instance, tax debtors or people owing money in enforcement proceedings). Banks may find it less attractive to open an account for a politically exposed person since this involves elevated due diligence for the bank, and to comply with it the bank needs to incur more expenses than usual.

Although under the Credit Institutions Act banks are allowed to choose their clients, the right of choice of the banks in the case of natural persons is restricted by the Law of Obligations Act. This law obliges a bank to enter into a basic payment service contract with a consumer lawfully residing in the European Union in the event of justified interest of a consumer.

Within the meaning of the Emergency Act, payment services are vital services whose continuity is ensured by the Bank of Estonia. Thus, restriction of basic payment services (including closure of bank accounts) amounts to restricting people's access to vital services which is particularly important in a crisis situation (e.g. in the event of a disease outbreak) where a person might not have any other possibility to pay for purchases.

On that basis, a bank must enter into a payment service contract and open an account for a person in respect of whom no money laundering and terrorist financing suspicion exists. Also, opening a bank account cannot be refused when a person and the contract conditions sought by them conform to the statutory requirements, the bank's general terms and conditions for services or the standard conditions for provision of payment services.

The bank must ensure that a person can use basic payment services to the extent of the unseized amount. Provision of basic payment services may not be restricted in any manner (including the number of transactions), and the range of services offered under a payment service contract must remain the same (§ 710^1(9) and (10) Law of Obligations Act). On that basis, it is not lawful to restrict the right of an enforcement proceedings debtor to make payments with a debit card, transactions in an internet bank, and withdraw cash from an ATM.

The Consumer Protection and Technical Regulatory Authority in its proceedings ascertained that only one bank offering the vital payment service (AS SEB Bank) ensured a natural person all the basic payment services to the extent of the unseized amount. Luminor Bank, Swedbank as well as LHV Bank have all restricted payment services. Supervision of the banks by the Consumer Protection and Technical Regulatory Authority is still pending.

Under § 115(5) of the Code of Enforcement Procedure, if a bailiff has sent an instrument of seizure of a debtor's account to a bank for enforcement, the instrument of seizure is also deemed to be valid in respect of accounts opened by the debtor in the future. Subsection (5^1) of the same section specifies that a bank may also refuse to open an account for a debtor if an instrument of seizure received from a bailiff is subject to enforcement in the same bank regarding an account of the debtor. However, § 115(5^1) of the Code of Enforcement Procedure does not prohibit a bank from opening an account if the person does not have an existing account in that bank. Contrary to the Code of Enforcement Procedure, the Taxation Act stipulates (§ 131(5) of the Act) that a bank is prohibited from opening a bank account for a taxable person if an order of a tax authority concerning seizure of the bank account of the taxable person has been received.

Thus, current legislative provisions are contradictory. Section 115(5^1) of the Code of Enforcement Procedure, in principle, allows opening an account for a debtor, whereas § 131(5) of the Taxation Act precludes this for certain persons. Moreover, the Law of Obligations Act does not provide for a possibility to refuse to open an account for an enforcement proceedings debtor or a tax debtor. Under the Law of Obligations Act, nor can an account of debtors be closed or their access to basic payment services restricted.

Restrictions related to a bank account even further increase a debtor's financial exclusion and complicate the payment of debt. Based on the Payment Accounts Directive and recommendations by the European Commission, such restrictions should be avoided. Due to these restrictions, people may find themselves in a particularly difficult situation first of all in the event of a larger crisis.

The Chancellor found that the Minister of Finance should review the rules in the Code of Enforcement Procedure and the Taxation Act and ensure that enforcement proceedings debtors as well as tax debtors have access to an account and that they can also use basic payment services in reality.

Risk assessment and organisation of financial supervision

To combat money laundering, clear principles and control mechanisms need to be put in place which would rule out use of illegal and opaque financial schemes.

