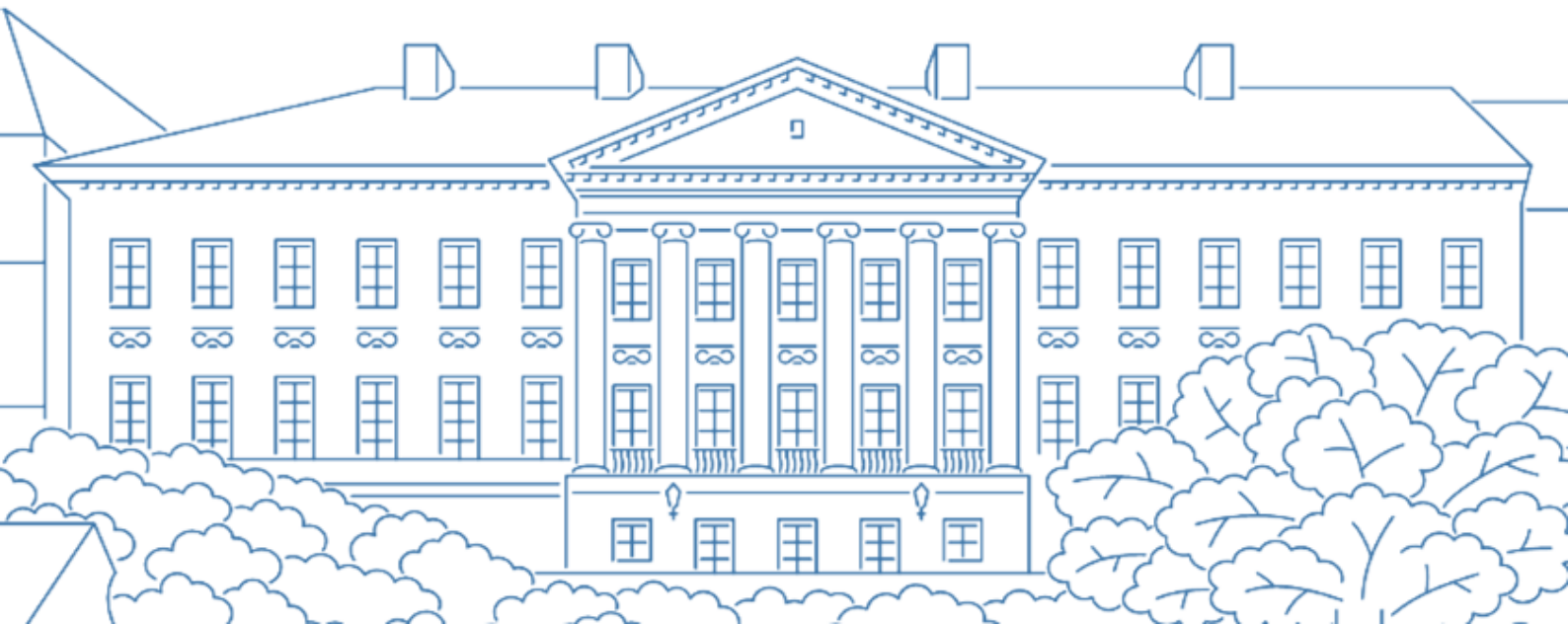
Õiguskantsler

2023/2024 OVERVIEW OF THE CHANCELLOR OF JUSTICE OF ESTONIA ACTIVITIES

Tallinn 2025



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Content

Chancellor's Year in Review

Dear Reader

Every year, a cross-section of concerns of the Estonian people and a number of broader constitutional law problems reaches the Chancellor of Justice's desk. It continues to be the goal of the entire Chancellor's Office to resolve matters and not just dryly process them; to create clarity, not noise; to reduce the number of conflicts in society; to strive towards balance and reasonableness – in order to make Estonia better within the limits of our powers and abilities. Just as the Constitution requires: we must work to ensure that Estonia is a good place to live in for present and future generations. It is for you to decide whether and how we have succeeded in doing so.

At the conclusion of this reporting year, there is again reason to thank the Riigikogu and the officials who have made an effort to resolve people's concerns. For example, at the request of the Chancellor of Justice, the Riigikogu amended the Health Insurance Act so that, with the support of the care allowance, a parent can stay with their child for a longer period if the child's effective medical treatment so requires. A vital concern of children, parents and paediatricians was thus resolved. Decision-makers are aware of the shortage of psychologists, speech therapists and other specialists supporting a child's development, and in some areas the problem has been slightly alleviated. Unfortunately, the Chancellor still receives complaints about a child not receiving the necessary support in a kindergarten or school.

For example, a child was left without a support person at school in the middle of the school year and was thus excluded from school. The child's need for assistance was clear to everyone, but there was disagreement as to whether it was a social service to be provided by the municipality or whether the responsibility lay with the education system. On the advice of the Chancellor of Justice, a solution was found. A similar situation can be seen in other areas, such as supporting the subsistence and employment of people with disabilities. A person must not be left without the necessary assistance or be forced to go endlessly from door to door simply because the authorities are arguing with each other about the division of work and money. Good administrative practice requires a person-based approach.

It is fair to say that most parents, teachers, doctors, child protection workers, judges and officials do their work with dedication and are guided by what is in a child's best interests. Children are parents' most precious asset and of society as a whole. We must all do our utmost to ensure that no child has to experience lack of consideration or unfair, undignified or violent treatment – this is the responsibility of every adult. Unfortunately, there are also those who are unable to shoulder this responsibility. For example, we receive numerous reports that no

place at a kindergarten or school has been provided, that a child's load exceeds what is allowed, that a school shuns a young person with learning difficulties, or that one parent badmouths the other parent in front of the child.

Children and young people also prepared a report for the UN on the situation of children and young people in Estonia, in which the Children's and Youth Rights Department of the Chancellor's Office offered them support. The views of children in alternative care and children who fled to Estonia from Ukraine were also heard and taken into account. The Chancellor's Office arranged a translation into Estonian of the summary of General Comment No 26 of the UN Committee on the Rights of the Child. This summary for children explains children's right to live in a clean and healthy environment now and in the future. The summary was translated and illustrated by the young people themselves.

In Estonia, too, the issue of nature conservation and stopping global warming has been turned into a battlefield, where expressing different beliefs, rights and interests and finding a constitutional balance is becoming increasingly difficult. However, it is clear that no fundamental right, interest or purpose can nor should automatically be given priority over others. Neither internal security, national security, nature conservation, stopping global warming, protecting health, a balanced budget or anything else should take precedence over others. According to the Constitution, balance must always be sought. Only this way can we live together peacefully and sensibly as a society.

In 2023, the Chancellor of Justice presented a report, whose purpose was to show the Riigikogu, ministries and agencies, entrepreneurs and the public that Estonia has assumed fixed-term international obligations to stop climate warming, but the norms necessary for fulfilling them have mostly not been enacted in legislation. However, without clear statutory obligations and restrictions, it is not possible to achieve these goals within the framework of the Constitution. In 2024, the Ministry of Climate did submit a Draft Act on Climate-Resilient Economy for discussion. The debate on its constitutionality lies ahead.

The people have decided that the Estonian state exists for defence of internal and external peace and serves as a pledge to present and future generations for their social progress and general welfare. Under § 5 of the Constitution, the natural wealth and resources of Estonia are national riches which must be used sustainably. Climate is an inseparable part of the natural living environment of the world and of Estonia. Section 53 of the Constitution imposes a basic duty on everyone to preserve the living and natural environment. The social and economic livelihoods of present and future generations must be ensured. Climate change that leads to stronger storms, heat waves, floods and droughts poses an immediate threat to the Estonian people.

Constitutional principles and basic duties to protect the environment may justify restrictions on the fundamental rights of individuals, such as the freedom to

conduct a business or the right to property. However, these restrictions must be well-considered, reasonable and fair. Crop and livestock farming, manufacturing companies, entrepreneurship in general are similarly under the protection of the Constitution. The Constitution also strongly protects property.

The Chancellor of Justice heard serious concerns from young people fighting climate warming, as well as from entrepreneurs and owners. It is important to avoid a quarrel between generations. It is hardly unlikely that anyone here knows anyone who is sincerely indifferent to the well-being of future generations and Estonia. Totalitarian-like orders and prohibitions and excessive restrictions on the fundamental rights of owners and businesses spark protest. This, in turn, can mean abandoning necessary changes, a big setback. That this may be the case is confirmed by the experience of excessive political correctness and the onslaught of a culture of cancellation: society has not become safer, extremes have arisen instead. This has now been confirmed both by election results and by theorists such as Francis Fukuyama and Slavoj Žižek. Rules-based, balance-seeking, peaceful governance will bring desired results with greater certainty. Consensus democracy is better than pendulum democracy in terms of people's well-being and safety.

No situation or objective justifies suppression of the constitutional freedom of conscience, thought and expression. Wise decisions are born in dignified debate, where factual errors and gaps in argumentation can be pointed out. Even a difficult security situation does not justify state-imposed truth or twisting the law. Everything must be done in Estonia's long-term interests. Ultimately, a democratic state governed by the rule of law, together with the principle of separation and balance of powers, protects everyone.

During the reporting year, the question had repeatedly to be asked whether we are really witnessing the rise of thinking that better to have ten innocent people hanged rather than let one crook get away. The Constitution stipulates exactly the opposite: no one should be punished for an act that was not punishable at the time of its commission, all doubt must be interpreted in favour of the suspect. This, too, is intended to ensure a society in which freedom is the rule and restriction the exception, while restrictions are clearly known in advance, proportionate and fair.

Unfortunately, disregard for the principle of legality is becoming more widespread in all areas. According to the Constitution, the Riigikogu must clearly and in sufficient detail decide on all the most important issues, including for what purpose and how fundamental rights may be restricted and obligations imposed. Governmental and ministerial regulations may only be used to lay down the arrangements necessary to implement a law but not to dictate the actual choices that change people's lives. A law must contain norms from which it is clear what is prohibited or what is prescribed. Orders and prohibitions may only be imposed by

a law but not by regulations, development plans, guidelines, or mere instructions issued at the discretion of an official.

The guarantee of fundamental rights must not be made conditional on the existence of technological solutions. Unfortunately, the last reporting year also showed that the availability, ease of use, security and functioning of e-solutions cannot be guaranteed in practice, be it for the purposes of applying for support to build a well, a scholarship, or taking an online examination. In addition to the technical difficulties that appeared during the entrance tests of Tallinn and Harju County state upper secondary schools, it turned out that, as supporting material during the online test examination of Estonian, basic school graduates were shown the combined dictionary of the *Sõnaveeb* language portal instead of the dictionary of standard Estonian (*Õigekeelsussõnaraamat*), which is the basis for the standard written language. Pupils' works are, of course, assessed on the basis of the dictionary of standard Estonian, the *Õigekeelsussõnaraamat*. However, by the time the online test examination was held, it was clear that, without changing the Language Act, it would not be possible to abandon the normative *Õigekeelsussõnaraamat*, which distinguishes between good and bad language use. Perhaps even changing the law is not enough because, under the Constitution, Estonian must remain the language of education, science and culture, and the cornerstone of the identity of Estonians. This is hardly possible if standard written language is no longer taught at school.

The requirement of legality protects us all, it creates a frame in which to act safely. The same is true of the Constitution. Laws can and should be changed as life progresses, if necessary, but doing it honestly; and draft laws in the Riigikogu can be scrutinised under the magnifier of the 101 life experiences of its members and, if necessary, amended. It is the representation of the people, not anyone else, who is responsible for passing laws.