Based on § 89(9) of the Credit Institutions Act, in restricting access to the basic payment service banks rely on the provisions of § 20 and § 42(1) of the Money Laundering and Terrorist Financing Prevention Act. Under these provisions, the basis for termination of a payment service contract is change in a bank's risk appetite, i.e. change of the so-called business model. Based on the risk appetite documents drawn up by banks, a bank determines what risks it is prepared to take.

Under international standards, guidelines on combating money laundering should primarily regulate risk management. However, it is not ruled out that instead of management of risks, in fear of financial supervision the banks in Estonia have gone down the road of risk avoidance.

FATF (*Financial Action Task Force* – an international intergovernmental cooperation organisation which coordinates the fight against money laundering and terrorist financing) recommends applying an integrated risk-based approach by banks because money laundering risks are not the same in all cases. Even though a client may have a high risk level, they do not necessarily engage in money laundering or terrorist financing. In order to verify the possible risks of money laundering related to high-risk clients, enhanced due diligence measures need to be applied.

FATF and the Moneyval Report recommend banks using risk management instead of risk avoidance. Termination of a client relationship should be assessed on a case-by-case basis and can be justified only where risks of money laundering and terrorist financing cannot be mitigated (point 7).

Based on the foregoing, the Chancellor contacted the Financial Supervision Authority in order to draw attention to closing accounts of legal persons (because of change in the risk appetite of banks), which neither promotes development of the national economy nor increases social well-being. Suspicions related to justification of closing the accounts should be verified in the course of financial supervision and, where necessary, possibilities to resolve the problems should be sought.

Effective and reliable functioning of banks is essential for economic development, as well as to ensure the well-being of people and economic stability. Effectiveness and reliability of banks should mean simultaneously combating money laundering as well as smooth and swift bank transactions in lawful economic activity. In this respect, a balance should be found between a bank's need for information and a person's duty to submit any materials a bank requests.

The Financial Supervision Authority carries out financial supervision over banks in order to enhance the stability, reliability, transparency and efficiency of the financial sector, to reduce systemic risks and to promote prevention of abuse of the financial sector for criminal purposes, with a view to protecting the interests of clients and investors by safeguarding their financial resources, and thereby supporting the stability of the Estonian monetary system (Financial Supervision Authority Act § 3(1)). Under § 3(3) of the Financial Supervision Authority Act, financial supervision is conducted only in the public interest. The Supreme Court has held that the purpose of financial supervision is to ensure that a credit institution operates in compliance with the current law and does not harm the public interest.

The reliability of the financial sector is guaranteed by the state through appropriate laws as well as state financial supervision. Supervision must ensure that the financial sector and its participants conform to requirements, and the supervisory authorities intervene decisively if the aims of financial supervision so require. The function of the Financial Supervision Authority is, inter alia, to ensure that the financial sector functions transparently and effectively and, in addition to fulfilling other aims, also protects the interests of clients. The Financial Supervision Authority also guards over compliance with the requirements of legislation in combating money laundering. Review of legality should not be control of lawfulness in an individual case, which is ruled out by § 3(3) of the Financial Supervision Authority Act. However, this does not mean that it is not in the public interest to group similar individual cases and ascertain the circumstances and reasons for problems related to them, and draw generalised conclusions on that basis.

The state must ensure systematic protection of fundamental rights, and financial supervision plays an important role in this. Certainly, where necessary, the relevant area needs to be regulated but any changes must fit in with the rest of the legal order. Many questions have been raised in connection with imposing administrative fines but resolving them is complicated and requires a detailed debate.

XII. CITIES, TOWNS AND RURAL MUNICIPALITIES

Chapter 14 of the Constitution guarantees the autonomy of local government, i.e. the right of local authorities to resolve and manage local matters independently. Naturally, rural municipalities, towns and cities must observe the Constitution and other laws in their activities. A local authority must respect people's fundamental rights and freedoms, save taxpayers' money and be honest in its dealings.

Local authorities are not a local extension of the arm of the national Government or ministries. The idea of local government is that local matters are resolved by the community itself in a manner most suitable for the particular city, town or rural municipality. The state should provide support in this process: matters should be arranged so that local authorities have enough money to promote local life. The state may also impose functions of the state on local authorities by law, but in that case sufficient funds should be provided from the state budget to fulfil these functions. Local and state budgets are separate.

During the reporting year, the Chancellor of Justice had to resolve several legal issues related to the working arrangements of municipal councils and rural municipal, town and city governments, including those arising from the emergency situation imposed because of the spread of the coronavirus. For example, the Chancellor recommended using flexible solutions for organising the work of municipal councils in the emergency situation (see Municipal council sessions in the emergency situation). The Chancellor also verified that rural municipalities, towns and cities perform public functions lawfully and do not violate fundamental rights and freedoms of people and legal persons.

12.1. Working arrangements of local authorities

A municipal council is a body laid down by § 156 of the Constitution. Thus, it enjoys the right of self-organisation, including the right to establish its working arrangements and procedural rules. The right of self-organisation, i.e. the right of discretion, cannot justify arbitrary acts. When exercising its right of self-organisation a municipal council must observe the rules and principles enshrined in the Constitution and the European Charter of Local Self-Government as well as laws. A municipal council also establishes more precise rules of procedure for the rural municipal, town or city government, the bases and procedure for formation of committees as well as the bases for their operation. Several issues related to working arrangements of a municipal council and government are regulated by the Local Government Organisation Act.

Deliberation by a municipal council of draft legislation initiated by a municipal council member

Based on a petition received by the Chancellor, she reviewed the legality of § 20(5) of the statutes of Jõgeva Rural Municipality. According to that provision, a draft legal act is not included on the agenda of a municipal council session unless it receives approval from the relevant municipal council committee, or – in the case of a draft referred to several committees – the approval of the lead committee. If the committee rejects the same draft act for the second time, the municipal council chair shall decide on inclusion of the draft on the session agenda.

The Chancellor found that the provision could be interpreted so that it does not result in violation of a municipal council member's right to initiate draft legislation: that is, the municipal council chair decides on inclusion on the agenda of a draft legal act submitted for the second time in line with the requirements (i.e. conforming to the requirements laid down by the municipal council) but not receiving support in the committee.

If a municipal council member has initiated draft legislation meeting all the requirements but the majority of a council committee (or, e.g., the committee or municipal council chair) rules out deliberation of the draft at a session within a reasonable time, this excessively restricts exercise of a free mandate. Municipal council opposition member(s) enjoy(s) the right to participate in law-making in the municipal council within the limits of their mandate. Protection of the rights of a political minority is an inseparable part of the principle of democracy (§ 1(1); § 10; § 156 of the Constitution). Also, arising from the principle of political responsibility, a situation should be avoided where – even before any deliberation – draft legislation meeting all the requirements is excluded from municipal council proceedings. This applies all the more if achieved by votes of committee members who are not municipal council members (see the opinion on "§ 20(5) of the statutes of Jõgeva Rural Municipality").

Session invitation and notification of materials

Based on a petition, the Chancellor verified whether Haljala Rural Municipal Council had lawfully handled the drafts of the municipality's development plan 2019–2030, budget strategy 2020–2030, and 2019 supplementary budget No 1.

Although procedural errors in handling this draft legislation did not require annulment of the legislation, yet as the principle of good administration (§ 14 Constitution) had been breached the Chancellor made to the municipal council and municipal government a proposal to ensure compliance with the principles of good administration. Inter alia, this means that the municipal council must approve the budget strategy and the development plan by 15 October at the latest (§ 37^2(7) and (3)

Local Government Organisation Act), comply with the requirements for budget proceedings established by itself, and make the session invitation and materials available to municipal council members in time.

Section 43(3) of the Local Government Organisation Act stipulates as follows: "When convening a municipal council session, issues to be discussed shall be indicated in the notice of the session which shall be forwarded to the municipal council members not less than four days prior to the municipal council session. Together with the notice, the session materials shall be made available to the municipal council members." That four-day deadline should be calculated in line with the general procedure for calculating deadlines (§ 135(1) and § 137(1) General Part of the Civil Code Act). Compliance with the requirement of the four-day deadline is not a mere formality; its purpose is timely notification to municipal council members of an upcoming session so that they could prepare sufficiently thoroughly for deliberation of the issues on the agenda (see point 1 of the proposal).