The idea of the Constitution is to prevent rash decisions which have not been well considered, the Constitution may not be drained of substance as a result of interpretation on the spur of the moment. Initiatives to this end could be quite successfully prevented during the reporting year. The Constitution protects us against mistakes and has served Estonia well.

The Chancellor of Justice has repeatedly pointed out that the annual state budget does not comply with the Constitution. The Constitution states that the Riigikogu adopts the budget for the entire revenue and expenditure each year as a law, but not as an explanatory memorandum. Here, too, the difference is substantive: a law is mandatory, while an explanatory memorandum does not oblige anyone to anything.

Perhaps it is high time that the state agencies refrain from doing anything not directly necessary for the service of the people. That laws should be limited to clear, understandable, well-considered provisions, while an explanatory

memorandum sets out an honest impact assessment. Wherever possible, benchmarks, reports, development plans should be abandoned. The focus should be on what is essential for people – i.e. the free and smooth functioning of everyday life without state interference. However, if the state intervenes, the task of all officials must be to serve the individual and solve their problem – so that in Estonia it would be easy to raise children and grow old with dignity, do the work one likes, start a business, build a home, or manage the land and forest.

Perhaps indeed those who say that most people do not want freedom and responsibility, but abundance and even an imaginary sense of security, are right, and the latter presumes deprivation of liberty, distrust, commands and prohibitions. Yes, perhaps the public will praise violation of fundamental rights until it realises that this is a big mistake and does a lot of harm. However, decision-makers must not succumb to such sentiments even for a moment.

The Constitution obliges us all to protect freedom and to bear responsibility. I wish us all the strength and the will to do so!

Ülle Madise

Chancellor of Justice

The Chancellor of Justice as the national human rights institution

As of 1 January 2019, the institution of the Chancellor of Justice is simultaneously the National Human Rights Institution (NHRI). The main task of this independent institution is to monitor, promote and protect human rights in Estonia.

Every national human rights institution may seek official international accreditation status, which gives the institution additional rights within the United Nations 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 Sub-Committee on Accreditation (SCA) of the Global Alliance of National Human Rights Institutions (GANHRI). Since December 2020, the Chancellor holds A-status, i.e. the highest level of NHRI accreditation. Human rights institutions are accredited every five years.

Budgetary autonomy of the national human rights institution

The principles for the operation of the human rights institution are set out in the so-called Paris Principles adopted by a resolution of the UN General Assembly. The principles lay down, inter alia, that human rights institutions must operate independently of the Government and must have adequate resources to carry out their tasks.

To this end, the Chancellor of Justice, in cooperation with other constitutional institutions, proposed to the Riigikogu to amend the State Budget Act so as to ensure greater budgetary independence of constitutional institutions from the executive in the future. The amendments to the State Budget Act, approved by the Riigikogu, entered into force on 7 June 2024. Under the new Act, the budget applications of constitutional institutions will be examined by the Riigikogu Finance Committee.

Work of the Advisory Committee on Human Rights

For six years, the Advisory Committee on Human Rights has been operational under the Office of the Chancellor of Justice, its main task being to advise the Chancellor on issues of human rights protection and promotion. Every four years, a committee set up by the Chancellor selects members of the Advisory Committee by public competition. Selection of members proceeds from the principle of equal treatment, diversity, and balance. The work of a member of the Advisory Committee is voluntary.

In autumn 2022, the mandate of the first composition of the Chancellor's Advisory Committee on Human Rights ended and the second composition of the Advisory Committee started its work. Members of the Advisory Committee include recognised experts from the fields of equal treatment, the rights of people with

disabilities, children's rights, violence prevention, healthcare, gene technology, medical ethics, and many other fields.

During the reporting year, the Advisory Committee on Human Rights convened twice: on 21 November and 7 May. The November meeting discussed the risks of excessive surveillance of people. Observations by the members of the Advisory Committee were also taken into account in the drafting of a memorandum sent to the Minister of Justice. Inspired by the discussion, Talis Bachmann wrote an article published on the "Human Rights" book blog – „Kas minu kodu ikka on minu kindlus? Kommentaare jälgimisühiskonna teemadel" (Is my home really my castle? Comments on issues of a surveillance society).

The Advisory Committee meeting in May addressed the issue of sexual violence and touched upon the so-called consent law, which seeks to change the definition of sexual violence. At the meeting, the Praxis report „Seksuaalvägivalla kohtueelne uurimine" (Pre-trial investigation of sexual violence) was examined, as was the analysis commissioned by the Ministry of Justice, titled „Seksuaalse enesemääramise vastaste süütegude koosseisude vastavusest Euroopa Nõukogu Istanbuli konventsioonile" (On compliance of the statutory definitions of offences against sexual self-determination with the Istanbul Convention of the Council of Europe).

In addition, the Chancellor of Justice sought advice from the members of the Advisory Committee on the rights of persons with disabilities, equal treatment and data protection, patient and environmental law.

International reports

During the reporting year, the Chancellor participated in preparing several international reports and other documents.

- In September, the Chancellor presented her opinion on implementing the Council of Europe's Framework Convention for the Protection of National Minorities. She noted that the restriction of the right to vote of third-country nationals, which the Government of the Republic is planning, is not compatible with the Constitution. In the Chancellor's opinion, interest groups should be meaningfully involved in societal issues and listened to. The Chancellor also noted that it must be possible to enter data on a person's multiple ethnicities and mother tongues in the population register, if necessary.
- In November, Estonian children and young people presented an overview of the situation of children's rights in Estonia to the UN Committee on the Rights of the Child. Drawing up the children's report was initiated by the Office of the Chancellor of Justice and prepared by the children's rights ambassadors of the Union for Child Welfare, i.e. children themselves. The UN Committee on the Rights of the Child monitors compliance with the UN Convention on the Rights of the Child and makes recommendations to the government on improving

the situation of the rights of the child. In addition to the state report, the Chancellor of Justice and NGOs advocating for children's rights also submitted their own reports.

- In February, the Chancellor had an online meeting with representatives of the European Commission to discuss the situation of the rule of law in Estonia. Discussions at the meeting were used as a basis for the European Commission's report on respect for the rule of law in the EU Member States. The Chancellor of Justice was also involved in the drafting of a report on the same subject by the European Network of Human Rights Institutions (ENNHRI) (see „State of the rule of law in the European Union").
- In April, the Chancellor sent a report to the UN on how the Estonian state has fulfilled its obligations under the Convention on the Elimination of All Forms of Discrimination against Women. Based on the state report and third-party reports, the UN Committee on the Elimination of Discrimination against Women (CEDAW) prepared recommendations for the Estonian government on how to better ensure women's rights.
- In May, the Chancellor participated in preparing a report on implementation of the UN Covenant on Economic, Social and Cultural Rights, explaining in detail the competence of the Chancellor of Justice in monitoring compliance with the Covenant. The Chancellor also sent her opinion to the Office of the United Nations High Commissioner for Human Rights (OHCHR) for a report on best practices in ombudsman institutions.

As a member of the European Network of National Human Rights Institutions (ENNHRI), the Chancellor has participated in the work of several working groups which, inter alia, help to prepare ENNHRI positions on artificial intelligence, migration, people with disabilities, older people, and other issues.

Presentations and articles on human rights

The Chancellor of Justice and her advisers attended several conferences and other meetings. Chancellor of Justice Ülle Madise delivered a speech at the Data Protection Association conference, where she stressed the importance of data protection in guaranteeing fundamental rights and freedoms. In November, the Chancellor spoke at the Tallinn Third Youth Popular University (*Tallinna Kolmanda Nooruse Rahvaülikool*) about protecting people's rights and dignity and the democratic and social rule of law. On the Estonian National Defence Course, she delivered a lecture on protecting human rights and security.

Liisi Uder, Adviser to the Chancellor of Justice and Head of Disability Rights, introduced the rights of people with disabilities to heads of units of the company AS Hoolekandeteenused at an autumn seminar. At a seminar organised by the Viru Keemia Grupp, Evelin Lopman, Head of the Business Environment Department, explained what aspects need to be kept in mind when drafting the Climate Act. Odyn Vosman, a Senior Adviser to the Chancellor of Justice,

introduced police officers to legal bases for surveillance. Advisers from the Department of Children's and Youth Rights were invited to several meetings where issues related to children's rights were discussed. At several meetings, advisers from the Inspection Visits Department presented the Chancellor of Justice's work as the national preventive mechanism for ill-treatment.

The Chancellor and her advisers are often invited to schools and universities to talk about the Chancellor of Justice's work in protecting human rights, or delegations of pupils and students visit the Chancellor's Office. During the reporting year, a total of sixteen such meetings took place.

The Chancellor of Justice and her advisers also actively appeared in the media.

- On 10 December, on the Kuku radio programme "Välismääraja" the Chancellor discussed problems of ensuring human rights with the host Neem Raud.
- On 15 December, the Chancellor of Justice spoke on the news programme "Aktuaalne kaamera" about the need to protect sensitive data.
- In the March issue of the magazine *Perearst*, Kristi Paron, Senior Adviser to the Chancellor of Justice, and Marje Oona, associate professor of family medicine, explained why, when and how to assess a child patient's decision-making capacity.
- On 4 April, on the Vikerraadio programme "Reporteritund", the Chancellor explained why people with a long-term residence permit also have the right to vote in municipal council elections in Estonia. The Chancellor also addressed third-country nationals' right to vote on 5 April on the Kuku radio programme „Käsi pulsil" and in an opinion article titled "Põhiseadusega ei mängita" (No playing with the Constitution) on the ERR news portal on 20 April.
- On 11 April, Olari Koppel, Deputy Chancellor of Justice-Adviser and former head of the Estonian Cooperation Assembly, spoke about the health of civil society on the Vikerraadio programme "Uudis+".
- On 19 April, via the ERR news portal, the Chancellor explained the conditions for guaranteeing freedom and secrecy of elections.
- At the beginning of May, the Chancellor spoke on Vikerraadio and Raadio 2 about the use of cameras in public space. The dangers of a surveillance society were also discussed in the Vikerraadio programme "Vikerhommik" on 7 June.

A more detailed overview of the appearances of the Chancellor of Justice and her advisers in the media can be found in the sub-chapter "The Year in the Media".

International cooperation

The Chancellor of Justice works closely with her counterparts in other countries and also actively participates in the work of international organisations and networks uniting chancellors of justice, ombudsmen and human rights institutions around the world.

Since 2001, the Chancellor has been a member of the International Ombudsman Institute (IOI). The Institute includes over 200 national and regional ombudsmen from over a hundred countries worldwide. In May 2023, Chancellor of Justice Ülle Madise was elected for the second time to the Board of the International Ombudsman Institute European region. The mandate of the Estonian Chancellor of Justice as a member of the Board ended in May 2024, when a new Board took office. The Board of the European region comprises seven members and currently includes ombudsmen from the Netherlands, Belgium, Italy, Slovenia, Malta, Ukraine and Cyprus.

The Chancellor of Justice is also a member of the Global Alliance of National Human Rights Institutions (GANHRI), the European Network of National Human Rights Institutions (ENNHRI), the European Network of Ombudspersons for Children (ENOC) and the networks of the European Ombudsmen (ENO), the International Conference of Ombuds Institutions for the Armed Forces (ICOAF), the police ombudsmen (IPCAN) and National Preventive Mechanisms (NPM).

Cooperation and meetings

During the reporting year, the Chancellor of Justice hosted a number of ombudsmen and other civil servants from European countries, as well as representatives of international organisations.