Participation in an e-session

Mustvee Rural Municipal Government asked the Chancellor about electronic sessions since some municipal council members wanted the council statutes to stipulate the possibility of participation in a council session by electronic means.

In her reply, the Chancellor noted that the Local Government Organisation Act did not regulate virtual participation in municipal council sessions. However, this does not rule out stipulating that possibility in a rural municipality's statutes. It is important to bear in mind that all municipal council members should have equal rights in exercising their mandate. This also includes possibilities for participation in council sessions. Although virtual communication is somewhat different from face-to-face communication, limitations on the exercise of a free mandate by a municipal council member participating at a session virtually are not so serious as to legally preclude the possibility of virtual participation at a municipal council session.

A municipal council may restrict the exercise of a free mandate by a council member. However, those restrictions may not be arbitrary or restrict the free mandate excessively. For example, it would be difficult to find a legitimate purpose for a restriction according to which a municipal council member may not participate virtually in a municipal council session more than twice consecutively. Also, a restriction which is legitimate in substance may not be applied arbitrarily. As to the basis on which a municipal council member may, for example, request interruption of voting in connection with an interruption in transmission of the session, this would be determined by the municipal council.

As a rule, oral agreements on municipal council session arrangements do not replace written law. If legal problems arise, a solution is found, first and foremost, based on legal norms and principles.

Although virtual participation is used at municipal council sessions, this still remains only an additional possibility for participation in the work of the council. The traditional session (i.e. with physical presence of municipal council members) has proved itself in practice and, in view of the substantive quality of local democracy (§ 156 Constitution), this should remain the prevalent form for participation at a municipal council session. The Chancellor was asked about holding electronic municipal council meetings mostly during the emergency situation (in more detail, see the chapter on "Rule of law in an emergency situation").

Refusal to give information to municipal council members

At the request of a member of Rae Rural Municipal Council, the Chancellor assessed the lawfulness of the rural municipal government in replying to their written question, and made the municipal government a proposal to comply with the principle of good administration.

The Local Government Organisation Act (LGOA) does not explicitly stipulate that a person or body replying to a written question by a municipal council member may refuse to provide information unless this is precluded by law. However, this does not allow for the conclusion that if a municipal council member asks for information in such a large amount that analysis of the information impedes the municipal government's performance of public functions and does not enable replying to the question by the deadline, the government could not refuse to reply (§ 26(2) (first sentence); § 30(1) clause 3 LGOA). Sufficient reasoning must also be given for refusal to provide information since this is a discretionary decision. Thus, § 5(10) of the Response to Memoranda and Requests for Explanations and Submission of Collective Addresses Act is also applicable: in the event of refusal to reply, the municipal council member must immediately be informed what deficiencies they should eliminate in order to receive a response to their written question. Under that provision, a municipal council member and the addressee of their question should look for a compromise and refrain from misusing their right. At the same time, this helps to ensure that the principle of good administration (§ 14 Constitution) is observed.

Connected persons and procedural restrictions

The Chancellor drew the attention of Maardu Town Council to the fact that a municipal council in its rules of procedure or other legal acts may not limit concepts defined by law or the bases for applying a procedural restriction (see the opinion on "Rules of procedure of Maardu Town Council", point II).

Section 7 of the Anti-corruption Act lays down the concept of a connected person, which also includes legal persons. Section 11(1) of the Act requires refraining from making a decision if at least one of the following circumstances exists: the decision is made or the act is performed with respect to an official or a person connected to them; the official is aware of their own economic or other interest or an economic or other interest of a person connected to them and which may have an impact on the act or decision; the official is aware of a risk of corruption. A municipal council member may not participate in the preparation, deliberation and resolution of legislation of specific application in the municipal council with regard to which a procedural restriction extends to the member under the provisions of the Anti-corruption Act (§ 17(5) LGOA). In that case, the municipal council member is required to make a statement prior to deliberation of the issue that they will not participate in that deliberation. Depending on circumstances, violation of a procedural restriction is punishable as a misdemeanour (see § 19 Anti-corruption Act) or as a criminal offence (§ 300[1] Penal Code).

Official travel of a municipal council chair

The Chancellor was asked to assess whether the procedure laid down in the Valga Town Council regulation for secondment of the chair of the municipal council to official travel was lawful. The regulation authorised the municipal council deputy chair to approve and draw up papers concerning official travel of the municipal council chair.

The Chancellor found that the part of the regulation regulating secondment of the municipal council chair was lawful.

Under § 11(2) of the Anti-corruption Act, in the case of a procedural restriction, an official is prohibited from assigning to subordinates the task of performing an act or making a decision instead of the official. If due to a procedural restriction an official cannot make a decision or perform an act, they must immediately inform their immediate superior or the person or body that has the right to appoint the official. The immediate superior or the person or body with the right to appoint the official shall themselves perform the act or make the decision or assign this task to another official. A municipal council shall elect its chair and deputy chair from among its members (§ 22(1) clause 14 LGOA). A deputy chair of a municipal council is not a subordinate of the chair of a municipal council, so the requirements of the Anti-corruption Act have not been violated.

Subordination of the chair of the municipal council audit committee

A municipal council member enquired whether the chair of a rural municipality's audit committee as head of an agency administered by the municipality may be directly subordinated to the rural municipal mayor. Currently, no such ban exists in the law, but

it will be introduced as of autumn 2021. As of the day of announcement of the 2021 municipal council elections, a provision in the Local Government Organisation Act enters into force stating that a member of the audit committee may not perform the functions of a chief executive, head, or member of the board of a company, foundation or non-profit association under the dominant influence of the same rural municipality, town or city, or the functions of a head or deputy head of an agency administered by an administrative agency of the same rural municipality, town or city.

However, members of an audit committee must already comply with the rules of the Anti-corruption Act concerning avoiding conflict of interest, restrictions on activities or procedural restrictions, and refraining from decision-making. If the chair of an audit committee is simultaneously the head of an agency administered by an administrative agency of the rural municipality, their work in the audit committee is rendered difficult because, with a view to avoiding conflict of interest, they should withdraw from a large part of their work. In supervision over activities of a rural municipal, town or city government, the audit committee plays a central role, so that the independence of members of the audit committee is extremely important.

Access to local authority premises

The Chancellor was asked to assess whether it was lawful that people with special mobility needs have no access to the premises of Valga Rural Municipal Council and Rural Municipal Government.

It is not lawful if the offices of local authority bodies are partially inaccessible to people with special mobility needs. The Chancellor asked the rural municipal government to inform her regularly about the steps that have been taken to change the situation (see the opinion "Access of people with special mobility needs to rural municipal council and municipal government premises").

The municipal government and council must arrange their work so that municipal council members with special mobility needs, as well as people with special mobility needs wishing to observe a municipal council session on site, could access the council session room without impediment. The work of a rural municipal, town or city government must also be arranged so that people with special mobility needs are ensured access to working premises.

It is understandable that renovating buildings may prove to be expensive, technically complicated and time-consuming, but reconstruction of buildings is not the only way to ensure access to municipal council and government working premises. The municipal council and government are also entitled to change their working arrangements and relocate to premises accessible to people with special mobility needs.

Article 7(1) of the European Charter of Local Self-Government also stipulates that the conditions of office of local elected representatives shall provide for free exercise of their functions. Under Article 2(1) of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority, the parties shall take all such measures as are necessary to give effect to the right to participate in the affairs of a local authority.