In October, the Finnish Parliamentary Ombudsman, together with his advisers, visited the Chancellor of Justice as part of long-term good cooperation. At the beginning of June, the Chancellor of Justice organised a spring seminar for members of the European Network of Ombudspersons for Children. At a two-day seminar held at the Office of the Chancellor of Justice, the situation of children growing up in substitute homes and the rights of children whose parents are in prison were discussed. In July, the Chancellor presented her work as the national preventive mechanism to the advisers of the Ukrainian Ombudsman.

There is still a lot of interest in data protection and Estonia as a digital state. In February, the Chancellor was visited by a delegation from the Eastern Partnership countries, which included representatives of the data protection authorities from Armenia, Georgia, Moldova and Ukraine. In March, the Chancellor met with the heads of the legal departments of the Dutch ministries. In May, the seven-member delegation of the German Bundestag Committee for the Scrutiny of Elections,

Immunity and the Rules of Procedure visiting the Chancellor of Justice also took an interest in e-elections and Estonia's progress in the field of digitalisation.

The Chancellor met three times with representatives from the Office for Democratic Institutions and Human Rights of the Organisation for Security and Co-operation in Europe (OSCE). In October, OSCE officials were interested in how the freedom of action of state institutions and civil society organisations ensuring human rights is guaranteed in Estonia. In February, the Chancellor was provided an overview of the report on the 2023 Riigikogu elections and the recommendations made therein to the Estonian authorities. At the beginning of June, an online meeting with an OSCE representative took place to discuss the right to hold peaceful public assemblies.

Cooperation also continued with representatives of the European Border and Coast Guard Agency (Frontex). This agency regularly monitors the guarantee of fundamental rights at the Estonian border, which is also an external border of the European Union. In October, a meeting took place with members of the European Economic and Social Committee ad hoc study group on fundamental rights and the rule of law. The rule of law situation in Estonia was also discussed at an online meeting with European Commission officials in February. In April, advisers to the Chancellor of Justice met online with the rapporteur on Estonia from the UN Subcommittee against Torture.

The Chancellor of Justice was also visited by Evelyn Veenker, President of the Stuttgart Social Court, a delegation of Ukrainian judges, students from South Korea and ambassadors from Germany, France and Morocco.

During the reporting year, the Chancellor and her advisers also participated in several events organised by colleagues in other countries and by international organisations. For example, ombudsmen and chancellors of justice from the Baltic and Nordic countries met twice. In Copenhagen in September, they discussed how to organise the work of their institutions in a situation where the number of complaints to an ombudsman or chancellor of justice has increased significantly. They also discussed the experience of applying European Union law and how to carry out own-initiative procedures effectively. In June, they met again in Helsinki where cooperation with the media and the parliament, as well as the issues of migration and freedom of expression were discussed. It has become a tradition for Baltic and Nordic ombudsmen to meet once a year. The next meeting will be hosted by the Latvian Ombudsman in Riga in June 2025.

Several other international cooperation events among ombudsmen and human rights institutions took place during the reporting year. In November, the Chancellor attended a conference of the network of ombudsmen of the EU Member States (ENO) organised by the European Ombudsman in Brussels, where she took part in a debate on artificial intelligence. At the European Union Translators and Interpreters Conference in Luxembourg, the Chancellor gave a

presentation on the importance of clear language in translation. The Chancellor of Justice then attended the global IOI annual meeting and conference in The Hague, as well as a seminar in Manchester, where the creation of a joint training academy was discussed with colleagues from the IOI European region.

The Chancellor's advisers represented the Chancellor in working groups set up by the European Network of National Human Rights Institutions and in several meetings organised by ombudsmen for children and other networks. For example, advisers from the Children's and Youth Rights Department attended the ENOC annual meeting and conference in Brussels in September, and the meeting of Baltic and Polish ombudsmen for children in Riga organised by Latvian colleagues in November. The Deputy Chancellor of Justice-Adviser represented the Chancellor of Justice at the annual meetings of the GANHR and ENNHR in Geneva and, at the invitation of the Czech Ombudsman, participated as an expert at a working meeting in Brno to discuss creation of the Czech human rights institution. In addition, the Deputy Chancellor of Justice-Adviser took part in the work of the working group that drew up the European Code of Conduct for Ombudsmen. The Head of the Inspection Visits Department took part in a seminar of national preventive mechanisms in Copenhagen organised in cooperation between the OSCE and the Danish Ombudsman.

The existence of considerable international interest in the activities of the Estonian Chancellor of Justice is also demonstrated by dozens of requests for information sent to the Chancellor. For example, the Chancellor of Justice has been asked how she uses the Charter of Fundamental Rights of the European Union in her work, what complaints have needed to be resolved in the areas of equal treatment and the rights of the child, how the Chancellor organises visits to places of detention, how she supervises the activities of the police, and what has been done in the field of artificial intelligence and the rights of persons with disabilities.

International reports

The Chancellor participated in drawing up several international reports. For example, she presented her views to the European Commission, which drew up a report on the rule of law situation in the Member States of the European Union. In addition, the Chancellor contributed to preparation of the rule of law report by the European Network of National Human Rights Institutions (ENNHRI) ("State of the rule of law in the European Union"), the purpose of which was to provide additional information for the above-mentioned report drawn up by the European Commission.

The Chancellor also presented her opinion on implementing the Council of Europe's Framework Convention for the Protection of National Minorities. She noted that the restriction of the right to vote of third-country nationals, which the Government of the Republic is planning, is not compatible with the Constitution. In the Chancellor's opinion, interest groups should be meaningfully involved in

issues of society and listened to. The Chancellor also noted that it must be possible to enter data on a person's multiple ethnicities and mother tongues in the population register, if necessary.

In spring, the Chancellor sent a report to the UN on how the Estonian state has fulfilled its obligations under the Convention on the Elimination of All Forms of Discrimination against Women. Based on the state report and third-party reports, the UN Committee on the Elimination of Discrimination against Women (CEDAW) prepared recommendations for the Estonian government on how better to ensure women's rights.

The Chancellor also sent her comments for the report on implementation of the UN Covenant on Economic, Social and Cultural Rights, explaining in detail how the Chancellor of Justice monitors compliance with the Covenant. In a report being prepared by the Office of the United Nations High Commissioner for Human Rights the Chancellor explained best practices of ombudsman institutions.

In November, Estonian children and young people presented an overview of the situation of children's rights in Estonia to the UN Committee on the Rights of the Child. Drawing up the children's report was initiated by the Office of the Chancellor of Justice and was prepared by the children's rights ambassadors of the Union for Child Welfare, i.e. children themselves. The UN Committee on the Rights of the Child monitors compliance with the UN Convention on the Rights of the Child and makes recommendations to the government on improving the situation of the rights of the child. In addition to the state report, the Chancellor of Justice and NGOs advocating for children's rights also submitted their reports.

The year in the media

Speeches and presentations

Presentation by Chancellor of Justice Ülle Madise „Kas vaimsus, kõlbelisus, õiglus ja õigus võivad poliittehnoloogia moevooludes pinnale jääda?" (Can spirituality, morality, justice and law stay afloat in the currents of trends in political technology) at a conference dedicated to Jaan Tõnisson on 22 December 2024

Presentation by the Chancellor of Justice "Obstruktsionismist, usaldusest ja targast valitsemisest" (Obstructionism, credibility and smart governance) at the Estonian Academic Law Society on 7 December 2023

Speech by the Chancellor of Justice at the Tallinn Third Youth Popular University on 16 November 2023.

Meeting of the Chancellor of Justice with Estonian interpreters and translators of the European Parliament, the European Commission, the Court of Justice of the EU and the Court of Auditors on 7 November 2023

Speech by the Chancellor of Justice at the educational conference “Igaüks meist loeb“ on 6 October 2023

Welcome speech by the Chancellor of Justice “Andmekaitse olulisus põhiõiguste tagamisel” (The importance of data protection in guaranteeing fundamental rights) at the Data Protection Association conference on 5 October 2023

Presentation by Evelin Lopman, Head of the Business Environment Department, “Millist kliimaseadust vajame?“ (What kind of a Climate Act do we need) at the VKG environment day on 12 September 2023

Interviews

The Chancellor’s adviser Indrek-Ivar Määrits spoke on Vikerraadio about the situation in detention cells on 8 August 2024

The Chancellor’s adviser Evelin Lopman spoke about environmental restrictions on the Kuku radio morning programme on 11 July 2024

The Chancellor of Justice spoke on Vikerraadio about the surveillance society on 7 June 2024

The Chancellor of Justice on the Kuku radio programme “Sihik“ on 6 June 2024

Interview with the Chancellor of Justice in Postimees daily “Iga laps on vahva, uudishimulik ja milleski eriti osav” (Every child is fun, curious and particularly skilled in something) on 1 June 2024

The Chancellor of Justice on the programme “Lastega ja lastele” (“With and For Children”) on 1 June 2024

The Chancellor of Justice spoke on Raadio 2 about cameras in public space on 7 May 2024

The Chancellor of Justice spoke on Vikerraadio about cameras in public space on 6 May 2024

The Chancellor of Justice on the programme “Esimene stuudio” on 25 April 2024

The Chancellor of Justice on the ERR news portal about freedom and secrecy of elections on 19 April 2024

Deputy Chancellor of Justice-Adviser Olari Koppel on the ERR news portal about the secrecy of elections on 18 April 2024

Deputy Chancellor of Justice-Adviser Olari Koppel spoke on Vikerraadio about the possibility of a collective appeal on 11 April 2024

The Chancellor of Justice on the programme “Käsi pulsil” on 5 April 2024

The Chancellor of Justice on the programme “Kultuuristuudio. Arutelu” on 4 April 2024

The Chancellor of Justice on the radio programme “Reporteritund” on 4 April 2024

The Chancellor of Justice on the programme "Otse Postimehest" on 1 April 2024

Weekly interview. "Ülle Madise: praegu nõutakse joonelt vaidlusse sekkumist ja poole valimist" (Nowadays people demand that you immediately intervene in a dispute and pick a side) in the magazine *Edasi* on 29 March 2024

The Chancellor of Justice spoke on Kuku radio about the independence of the prosecutor's office on 21 March 2024

The Chancellor of Justice on the "Aktuaalne kaamera" television news programme on 17 March 2024

The Chancellor of Justice on the Kanal 2 programme "Telehommik" on 14 March 2024

The Chancellor of Justice spoke on the "Vikerhommik" programme about good and bad language use on 14 March 2024

The Chancellor of Justice on the programme "Uudis+" about standard written language on 12 March 2024

The Chancellor of Justice on Delfi TV on 22 February 2024

Chancellor of Justice Adviser Liisi Uder on the Vikerraadio programme "Keelesaade" on 11 February 2024

Chancellor of Justice Adviser Indrek-Ivar Määrits on the programme "Zerkalo" on 30 January 2024

The Chancellor of Justice on the programme "Keelesaade" on 14 January 2024

The Chancellor of Justice on the Vikerraadio programme "Reedene intervjuu" (Friday interview) on 12 January 2024

The Chancellor of Justice on the Kuku radio programme "Neeme Raud. Siin" on 23 December 2023

The Chancellor of Justice on the Kuku radio programme "Kahe vahel" on 22 December 2023

The Chancellor of Justice on the "Aktuaalne kaamera": Tuleb selgeks teha, kes delikaatseid andmeid hoida tohib (It must be made clear who may keep sensitive data) on 15 December 2023

The Chancellor of Justice on the Vikerraadio programme "Uudis+" on 12 December 2023

The Chancellor of Justice spoke about votes of confidence on Kuku radio on 11 December 2023

The Chancellor of Justice on the Kuku radio programme "Välismääraja" about guaranteeing human rights on 10 December 2023

Chancellor's Adviser Aigi Kivioja on the judicial podcast Kohtulood on 8 December 2023

The Chancellor of Justice on the occasion of international Plain Language Day on Vikerraadio on 13 October 2023

The Chancellor of Justice on the programme "Esimene stuudio" on 28 September 2023

The Chancellor of Justice presented her annual report on Kuku radio on 22 September 2023

Chancellor's Adviser Liisi Uder spoke on the programme "Reporteritund" about the concerns of people with disabilities on 20 September 2023

Interview with the Chancellor of Justice in the newspaper *Sirp* on 1 September 2023

Articles

Article by Kristi Paron, Adviser to the Chancellor of Justice, "Lapsest täiskasvanuks" (From a child to an adult) in the magazine *Eesti Õde*, summer issue 2024

"Ülle Madise: põhiseadusega ei mängita" (No playing with the Constitution) on the ERR news portal, 20 April 2024

"Ülle Madise: rämeduse esteetika kaasaja poliitika moevoolus" (The aesthetics of raucousness in the fashion trends of modern politics), magazine *Edasi*, 15 April 2024

Article by Kristi Paron and Marje Oona about a child patient's decision-making capacity, in the magazine *Perearst*, March 2024

Article by the Chancellor's Advisers Karolin Soo, Kristi Lahesoo and Ivika Nõukas "Kuhu jäävad põhiõigused? Vastamata küsimused kättetoimetamise fiktsiooni laiendamisel" (Where are Fundamental Rights? Unanswered Questions on Extending the Fiction of Service) in the journal *Juridica*, No 2, 2024

Article by Ülle Madise, Liina Lust-Vedder and Ida Ulita Vooglaid "Töötõke Riigikogus ja eelnõude usaldusküsimusega sidumine" (The Working Barrier in the Riigikogu and Linking Drafts to the Issue of Confidence) in the journal *Juridica*, No 2, 2024

Ülle Madise on the *Sirp* newspaper discussion panel: "Miks üldse ja kellele ÕS?" (The dictionary of standard Estonian ÕS - why and for whom?), 15 March 2024

"Ülle Madise: eesti kirjakeele normi ei tohi kaotada" (The standard written Estonian norm must not be abolished), *Postimees*, 15 March 2024

"Õiguskantsler Ülle Madise vastuseks Marustele: kui mittekodanikke hakatakse hääleõiguseta jätma, viin küsimuse riigikohtusse" (Chancellor of Justice Ülle Madise's response to Maruste: if non-citizens are going to be left without the right to vote, I will take the matter to the Supreme Court), *Eesti Päevaleht*, 13 March 2024

E-Estonia

The transfer of services to virtual space has become an integral part of our daily lives. On the one hand, provision of public services through the online environment allows saving time and, in general, also makes these services more accessible. On the other hand, we are faced with new challenges: issues of privacy, personal data protection and cybersecurity, as well as the issue of reliability of services. The success of digitalisation will depend on how we as a country can solve these problems.

Protection of personal data

Processing of personal data is constantly increasing in both private and public sectors. Biometric data are also increasingly processed by automated means. At the same time, devices for storing and processing personal data are becoming more and more compact and powerful.

Increasingly often, the Chancellor's opinion is sought on regulating the use of private cameras. This concerns cameras placed both on private premises and in public space, including, for example, stationary cameras set up in the forest by photography enthusiasts. The question is asked how large an area a video camera can capture and who has the right to use the video recording and under what conditions. People want to know how low a drone can be flown on a property owned by another person and how to identify the owner of a drone. A number of questions also seek an answer to whether a private person can bring down a drone that violates their privacy and what is their liability in case of damage to the drone.

The Chancellor has been asked about Land Board detailed aerial photographs. These photos are of such good quality that property visible from them, such as precious agricultural equipment, can also attract malicious interest.

Processing of personal data restricts the fundamental right of informational self-determination. Under § 26 of the Estonian Constitution, everyone has the right to the inviolability of private and family life. The protected sphere of private life includes, among other things, a person's right to informational self-determination and the right to one's speech and image. The state may not interfere in anyone's private or family life except in the cases and in line with the procedure laid down by law. In view of the fundamental right to defence under § 13(1) of the Constitution, it may prove necessary to regulate the processing of personal data when carried out by another private person.

In a memorandum sent to the Ministry of Justice, the Chancellor pointed out that issues important in terms of fundamental rights must be resolved by a law, i.e. it

must be done by the Riigikogu. The powers of government agencies should be limited only to less severe restrictions on fundamental rights.

In the memorandum, the Chancellor complimented the Ministry of Justice for plans to amend the Law Enforcement Act and for having begun to regulate more precisely the use of police body cameras. The Chancellor explained which conditions for the use of body cameras need to be specified in the law. She also pointed out that the law must also further elaborate other provisions relating to mobile cameras used by public authorities (including those used in vehicles and on drones). The Chancellor considered that the law should clearly stipulate that, without a person's own consent, automatically identifying the person through the image of a camera in a public space (by processing biometric data) is not allowed.

In the Chancellor's opinion, the law must regulate the bases for processing personal data, the composition of data, the time limits for storing personal data processed, the right of a person to receive information about processing of their personal data, and organisation of the data controller and supervision. Processing of personal data must also comply with European Union law, in particular the General Data Protection Regulation.

The Chancellor also drew attention to the need to create a legal framework to protect the image of a person when using a malicious forgery.

In his reply, the Minister of Justice thanked the Chancellor of Justice for drawing attention to important issues and promised to take these views and proposals into account when drafting legislation.

Data leaks

At the end of 2023, Asper Biogene, a genetic testing and research company, became a victim of a cyberattack: the personal and health data of some 10 000 people were stolen, including data from genetic analyses. As far as we know, this was the largest health data leak in Estonia to date. A large-scale personal data leak also occurred during a cyberattack in early 2024, when criminals gained access to the contact details and, in some cases, the purchase history of pharmacy customers.

According to the Chancellor's assessment, considering the leakage of genetic data from a private company, it is necessary to review who collects sensitive personal data in Estonia and why. Data about patients' health and analyses may be kept by hospitals and treating physicians. Storage of these data has a clear purpose which must be plainly and clearly stated in the law.

The need for plain and specific norms concerning data processing was also emphasised by the Chancellor of Justice at a public session of the Riigikogu Social Affairs and Constitutional Affairs Committees. The legal framework under which

data entrusted to the state are processed must be understandable to every doctor and patient.

E-examinations and applying for scholarships

Organisation of the Estonian language online test examination

In April, an online test examination in Estonian was organised for basic school leavers. During the examination, pupils were given the opportunity to use the combined dictionary of the Estonian Language Institute's language portal *Sõnaveeb* as a reference material, but not the dictionary of standard Estonian, *Õigekeelsussõnaraamat*.

In her letter to the Education and Youth Board, the Chancellor recalled that the basis for standard written language is the latest dictionary of standard Estonian. Written work in the Estonian language as a subject in the syllabus must follow the orthographic rules, and the teacher must evaluate a pupil's work on the basis of the norms for standard written Estonian.

The Chancellor found that if reference material is to be made available to pupils during the basic school final examination in Estonian, it must be the latest dictionary of standard Estonian, *Õigekeelsussõnaraamat* (ÕS) or its online version. Reference material at an examination must be unequivocally clear for a pupil.

According to the Ministry of Education and Research, the standing recommendation is to provide pupils access only to the dictionary of standard Estonian during the online examination.

Basic school final examinations

An examination may be undertaken in writing on paper or electronically in the test database, or orally. This is decided by the Minister of Education and Research for each subject for the following academic year by 25 May at the latest. If the minister establishes an electronic form for the written part of the exams in these subjects, then basic school graduates must be able to prepare for the electronic examination.

Basic education must give a pupil the opportunity for self-realisation according to their abilities. Computer literacy has become increasingly essential over time, which must be taken into account by schools when organising studies. The task of the school is to offer all pupils the opportunity to learn how to use a computer well, so that they can also perform learning tasks on a computer. The ability to use a computer is one of the general competences whose acquisition must be supported in order for a pupil to be able, among other things, to make learning more efficient.

The Chancellor of Justice found that although pupils who have completed an informatics curriculum may have better computer skills, in abstract terms this does not give any advantage to an examinee. It is important that all pupils should be able to familiarise themselves with both the structure and form of an examination before the examination itself. The structure and form of an examination must not come as a surprise to a pupil during the examination.

Applying for a speciality scholarship

In the autumn term of the 2023/2024 academic year, students of the University of Tartu were able to apply for the teacher training and support specialist training scholarship from 2 October to 8 October. Although students were already entitled to apply in September, the technical solution for the study information system could not be completed by that time. No other solutions were offered to apply for the scholarship in September.

A student may apply for a scholarship in free form, unless a mandatory form has been prescribed under a law or on the basis of a law. A possible increase in the administrative burden does not justify violation of students' rights.

In the Chancellor's opinion, the University of Tartu violated the principle of good administration and the rights of students, as it deprived students of the opportunity to submit scholarship applications on time and provided misleading information about submitting applications on its website.

Internet use in prison

The Chancellor of Justice has repeatedly said that isolating people in prison from technology and the digital world increases the gap between them and society (see the Chancellor's opinion in a constitutional review case). This, in turn, can jeopardise safety in prison and society. Therefore, the Chancellor is of the opinion that digital disengagement of people in prison must be reduced and efforts must be made to prevent it from occurring.

The provisions of the Imprisonment Act on the use of information and communication technology should serve modern purposes of imprisonment: to enable prisoners to acquire knowledge and skills necessary to cope in society and to facilitate interaction of people in prison with their next of kin.

In 2023, the Ministry of Justice prepared the long-awaited amendments to the Imprisonment Act, which were adopted by the Riigikogu on 6 March and entered into force on 1 April 2024. As a result of the amendments, people in prison will be able to access, for example, their digital file; they can communicate with the prison electronically; they will be given the opportunity to meet their next of kin or also defence counsel via a video link. Inmates in open prisons and inmates on prison leave will be allowed, under certain conditions and to a certain extent, to use

mobile phones issued by the prison. People can use the internet more than before, for example, when studying or working.

The functioning of the MinuKataster e-environment

The state is increasingly providing services only through electronic information systems. In this way, services can be provided more efficiently, more quickly and more cheaply. At the same time, this poses new challenges, as e-service information systems and databases may not always be reliable and user-friendly.

In April, the Land Board introduced MinuKataster, a new procedural environment for the land cadastre, through which a landowner can initiate operations affecting land and which is also a necessary tool for land surveyors. Unfortunately, the reliability of the e-environment has left much to be desired.

The Chancellor drew the attention of the Land Board to the fact that in line with the principles of good administration, an electronic service created for dealings with the authorities must function smoothly and reliably. This is especially important if no alternative to using the e-service is offered. Thus, before introducing a new procedural environment, its reliability and ease of use must be tested so as to avoid failures and errors. If a new procedural environment cannot be fully tested beforehand, it is necessary to be prepared to resolve problems quickly and to provide adequate user support. A situation cannot be allowed to arise in which, due to deficiencies in the information system created for procedural purposes, it is entirely impossible to perform the necessary procedural actions for some time. The Chancellor found that deficiencies revealed in provision of the service restrict the fundamental right to property (§ 32 of the Constitution), since failures in the conduct of land operations also prevent land transactions that require changes in the boundaries of an immovable.

Service of administrative acts

The Chancellor of Justice has received a number of petitions about problems with service of national documents. When is a document deemed to have been served on a person? How important is it that the person has actually received the document? What happens if a person asserts that an administrative act or an important document sent to their e-mail has not reached them?