12.2. Organising local life

Under § 154(1) of the Constitution, all local matters are determined and administered by local authorities, who discharge their duties autonomously in accordance with the law. That constitutional provision entitles rural municipalities, towns and cities to resolve all local matters without needing special authorisation for this. This right precludes laying down an exhaustive list of local matters in laws. However, the right of self-organisation, i.e. autonomy, is not unlimited: the words "discharge their duties ... in accordance with the law" in § 154(1) should be understood as the requirement of legality (see the opinion "On the right of self-organisation and interpretation of law"). When organising local life, rural municipalities, towns and cities must observe persons' fundamental rights and freedoms.

Encumbrances imposed under property maintenance rules

The Chancellor was contacted by a resident of Pärnu city who wrote that, due to various circumstances, they were unable to maintain the municipal land (200 m^2) adjacent to their immovable. They asked the city to relieve them of the encumbrance but the city refused and suggested that the petitioner should pay 1080 euros a year to the public maintenance company.

The Chancellor asked Pärnu City Council to consider amending the regulation on "Establishing property maintenance rules and imposing an encumbrance" so as to avoid the risk of excessive restriction of fundamental rights in discharging the encumbrance (see the opinion on "Encumbrance imposed under property maintenance rules").

Section 157(2) of the Constitution stipulates that local authorities have the right, on the basis of the law, to establish and levy taxes, and to impose encumbrances. More specifically, local authority encumbrances are regulated in § 36 subsections (2)–(9) and § 22(1) clause 4 of the Local Government Organisation Act. It does not follow from these provisions that a rural municipality, town or city should impose an encumbrance to ensure property maintenance on their public territory. A local authority may choose between several solutions. Fundamental rights may not be excessively restricted when imposing an encumbrance.

Excessive restriction of a person's fundamental rights in discharging an encumbrance can be prevented by flexibility in regulations established by a municipal council. In a regulation on an encumbrance, a municipal council may allow advantages to a person in discharging an encumbrance or relieve them of discharging an encumbrance.

Pärnu property maintenance rules only see the municipal council's role in setting the cost of the encumbrance based on materials submitted by the economic department. Under the law, such a solution is possible but, in the specific case, this may prove to be insufficient and result in excessive restriction of a person's fundamental rights. It is important to avoid a solution where, in order to discharge an encumbrance, a person is forced to apply for social assistance or support from public authorities.

In its reply to the Chancellor, Pärnu City Council announced that the city was preparing new property maintenance regulations and that the Chancellor's proposals would be considered.

The Chancellor was asked to verify the lawfulness of a provision in the regulation on "Establishing property maintenance rules and imposing an encumbrance". Under that provision, with a view to property maintenance, a natural and a legal person must carry out necessary work on an immovable in their ownership or possession, or on other territory in their use, and on immediately adjacent public territory between their immovable and the road. The petitioner asserted that maintenance of an area which is part of a cadastral unit with designated use as transport land, or an area within the road protection zone with no pavement, should be ensured by the owner of the road. In support of their opinion, the petitioner cited the provisions of the Building Code (§ 97(6), § 71(1) and (3)) and the Minister of Economic Affairs and Infrastructure Regulation on the "Requirements for the condition of roads".

The Chancellor concluded that the Building Code and the regulation on the "Requirements for the condition of roads" do not deprive a municipal council of the right to set the extent of an encumbrance for property maintenance purposes under § 22(1) clause 4 of the Local Government Organisation Act in the manner done by Pärnu City Council. The Building Code and its implementing legislation do not impose on a road owner a general duty of property maintenance within the road protection zone or on the road area. The purpose and substance of the encumbrance imposed under § 22(1) clause 4 of the LGOA and the duties extended to a road owner under the Building Code and its implementing legislation are different.

Regulations on keeping dogs and cats

Based on a petition, the Chancellor reviewed § 6 of the Rakvere rural municipality regulation on keeping cats and dogs and found that several provisions under this section were incompatible with the laws and the Constitution.