The Chancellor has had to intervene where a person has not received a cautionary fine notice sent by e-mail from the Police and Border Guard Board and the decision on the fine reached the person only at the stage of the bailiff's enforcement proceedings.

The Chancellor explained that in the event of initiating enforcement proceedings, the bailiff must also check the data concerning service of the notice of fine. This means that if the state makes a mistake in serving the fine notice or if service of the fine notice fails for objective reasons beyond the control of the person (e.g. an electronic error occurs and the e-mail does not reach the addressee) and the person considers that the bailiff has failed to verify the data proving service, the person has the right to challenge the bailiff's actions.

The Chancellor has also been approached by companies concerned that state authorities send documents to companies electronically, but do not check whether the document was received. The Chancellor considers that, even though a company must ensure that its e-mail address entered in the commercial register is correct and functional, the state, as the sender of the document, must be able, if necessary, to prove that it has indeed sent the document to the company's e-mail address entered in the commercial register.

Problems related to service of documents and plans to facilitate service were addressed by the Chancellor's advisers in an article published in the journal *Juridica* "Kuhu jäävad põhiõigused? Vastamata küsimused kättetoimetamise fiktsiooni laiendamisel" (Where are Fundamental Rights? Unanswered Questions on Extending the Fiction of Service)

In legislation, a noticeable tendency exists to switch to electronic service of documents and to create opportunities to consider a document as having been served on a person simply by sending it. In essence, this means that the state no longer has an obligation to ensure that a person can examine the document, but the person themselves must carefully monitor whether the state has sent them an important message or document.

However, the state should take into account that not all people have equally good access to technical means and the internet, and people have different understandings of technical glitches and cybersecurity. Before making such legislative amendments, the Riigikogu must analyse how people's fundamental rights are affected if a document is deemed to have been served, but the person has still not been able to examine the document due to circumstances beyond their control.

Impelled by this, the Chancellor also drew attention to problems of the Land Tax Act and the Act amending the Taxation Act (see the opinion in constitutional review court case No 524-1).

The Draft Act (297 UA) amending the Land Tax Act and the Taxation Act laid down that if a legal person using the e-services environment of the Tax and Customs Board has not opened a document stored there, the document sent to the person is deemed to have been served five working days after the notification was sent,

unless earlier receipt of the document has been proven. The amendment laid down a similar requirement for a document sent to an e-mail address.

Such a legislative amendment would also have essentially imposed a due diligence obligation on non-profit associations and foundations to monitor their emails over at least five working days. This means that an entrepreneur should enter the e-services environment of the Tax and Customs Board at least every five working days in order to avoid overlooking an e-mail. An administrative act can be challenged within 30 days of its receipt (§ 46(1) of the Code of Administrative Procedure).

Unfortunately, it is not clear from these amendments for what purpose the rules applicable to non-profit associations and foundations will be changed. No analysis has been carried out as to how such changes will affect the sector as a whole. The draft has been prepared based on an unverified assumption that non-profit associations and foundations will be able to meet the new requirement and are ready to do so.

In its judgment of 18 April 2024 (No 5-24-1), the Supreme Court declared the Act amending the Land Tax Act and the Taxation Act adopted on 18 December 2023 unconstitutional. The court noted, among other things, that the Riigikogu should also assess the substantive constitutionality of norms when re-considering the law, and in doing so also take into account the arguments put forth by the Chancellor of Justice in order to find a balance between the public interest and protection of the fundamental rights of individuals.

In general, it is conspicuous that the state has been inconsistent in changing the rules for service of documents. On the one hand, it wants to lay down a possibility that a document is deemed to have been served after being sent to an e-mail, while on the other hand, the Ministry of Justice wants to expand the possibilities for using the service portal (https://kattetoimetamisportaal.rik.ee/eng/). The portal is currently used to serve documents sent by the prosecutor's office, courts and authorities conducting misdemeanour proceedings. At the same time, both private individuals and attorneys have complained to the Chancellor about technical problems in using the portal.

It should be analysed whether the further expansion of the portal and the draft laws regarding delivery are in alignment with each other.

Information systems created by the state must work seamlessly. This requirement also applies to the service portal. Otherwise, this will hinder the work of attorneys and limit the ability of people to defend their rights.

E- and m-elections

At the initiative of the Ministry of Justice, the Riigikogu supplemented the electoral laws by introducing into them norms laying down the technical organisation of e-voting, which were previously set out in the procedures and instructions approved by the National Electoral Committee. By doing so, a legal solution was found to the observation made by the Supreme Court in 2019 that the rules for determining the results of electronic voting must be laid down more clearly in legislative acts.

When dealing with election complaints after the 2023 Riigikogu elections, the Supreme Court stated that the task of the Riigikogu is "to stipulate in the electoral laws a sufficiently tight regulation regarding all important issues related to elections, in order to ensure the control of the legislator and the public trust in the elections by means of organisational, procedural and substantive legal requirements".

These amendments also created a legal basis for the situation that, starting from the 2025 municipal council elections, it will also be possible to use Smart-ID as a means of identification (in addition to ID-cards and mobile-ID) in e-voting.

The third fundamental amendment concerns m-voting, i.e. the possibility to also e-vote with mobile devices, which are usually mobile phones and tablets. To this end, a provision was added to the Riigikogu Election Act, providing an opportunity to create a voter application for the most common mobile operating systems in the future. Their use is decided by the National Electoral Committee prior to elections.

The National Electoral Committee, which was involved in preparing the Draft Act, drew the attention of the Riigikogu to several security risks involved in voting with a mobile or smart device. The main risk concerns compilation and publication of the mobile voter application. While the entire process of regular e-voting is under the control of the state – the voter application is compiled by the State Electoral Office and the application can be downloaded from the state-managed web environment valimised.ee – then in the case of m-voting these operations are performed in online stores of mobile operating system operators (Google Play, Apple Store).

The Electoral Committee concluded the following: "It must be taken into account that it is possible for different parties to upload alternative or malicious voter applications to app stores. In the case of such voter applications, the electoral service cannot guarantee their correct operation, and the removal of these applications requires a quick response from the app store manager. […] Penal norms cannot prevent malicious voter applications from being uploaded if they are uploaded outside Estonia. It is possible that some of these applications will only be made available outside Estonia, which allows influencing the correctness

and receipt of electronic votes cast abroad, but makes it difficult for competent state authorities to quickly detect violations."

Statehood

The last reporting year was characterised by turmoil and anxiety in the daily work of the Riigikogu as well as in the internal climate of political parties elected to parliament. As a result, citizens who are worried about the state of democracy in Estonia were asking how votes received in elections are divided up into Riigikogu seats, i.e. mandates. People also enquired what happens to those people's representatives who were elected to the Riigikogu as part of a political party list, but who decided to leave the party or have been excluded from the party.

The proportional electoral system in place in Estonia must ensure that support received in elections is subsequently more or less accurately reflected in the number of mandates in the Riigikogu. Since, according to the Constitution, a member of the Riigikogu is not bound by their mandate or, consequently, tied to their political party, an elected people's representative has no statutory obligation to remain true to the positions of the majority of their party in all situations. Divergence does not lead to a member of the Riigikogu losing or relinquishing their mandate but may lead to their leaving the party and/or its parliamentary group.

All decisions important for fundamental rights and Estonia's development must take the form of an Act by the Riigikogu. The Constitution provides for a balanced consensus democracy: the broadest possible support for changes must be sought both in the Riigikogu and in society, mitigating injustice. The principle "winner takes all, the loser loses all" must not apply in Estonia (see the Chancellor's opinion). Of course, it is not possible to achieve a situation where everyone is in favour of a chosen solution. You cannot go in different directions at the same time, so in the end the majority will decide, even in a consensus democracy. A broad understanding must at least be sincerely pursued, and assurances backed by deeds given to those who were outvoted that they have been heard. In this way, the emergence of a sufficiently strong counterforce is avoided, which, figuratively speaking, would lead to a pendulum democracy, where important decisions are constantly reconsidered and confidence is lost.

After the 2023 Riigikogu elections, so-called steamroller politics, arrogant attitudes and creation of artificial confrontations took on an even harsher form than before. The opposition rightly reacted to this with obstruction, which unfortunately grew into a threat to the constitutional order (see the Chancellor's opinion). The constitutional review system, with the Supreme Court at its peak and with the President of the Republic and the Chancellor of Justice as its preliminary stages, helped to rediscover the necessary constitutional balance (see the Chancellor's opinion).

The threat to the constitutional order imported into Estonia as a means of attracting voters has three main manifestations: denial of the legitimacy of the election result; unfounded attacks on the independence and activities of

constitutional institutions; attacks on the functioning of the constitutional order. Once election complaints have been resolved, the relevant court decisions have entered into force and the election result has been announced, allegations of dishonesty of elections and the illegality of the election result are no longer appropriate (see the opinion on "Obstruction and the Estonian election system"). Court judgments and the election result must be respected. It is also inappropriate to create misperceptions in the electorate about the functioning of independent institutions governed by the rule of law. Non-committal to picking a side must not be interpreted as picking a side, impartiality must not be interpreted as bias, or compliance with the Constitution and the law interpreted as a violation of professional duties.

Yet again, the issues of online voting, the timing of advance voting and other issues of constitutionality had to be clarified. If, for political or other reasons, a political force with considerable support in society repeatedly asserts before and after elections that one of the lawful forms of voting is not fair and/or legitimate, then many voters of that political force can be expected to take the same view. It can also be assumed that voters supporting that party do not use the method of voting considered "dubious" as readily as others.

Judges, officials, politicians, and especially election organisers and those responsible for their integrity, including independent IT auditors with international certification, have a duty to investigate impartially all suspicions and possible violations. It is certainly important to explain the electronic voting system and to refute misconceptions and untruths that are spread about it. In addition, electoral laws must, if necessary, be amended, clarified and supplemented (see the Chancellor's opinion). Once Supreme Court decisions on election complaints have entered into force, they must be respected in a country governed by the rule of law, so that questioning the election result is not appropriate.

While secrecy of voting in Riigikogu elections is a constitutional requirement and, in this connection, offers an important guideline for choosing a technical solution for electronic voting, then the procedure for electing city and rural municipality mayors can be determined by law. Currently, the law requires that the mayor of a city or rural municipality must be elected by secret ballot. This means that a municipal council member may not be put directly or indirectly in a situation where their choice becomes known to others (see the opinion on "Secrecy of voting").

Estonian and European Union legislation

The European Union Affairs Committee of the Riigikogu's current composition has commendably strived to ensure that everyone understands the actual impact of European Union legislation on the Estonian people and economy. During the

reporting year, the Chancellor of Justice also analysed situations where the requirements of the Estonian Constitution had not been or could not be sufficiently protected when discussing European Union legislation.

Most public attention was attracted by the Draft Act on so-called administrative fines, but that is not the only concern. There is nothing wrong with the fact that, 20 years after joining the European Union, we analyse the relationship between the Estonian Constitution and European Union law based on our own experience. Quite the opposite. Nor should unjust criticism be raised against officials who participate in negotiations and coordinate the entire process at the Government Office. During preparation of the Constitution of the Republic of Estonia Amendment Act (CREAA) before accession, it was possible to rely only on a theoretical idea of functioning as a full member of the European Union and on an understanding of the essence of European Union law at that time. To date, we have enough practice to allow us to act with more nuance than before in defending our interests.

Under § 1 of the CREAA, Estonia may belong to the European Union proceeding from the fundamental principles of the Constitution of the Republic of Estonia. Upon Estonia's membership in the European Union, the Constitution of the Republic of Estonia is applied taking into account the rights and obligations arising from the treaty of accession. In line with the principle of the primacy of European Union law, the effectiveness and implementation of Union law in Member States must be ensured.

Section 1 of the CREAA further explains that the principle of the primacy of European Union law applies to the national law of Estonia as a whole to the extent that it does not conflict with the fundamental principles of the Constitution (Supreme Court *en banc* judgment in case No 5-19-29, para. 41). The principle of primacy applies only to those rules of European Union law that have already been adopted. During negotiations on draft legislation, what must be followed is the Constitution and not the Constitution of the Republic of Estonia Amendment Act.

In the European Union legislative process, Estonia must stand for the survival of the Estonian language, Estonian culture and the Estonian nation. It is also necessary to take into account the peculiarities of Estonia's geographical location on the periphery of the European Union, its sparse and small population and, consequently, small companies. This is precisely as provided by Article 4 of the Treaty on European Union, according to which the European Union must respect the national identities of the Member States, which are inherent in their fundamental structures, political and constitutional.

In order to ensure comprehensive implementation of the Estonian Constitution, it is important to analyse the compatibility of all initiatives concerning European Union law with the Constitution. This analysis is necessary to determine:

1. whether protection of fundamental rights is guaranteed in the manner prescribed by the Constitution. Among other things, a check must be carried out to see whether implementation of the proposed restrictions on fundamental rights – for example, possible additional penalties, reporting obligations or restrictions on freedom of enterprise – would be proportionate in Estonian circumstances;
2. whether European Union legislation can be implemented so that the structure and operating logic of constitutional institutions is observed;
3. whether a European Union legal act can be implemented without fundamental changes in the organisation of affairs of the state;
4. whether, if negotiations on a European Union draft legislative act fail to achieve conformity with all the provisions of the Constitution, §§ 1 and 2 of the CREAA can be relied upon.

If the analysis shows that an initiative of European Union law may conflict with the Constitution, then the analysis must state the exact substance of this conflict. The negotiations must then seek to amend the initiative or leave a choice or derogation to the Member State. If the negotiations fail to achieve this objective, it is necessary to analyse whether it is still possible to implement the directly applicable act with the support of the CREAA. If a European Union legislative act has to be transposed by a law, the Riigikogu may ask for an opinion from the Supreme Court.

An official is not authorised to formulate a *definitive* position on whether a provision of the Constitution amounts to a fundamental constitutional principle, nor on the question how to interpret the Constitution in compliance with European Union law. The following positions of the Supreme Court should be followed:

- "From the fact that the provisions are compatible with European Union law, it cannot be inferred that the same provisions are also compatible with the Constitution of the Republic of Estonia" (Supreme Court *en banc* judgment No 3-2-1-71-14, para. 81). "Estonian laws, including the contested provisions, must comply with both EU law and the Constitution, and no reason exists not to assess their constitutionality on the sole ground that they may also be contrary to EU law" (Supreme Court Constitutional Review Chamber judgment No 5-20-10, para. 42).
- "If EU law confers an objective on a Member State, but the means to achieve it remain in the hands of the Member State, the means chosen must comply with EU law as well as be compatible with the Estonian Constitution" (Supreme Court Constitutional Review Chamber judgment No 3-4-1-5-08, para. 36).

The Estonian legal order confers the power to interpret the Constitution on the Supreme Court. Thus, when participating in negotiations, officials must act sustainably and try to achieve a situation where the legislative act is, as far as

possible, compatible with all the provisions of the Constitution to which the Supreme Court has not yet given a different interpretation.

To this end, it is necessary to carry out a constant and comprehensive analysis of the constitutionality of European Union legislative initiatives. If it is found that a provision of proposed European Union legislation may conflict with one of the norms of our Constitution, the Government of the Republic and the Riigikogu must be briefly and clearly notified of this.

In conclusion: Estonian officials and ministers involved in creation of European Union legislation are obligated to follow the main text of the Constitution. The Constitution of the Republic of Estonia Amendment Act does not allow reliance on the Act in preparing European Union legislation. The CREAA is intended for cases where, despite great effort, it has not been possible to achieve consistency with the main text of the Constitution.

Reducing bureaucracy and law-making

Transposition of European Union legislation into Estonian legal space, as well as preparation of our own draft laws, is often preceded by drawing up a legislative intent. In the opinion of the Chancellor of Justice, it is possible to reduce such an excessive administrative burden related to draft legislation.

The Chancellor finds that in cases where it is necessary to correct an error in a law or to solve a problem that has arisen, drawing up a legislative intent could be replaced by preparing a clearly worded small-scale draft and explanatory memorandum. In this way, those affected by the amendment can be given sufficient time to put forward concrete proposals to improve the draft. This would save time for everyone concerned.

Therefore, if it is clear that solving a problem requires regulating the situation by a legal act but this does not involve an innovative solution, and if preparing a draft act can be expected to take less time than drawing up a legislative intent, then preparing a draft should begin immediately and drawing up a legislative intent should be abandoned.

Amendments to the Competition Act

Pending before the Riigikogu is the Draft Act on amending the Competition Act and other related acts (384 SE), which transposes into Estonian law a European Union directive (ECN+ Directive) whose purpose is to create functioning competition supervision throughout the European Union.

The Chancellor has repeatedly drawn attention to concerns in connection with this Draft Act. The issue was also dealt with in previous annual reports (e.g. 2022/2023, 2021/2022, 2020/2021). The most important questions are whether and why we need a new procedure – a competition supervision procedure – and how the fundamental rights of individuals are guaranteed in this procedure.

Competition supervision can also be carried out more effectively than before if supervision is performed in accordance with the rules of misdemeanour proceedings. What is lacking is a frank analysis to find out which procedure – administrative procedure or misdemeanour procedure – would be suitable for transposing the ECN+ Directive so as to guarantee the fundamental rights of individuals in a situation where penalties are very severe. Problems referred to in the explanatory memorandum, which relate, for example, to the concept of entrepreneur or to the application of intent and negligence in misdemeanour proceedings, also need to be resolved in administrative proceedings. So far, no analysis has been prepared and/or made public to take into account the changes already made to the general part of the Penal Code (the possibility of liability of a legal person).

Two issues in particular have been of concern – protecting the confidentiality of messages and the right not to incriminate oneself. The Ministry of Justice introduced amendments to provisions on protecting confidentiality of messages, eliminating the apparent incompatibility of the Draft Act with the Constitution. However, it is not possible to eliminate the substantive problem. Section 43 of the Constitution allows confidentiality of messages to be breached only with permission of the court in order to prevent a crime or to ascertain the truth in criminal proceedings. Competition supervision proceedings are an administrative procedure, and the Constitution does not allow breaching the confidentiality of a person's messages in administrative proceedings.

The second problem concerns the privilege against self-incrimination. The wording of the norm is now better than in the previous version of the draft, as it takes more account than before of a person's right not to testify against oneself. The wording of the norm offers an opportunity to implement it constitutionally, but the explanatory memorandum to the draft (p. 7 et seq.) nevertheless indicates a desire not to allow the privilege against self-incrimination to be invoked.

In the context of this particular draft, the question must be answered as to whether a party to proceedings is also permitted to rely on the privilege against self-incrimination in answering questions other than 'Have you committed a violation of competition law?'. If only that one question can be left unanswered, the privilege against self-incrimination is essentially non-existent in the case of legal persons (see also H. Sepp, E. Kergandberg. Comment on § 22 of the Constitution, 40 ff. – Eesti Vabariigi põhiseadus. Kommenteeritud väljaanne [Constitution of the Republic of Estonia. Annotated edition, 2020]). Unfortunately, the explanatory memorandum to the Draft Act supports exactly this kind of solution.

It should also be kept in mind that this procedure is likely to serve as a model when administrative fines are extended to other areas. Therefore, all fundamental decisions based on this draft must be thought through especially carefully and

clearly written down in the draft. For example, it should be unequivocally clear to what extent the privilege against self-incrimination can be invoked and whether this is compatible with the Estonian Constitution. It must also be clear how exactly court proceedings will take place when an administrative fine is challenged.

When considering alternatives, it could be taken into account that from the point of view of protecting fundamental rights it is immaterial whether imposition of a fine related to competition supervision proceedings is heard in an administrative or district court. What is important, however, is that the procedural regulation protecting fundamental rights is as tight and offers the same effective guarantees as the regulation of misdemeanour procedure. This is not the case in the current draft.

Elections and the National Electoral Committee

The National Electoral Committee has been set up on the basis of the Riigikogu Election Act and its main task is legal supervision of all decisions and steps taken in connection with elections. In addition, the Committee organises elections for the President of the Republic and the Board of the Riigikogu.

The Electoral Committee ascertains the voting results in elections for the Riigikogu and for the European Parliament or in a referendum, and also registers members of the Riigikogu and members of the European Parliament elected from Estonia. The Electoral Committee handles election-related complaints as well.

The mandate of the Electoral Committee lasts for four years. Under the law, members of the Electoral Committee include a first instance judge appointed by the Chief Justice of the Supreme Court, a second instance judge appointed by the Chief Justice of the Supreme Court, an adviser to the Chancellor of Justice appointed by the Chancellor, an official of the National Audit Office appointed by the Auditor General, a State Prosecutor appointed by the Prosecutor General, an official of the Government Office appointed by the Secretary of State, and an information systems auditor appointed by the Board of the Estonian Auditors' Association. Every member of the Electoral Committee also has a substitute member.

On 1 June this year, the mandate of the new composition of the National Electoral Committee began. Olari Koppel, the Deputy-Chancellor of Justice-Adviser, Director of the Chancellor's Office, will continue as representative of the Chancellor of Justice on the Electoral Committee.

During the reporting year, elections took place for the European Parliament and for the Board of the Riigikogu. Since the Vice-President of the Riigikogu, Jüri Ratas, was elected as a member of the European Parliament, early election of the Vice-Presidents of the Riigikogu had to be carried out.

During the reporting period, the Electoral Committee held 25 meetings, of which about half dealt with decisions concerning European Parliament elections and resolving election complaints. Decisions and minutes of meetings of the Electoral Committee are accessible in the document register of the Chancellery of the Riigikogu.

Deposit and voting age in European Parliament elections

Under the European Parliament Election Act, among the documents required to register as a candidate, political parties and independent candidates running in an election must also submit proof of payment of deposit. Representatives of the Estonian Green Party presented nine persons as party candidates but only paid a deposit for two candidates. As a result, the National Electoral Committee refused to register seven candidates.

The Green Party then filed an election complaint, contesting the constitutionality of the deposit requirement. The Electoral Committee dismissed the complaint, so the Green Party appealed the decision to the Supreme Court.

On 14 May 2024, the Supreme Court issued an order, stating the need to check the compatibility of the deposit requirement with European Union law and deciding to refer the matter to the Court of Justice of the EU for a preliminary ruling. The Supreme Court found that the Green Party's appeal is not without prospect of success: it raises an important legal issue. In the opinion of the Supreme Court, the deposit applied in Estonia in European Parliament elections is one of the highest in Europe and is also significantly higher per candidate in view of the Riigikogu elections.

Since the ruling of the European Court of Justice would not have entered into force before the European Parliament elections, the Supreme Court decided to grant interim protection to the Green Party and ordered the National Electoral Committee to also register those Green Party candidates for whom no deposit had been paid. The Electoral Committee registered the Green Party candidates on the day the court order was made public.

Should the Court of Justice find that the deposit or the amount thereof applicable for European Parliament elections contravenes European Union law, all political parties and independent candidates who have paid a deposit will have their deposit refunded. In that case, the Riigikogu will also have to amend the deposit provisions in the European Parliament Election Act.