The above section in the regulation changed the scope of regulation of the Animal Protection Act and imposed public financial obligations without a legal basis. A municipal council may not change the rules contained in laws (either to restrict or expand the scope of a law) by its regulation. A municipal council may also not impose on people duties related to stray animals, which the law has imposed on local authorities. Section 66^3 of the Local Government Organisation Act is a penal norm whose more specific elements defining the offence are set in a regulation on keeping dogs and cats. Thus, when establishing the regulation it is particularly important to observe the purpose of the statutory delegating norm so as to avoid making punishable something that was not deemed punishable by the Riigikogu. A municipal council may impose a public financial obligation only on the basis of a law (see the opinion on "§ 6 of Rakvere rural municipality regulation on keeping cats and dogs").

Rakvere Rural Municipal Council brought § 6 of the regulation into line with the laws and the Constitution.

Setting kindergarten expenses

The Chancellor was asked to check the provision in the Narva City Council Regulation on ("Setting the rate for part of other expenses to be covered by parents in Narva city preschool municipal childcare institutions") by which the municipal council authorised Narva City Government to decide on the duty of parents in covering expenses of municipal childcare institutions during the emergency situation.

The provision was introduced in the emergency situation and the reason given for this was that, since during the emergency situation it had been strongly recommended not to take children to the kindergarten it "was not reasonable or fair that parents should pay the parental contribution for the time when a child was forced to be away from the kindergarten due to the emergency situation. Once an emergency situation is declared, as a rule, it is necessary to decide quickly and, therefore, it is appropriate and reasonable to delegate such decision-making to the city government".

The Chancellor found that this provision in the regulation contravened § 27(3) and (4) of the Preschool Childcare Institutions Act and thus also the principle of legality laid down by § 154(1) and § 3(1) (first sentence) of the Constitution.

Making concessions to parents of preschool municipal childcare institutions in an emergency situation or relieving them of payment of other expenses (maintenance costs, staff wages, social tax, costs of teaching aids) of childcare institutions corresponds to the principle of the social state (§ 10 Constitution). In doing so, a local authority must act lawfully. A decision on whether parents must cover part of the other expenses of a childcare institution, and the amount of the parents' own contribution, must be made by the municipal council. A municipal council cannot delegate this decision to the city government. The fact that the delegating provision in the regulation contravenes the law does not mean that the city should retroactively reclaim from parents other expenses incurred during the emergency situation.

Narva City Council replied to the Chancellor that it did not intend to amend the relevant provision in the regulation.

Local opinion poll

The Chancellor was asked to assess a poll organised by Narva City Government on building a care home for people with special mental needs. The question was worded as follows: "Should it be allowed to build a care home for people with mental disorders in the vicinity of residential buildings, healthcare and cultural institutions, shops and other public places? If your answer is YES then what location would you choose?" Four options were then offered. In the VOLIS online environment, a brief explanatory text had been inserted before the question along with a call on people to actively participate in the poll.

The Chancellor emphasised that a local authority must be particularly careful with wording a question of a poll so as not to reinforce prejudices against people in a vulnerable situation. The wording of the poll was not neutral but leading. A poll using a question with such wording may reinforce prejudices and fears as well as the opinion that fellow city residents with mental disorders should live apart from others even when they go to work and no constitutional basis exists to restrict their freedom as they pose no danger to themselves or others. By analysing the question from this angle, the wording of the question also contravenes the principle that people with special needs may not be treated less favourably than others (§ 12 Constitution).

People may move around freely where no basis exists for restricting that freedom. The same right is also enjoyed by people with special mental needs who pose no danger to themselves or others while still in need of assistance for coping. A child with special mental needs may be born to any family, and anyone may develop a special mental need during their lifetime due to illness or trauma.

The poll was also unnecessary from the aspect of spatial planning: proper inclusion, collection of opinions and weighing of interests is still necessary in the process of

making decisions concerning spatial plans and building law. A local authority must always word a poll question with an honest mind and tell people well in advance and clearly what may be at stake depending on the result of the poll (see the opinion "Poll on building a care home for people with special mental needs").