Another fundamental issue about the relationship between the Constitution, the Constitution Amendment Act and European Union law arose in connection with the plan of Riigikogu members to lower the voting age in European Parliament elections, following the example of several other Member States. The Chancellor of Justice is convinced that in elections to the European Parliament, citizens of the European Union voting in Estonia do not exercise the state power of the Republic

of Estonia, so § 56 of the Constitution does not restrict lowering the voting age. In the opinion of the Chancellor of Justice, the opposite conclusion would be contrary to the nature of the European Parliament and also unconstitutional, since state power in Estonia may only be exercised by citizens of the Republic of Estonia.

Secrecy of elections

In connection with the election of the Tallinn mayor held in Tallinn City Council on 14 April 2024, the National Electoral Committee and the Chancellor of Justice had to assess whether this election was legitimate and in line with the general principle of secrecy of elections.

According to a representative of the Centre Party faction, which was recently left in opposition in the Tallinn City Council, the parties of the ruling alliance had agreed on a pattern for marking ballots before the third round of the mayoral election. This deprived council members, at least in theory, of their freedom to vote, as it allowed the faction leaders to control how members of their faction voted in the mayoral election.

In the first two rounds of voting, the mayor had not been elected as he had not received the support of all the coalition councillors present. The pattern of marking the ballots allegedly set out which corner of the empty box after the candidate's name on the ballot was to be ticked.

The complaint alleged that city council members were also pressured to take a picture of their ballot paper and later share that photo with others.

The National Electoral Committee found that resolving this issue did not fall within the Committee's competence since, according to the law, no complaint can be filed with the Electoral Committee against a municipal council internal act. The complaint was forwarded to the Ministry of Justice for analysis.

In her reply, the Chancellor of Justice emphasised that, as long as the City of Tallinn has not decided otherwise by its statutes (for example, that the mayor is elected by public vote), the general principle of secrecy of elections also extends to internal acts of the Tallinn City Council, thus also to the procedure for electing the mayor. This means that pressure on voters is not allowed. Nor do the Tallinn statutes limit the number of rounds of voting that may be held in the city council in the mayoral election.

E- and m-elections

At the initiative of the Ministry of Justice, the Riigikogu supplemented the electoral laws by introducing into them norms laying down the technical organisation of e-voting, which were previously set out in the procedures and instructions approved by the National Electoral Committee. By doing so, a legal solution was found to the observation made by the Supreme Court in 2019 that the rules for determining the results of electronic voting must be laid down more clearly in legislative acts.

When dealing with election complaints after the 2023 Riigikogu elections, the Supreme Court stated that the task of the Riigikogu is "to stipulate in the electoral laws a sufficiently tight regulation regarding all important issues related to elections, in order to ensure the control of the legislator and the public trust in the elections by means of organisational, procedural and substantive legal requirements".

These amendments also created a legal basis for the situation that, starting from the 2025 municipal council elections, it will also be possible to use Smart-ID as a means of identification (in addition to ID-cards and mobile-ID) in e-voting.

The third fundamental amendment concerns m-voting, i.e. the possibility to also e-vote with mobile devices, which are usually mobile phones and tablets. To this end, a provision was added to the Riigikogu Election Act, providing an opportunity to create a voter application for the most common mobile operating systems in the future. Their use is decided by the National Electoral Committee prior to elections.

The National Electoral Committee, which was involved in preparing the Draft Act, drew the attention of the Riigikogu to several security risks involved in voting with a mobile or smart device. The main risk concerns the compilation and publication of the mobile voter application. While the entire process of regular e-voting is under the control of the state – the voter application is compiled by the State Electoral Office and the application can be downloaded from the state-managed web environment valimised.ee – then in the case of m-voting these operations are performed in online stores of mobile operating system operators (Google Play, Apple Store).

The Electoral Committee concluded the following: "It must be taken into account that it is possible for different parties to upload alternative or malicious voter applications to app stores. In the case of such voter applications, the electoral service cannot guarantee their correct operation, and the removal of these applications requires a quick response from the app store manager. […] Penal norms cannot prevent malicious voter applications from being uploaded if they are uploaded outside Estonia. It is possible that some of these applications will only be made available outside Estonia, which allows influencing the correctness and receipt of electronic votes cast abroad, but makes it difficult for competent state authorities to quickly detect violations."

The size of electoral districts in Riigikogu elections

In the autumn of 2023, the National Electoral Committee commissioned an analysis from the University of Tartu on whether and in what way it would be possible to change the electoral districts valid for the Riigikogu elections since 2002 and the number of mandates to be distributed in them. In theory, all districts could be more or less the same size in terms of the number of voters and the number

of mandates that can be distributed there, since this would ensure the equal weight of each vote.

Demographic processes in the last two decades have led to a situation where the electoral districts for the Riigikogu elections are of very different sizes. For example, nearly 47 000 voters in Lääne-Virumaa district will determine 5 seats in the Riigikogu, while 151 200 voters in Harju-Rapla County will determine 16 seats. The size of the districts thus differs more than three times.

An important difference comes into play when seeking a personal mandate: while an independent candidate standing for election in Lääne-Viru County has to collect 20 per cent of all votes cast and valid in the district in order to be elected to the Riigikogu, then in Harju-Rapla County, 6.25 per cent is enough. Consequently, in recent years, repeated studies have looked into whether this distribution of mandates and the treatment of candidates is still compatible with the Constitution.

The Chancellor has previously drawn the attention of the Riigikogu to this problem and recommended that the districts be changed. So far, there has been no reason to initiate constitutional review.

In July 2024, the University of Tartu announced that the analysis is complete. In September, the National Electoral Committee began to examine the conclusions of the analysis and proposals for reshaping electoral districts. The Electoral Committee has promised to make a proposal to the Riigikogu once that is done.

Good administration

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

People are often dissatisfied with how state agencies resolve their applications. In carrying out its tasks, an authority is obliged to comply with deadlines set by legislation.

According to the law, memorandums and requests for explanation must be replied to promptly but no later than 30 calendar days as of registration. In complicated cases, the deadline for reply may be extended to two months (Response to Memoranda and Requests for Explanations and Submission of Collective Addresses Act, § 6). The following institutions had problems with responding to memorandums and requests for clarification on time: the Ministry of Education and Research, the Ministry of Justice, the Ministry of Climate, the Ministry of

Finance, the Ministry of the Interior, the Land Board, and in addition Kohila Rural Municipality Government, Mustvee Rural Municipality Government, Narva-Jõesuu Rural Municipality Government, Pärnu City Government, Põhja-Sakala Rural Municipality Government, Põltsamaa Rural Municipality Government, Raasiku Rural Municipality Government, Rõuge Rural Municipality Government, Saarde Rural Municipality Government, Tallinn City Government, and Tartu City Government.

The Chancellor of Justice also received complaints against the Land Board, which had failed to respond to letters. The issue concerned the conduct of proceedings for acquisition of an immovable in the public interest.

The Administrative Procedure Act stipulates that a participant in administrative proceedings must be answered promptly, i.e. within a reasonable time. The definition of a reasonable time depends, first and foremost, on whether the request complies with requirements, on the complexity of the case and the steps to be taken to resolve it, as well as other circumstances which may objectively affect the duration of proceedings. In this case, the Land Board should also have taken into account that acquisition of an immovable in the public interest is likely to interfere seriously with a person's rights (§ 32 Constitution). The Chancellor found that the Land Board failed to comply with the law and good administrative practice in responding to the petitioner's letters.

The Chancellor of Justice received a complaint that the Environmental Board did not respect the deadlines for registering forest notifications. According to available information, the Environmental Board informed the parties about exceeding the procedural deadline and, for example, in June 2024 informed them that the procedural deadline would be extended until December 2024. The procedural deadline was therefore set at up to six months. Under the current law, a forest notification should be registered or refused within 15 to 30 working days. If necessary, it is possible to extend the deadline for registering a forest notification, but a decision must be made no later than on the 90th day. The Chancellor asked the Environmental Board to comply in future with the deadlines laid down in legislation.

The Chancellor received a complaint that the Strategic Goods Commission at the Ministry of Foreign Affairs had not resolved an application for an import licence for military goods for nearly four years. The law stipulates that the relevant application must be resolved within 30 days (§ 17(1) Strategic Goods Act). According to the Commission, the applicant was repeatedly informed of shortcomings in the application and asked to provide additional information but failed to do so. In the case of deficiencies in an application, the applicant must be given a specific time limit for eliminating them. It must also be explained to the applicant that if deficiencies are not remedied, the authorities may decline to examine the application (§ 15(2) Administrative Procedure Act).

The Strategic Goods Act expressly lays down that proceedings of an application will be terminated if the applicant fails to submit the relevant additional data required by the Commission within 30 working days as of receipt of a request (§ 17(6)). Therefore, the Commission should have given the applicant an appropriate explanation about processing the application and avoided leaving the applicant in a vague situation.

An adult adoptee contacted the Chancellor of Justice with a concern that the National Archives would not issue them with a primary birth certificate without the consent of their biological mother's other children, as the file contains private personal data and circumstances of adoption secrecy. The petitioner stated that their parents and adoptive parents are deceased and asserted that issuance of their birth certificate could not be made dependent on the other children of the biological parent born about a decade later than the petitioner.

The Chancellor reached the opinion that the National Archives and the Social Insurance Board had not lawfully resolved applications for access to the origin data of adoptees in cases where the biological parents of the adoptees have died. No law imposes a condition that an adoptee whose biological parents have died can access their origin data only if the other children (or heirs) of the parents agree.

If an adoptee whose biological parents have died wants the Social Insurance Board or the National Archives to give access to their origin data, the General Data Protection Regulation must be applied and the person must be given an opportunity to access their origin data, provided that this does not damage the rights and freedoms of other people (e.g. other children of biological parents). Weighing different interests is the responsibility of the Social Insurance Board and the National Archives.

The Chancellor received a complaint about proceedings of a notice for correction of the data of an apartment building in the building register. The building register must reflect the actual situation as accurately as possible – in which case the register data are useful in practice and reliable. The Chancellor explained that the data entered in the register have informational significance and that true data do not need to be removed from the register, even if they reflect illegal or unauthorised alterations.

The Chancellor also dealt with a case of administrative bullying. The petitioner complained that Luunja Municipality Government had issued to them a series of disproportionate precepts, which the petitioner had to challenge in court. The Chancellor reached the opinion that a person must not feel that the municipality has picked them out and is looking for ways to bully them. The municipality must ensure that its activities are in accordance with the law, purposeful, honest and humane, and must also convincingly, impartially and cordially explain this to the parties in proceedings.

The Chancellor was contacted by the guardian of an adult disabled person with the concern that the guardian must submit to the municipality monthly bills from the special care institution, fuel cheques and a bank account statement in order to receive support for their ward. The guardian considered it humiliating and burdensome. The Chancellor found that although the rural municipality government pays the support voluntarily, it still has to follow the principles of good administration and provide reasoning for its decisions. Nor may the rural municipality government impose superfluous conditions on receiving support. The Chancellor recommended that the municipality should consider whether requiring fuel cheques was justified from the point of view of both the municipality and the guardian.

When resolving the guardian's complaint, it was further revealed that the municipality had assessed the ward's need for assistance three times in the past five years. The assessment of the ward's need for assistance had not changed during that period and the decisions to grant assistance based on those assessments were also substantively the same. At the same time, each social service was assigned a different deadline: from half a year to two to three years. Therefore, every now and then, the guardian had to submit a new application for assistance to the rural municipality government in order to ensure consistent assistance to the ward.

Under the Social Welfare Act, a person does not need to apply to a rural municipality or city for a separate assessment of the need for assistance and corresponding individual services: submission of one application for assistance is enough. When resolving an application, a rural municipality or city must comprehensively assess a person's need for assistance and offer the corresponding assistance, having also heard the person's own opinion beforehand. This is also required by the general principle of administrative procedure, according to which a person's application must be resolved purposefully and efficiently, and as simply and quickly as possible, avoiding excessive expense and inconvenience for the person.

The Chancellor asked the municipality to consider whether it was justified to carry out a regular assessment of the need for assistance so frequently. She suggested assessing whether it would be possible to determine, in a single decision and on a uniform basis, what services the municipality organises for a person in need and what support it provides. The Chancellor explained that a municipality must justify why it assigns a service to a person for a specific period and how it meets the person's need for assistance.

The Chancellor also criticised a rural municipality government that failed to consider objections raised as an extra-judicial administrative challenge against a decision to reduce subsistence benefit, failed to give the person the opportunity to remedy possible deficiencies and failed to make a decision on the challenge.

If someone submits a manifestation of intent to the rural municipality government to amend or annul a decision within the time limit for challenge, it should be presumed that the individual wishes to lodge a challenge. An application must also be regarded as a challenge even if it does not expressly request that the administrative act be amended or annulled, but it is clear from the content of the application that this is what the person actually wants.

Correct Estonian usage

Compatibility of the new dictionary of standard Estonian ÕS with the Language Act

Widespread problems with ensuring legality also appeared in preparing the new edition of the dictionary of standard Estonian *Õigekeelsussõnaraamat* (*ÕS*). The Chancellor of Justice asked the Institute of the Estonian Language (EKI) to proceed from the requirements of the Language Act and the Government of the Republic regulation when compiling the 2025 edition of the dictionary of standard Estonian *ÕS*.

Under § 4 of the Language Act, official language usage must comply with the norms for standard written Estonian. According to the law, standard written language is understood as a system of spelling, grammatical and lexical standards and recommendations. This system must ensure uniformity and clarity in the official use of language and encourage implementation of good language usage.

By normative standard written language, the Language Act means restrictive and guiding norms, compliance with which is mandatory in official communication. Under § 2 of the Government of the Republic regulation on "The procedure for implementing the norms of standard written Estonian", the norm for standard written language is determined by the latest dictionary of standard Estonian (the *Õigekeelsussõnaraamat*) published by the Institute of the Estonian Language, the decisions of the language committee of the Estonian Mother Tongue Society, and the orthography rules, normative manual and grammar approved by the language committee. Specialists at the Institute of the Estonian Language were planning to abandon fixing word meanings and offering recommendations on word choices in the *ÕS* which will be published in 2025.

We reached a consensus with the Institute of the Estonian Language and the Ministry of Education and Research (which has a supervisory duty) that neither the law nor the regulation allows the norm for standard written language to be fused into an overview of actual language usage or to abandon vocabulary norms and recommendations (see the Chancellor's letter). The requirement of the standard written language norm must not be drained of substance as a result of interpretation, so as essentially amounting to absence of a norm. The law

stipulates that norms and recommendations also apply to the meaning and use of words.

The standard written language norm must be followed in official language use, while other texts aimed at the public must be based on best language usage practice. This does not violate freedom of expression: the standard written language norm is mandatory only in official texts because they must be understandable to as many members of society as possible. Following best linguistic practice supports clarity of the message and preservation of the Estonian language as the common language and basis of the identity of our people.

Unfortunately, during the online test examination of Estonian, basic school graduates were given the possibility to use the combined dictionary of the Estonian Language Institute's *Sõnaveeb* portal as reference material, but not the dictionary of standard Estonian, the *Õigekeelsussõnaraamat*. The search engine of the *Sõnaveeb* portal does not show a match for the searched keyword in the *Õigekeelsussõnaraamat*. However, assessment, including of the online test examination, is based on the norm for standard written Estonian, one of the main sources of which is the *Õigekeelsussõnaraamat*. The Chancellor was told that since the test examination gave pupils the opportunity to use the *Sõnaveeb* portal, this time possible differences between the standard written language norm and the combined dictionary on the *Sõnaveeb* would be resolved in favour of pupils.

The Chancellor emphasised that reference material available during the examination must be the latest dictionary of standard Estonian, *Õigekeelsussõnaraamat* (*ÕS*) or its online version. Schools must ensure that basic school graduates know how to use the ÕS, know its significance and are able to distinguish it from other supporting language sources.

Estonian in public space

From the point of view of survival of the Estonian nation and its language and culture, use of the Estonian language in all areas of life is extremely important. A small unique language should not be seen as an obstacle, but as a great advantage: after all, language is also a means of sharing thoughts and a perception of the world. Appreciation of the Estonian language was demonstrated by statements complaining about the excessive influence of foreign languages. The Chancellor of Justice affirmed that it must be possible to conduct all affairs in Estonian in Estonia.

The eventual abandonment of the segregated school system primarily serves the interests of pupils with other mother tongues, creating equal opportunities for them to realise themselves in the best possible way.

According to the Constitution, the official language of Estonia is Estonian and children are entitled to free basic education in Estonian. International law binding on Estonia also does not stipulate that a child or a young person must be

guaranteed free basic education in their mother tongue which is not the official language. These legislative instruments stress that the state must establish a uniform educational system and ensure learning of the country's official language so that people can participate in the life of society.

Of course, a person cannot be prohibited from speaking in their mother tongue. The problems that have accompanied the preservation of two separate education systems are known: the learning outcomes of pupils in schools where the language of instruction is Russian tend to be poorer than those of Estonian schools, so that children with Russian as the language of instruction also have poorer prospects of continuing their education and choosing a suitable profession and work, and people whose mother tongue is Russian are more often excluded from the life of society. The Chancellor of Justice gave a thorough opinion on this issue to the Supreme Court Administrative Law Chamber. The Supreme Court reached a similar opinion as the Chancellor and did not stop the transition to instruction in Estonian.

No reform – in the substantive sense of the word – can proceed without legitimate concerns, setbacks and conflicts. Thus, some Estonian parents are rightly concerned that in some classes the proportion of children with a different mother tongue may turn out to be very high. Transition to Estonian-language school education requires a great deal of effort on the part of pupils, teachers and parents alike, and the school is obliged to provide the best possible teaching and support to all pupils (see the Chancellor's opinion).

At the same time, one must not go to extremes, for example by prohibiting pupils from speaking to each other in a language of their choice during breaks. Everyone has a constitutional right to preserve their national identity, and a break between lessons is intended to take a rest from studying (see the opinion on "Language of communication between pupils").

Education

"Who is a good member of society, who is a good person?", the Chancellor of Justice asked in autumn 2023 at the educational conference "Igaüks meist loeb" (Every one of us counts) organised at the Rocca al Mare School. Children and young people are supported in growing up into independent individuals by their family, teachers, kindergarten, school, as well as rural municipalities and cities, the state and society as a whole. Every child is invaluable, it is the duty of us all to help them grow into a good person, to create Estonia's future (see the interview with the Chancellor of Justice published in the *Sirp* newspaper).

A parent is entitled to choose a school for their child within the existing education system. At the same time, neither children nor parents have the right to demand abstention from reorganisation which is necessary in the public and community interests and is not excessively burdensome for individuals. Regardless of their place of residence, parents and home language, all children are entitled to education in line with their abilities, said the Chancellor of Justice at the education network development conference "HaridusLood" in November 2023. Schools should not be divided into good or bad. All schools should support the desire to learn and develop into a good person. After all, school also means preparing for adult life: for adaptation and effort, for a calm and cordial understanding of what is different from oneself, for being a dignified citizen.

The task of the state and of cities and rural municipalities is to organise school life in a rational way. A city or rural municipality which feels that these tasks are beyond its capacity has the right and duty to take the state to court. Children and young people have the right to education. A local authority may not leave the functions assigned to it by law to the families.

In order to obtain a place at a kindergarten for their child, parents often have to seek help from the court. The reason is that several cities and rural municipalities have failed to create enough kindergarten places. Violation of the rights of parents and children is such an acute problem that judges have also addressed it in their podcast Kohtulood (see "Mida peab teadma lasteaiakoha taotlemisest või koolitranspordist?" (What do you need to know about applying for a place in kindergarten or about school transport?)). Judges from the Tallinn Administrative Court discussed this issue with a Chancellor's Adviser on the podcast.

One of the biggest goals in education in the coming years is the transition to instruction in Estonian. The unity of a co-operative society also depends on how people understand each other. In Estonia, the basis for this unity is the Estonian language, which is best learned in kindergarten and school.

Preschool education

A rural municipality or city government must provide a place in kindergarten to all children between the ages of one and a half to seven years whose parents apply for it. Recognition is due to those cities and rural municipalities who are able to ensure kindergarten places for all children by establishing new kindergartens, opening additional groups, involving private kindergartens or cooperating with a neighbouring city or rural municipality.

Several rural municipalities and cities support parents in paying the place fee for a private kindergarten. When offering such voluntary support, a rural municipality or city may decide on the conditions under which this is done. The Chancellor of Justice found that a rural municipality may establish a procedure according to which the parents of a child attending a private kindergarten or childcare are not supported if, by 1 October of the current school year, the child has turned at least three years old and the family has waived a place offered in a municipal kindergarten. So, if a child should go to another kindergarten, they will have to get used to the new environment, which may take some time. However, this need not always be detrimental to the child's well-being. In the specific case, the rural municipal council gave the rural municipality government the opportunity to consider whether paying support could exceptionally be justified.

If a child's home municipality or city has fulfilled its task, but the parent has chosen for their child a kindergarten maintained by another rural municipality or city, the child's home municipality or city must, according to the law, contribute to the costs of that kindergarten place. Covering the costs of a kindergarten in another city or rural municipality is essentially performance of a state function, the costs of which must be covered from the state budget (see the Chancellor's opinion on "Termination of payment of support for a private kindergarten"). As currently no legal norm stipulates that the costs directly related to performing such a state function should be covered from the state budget, a local authority can demand that expenses incurred be covered by the Ministry of Education and Research. If the ministry refuses to do so, the rural municipality or city may have recourse to the administrative court with a claim for expenses incurred.

Cities and rural municipalities may not impose additional restrictions on obtaining a place in kindergarten. According to the Supreme Court, it is unconstitutional for a rural municipality or city to make grant of a kindergarten place conditional on the availability of vacancies. The court reasoned that, as a result, children enjoying a statutory right to a place in kindergarten may be left without one. The Chancellor of Justice found that a local authority should repeal such restrictions. Cities and rural municipalities should also repeal illusory restrictions that could mislead a parent and leave the impression that a kindergarten place may be denied or postponed. The Chancellor recommended that the Ministry of Education and

Research should look for additional ways to help local authorities in predicting the need for kindergarten places and ensuring places.

A family does not necessarily have to obtain a place for their child in the kindergarten that the parent considers most suitable or that is located closest to home. The city and rural municipality government has fulfilled its obligation when it gives the family a place in a kindergarten within the service district. However, the courts have found that the obligation of a rural municipality and a city cannot be considered fulfilled if the family is offered a place in a kindergarten that is not accessible to it, i.e. it is located at an unreasonable distance from where the family actually lives, so that the family would have to incur significant expenses in order to take the child to the kindergarten (see Tallinn Circuit Court of Appeal judgment in case No 3-21-336). If, in the opinion of the parent, a kindergarten place is not accessible, the parent may notify the local authority thereof and apply for a new kindergarten place. If the local authority does not resolve the problem, the parent may have recourse to the court to protect their own rights and those of the child.

A local authority is responsible for the proper maintenance of a kindergarten. For example, a rural municipality or city government decides on the opening hours of a kindergarten, based on a proposal by the board of trustees. The rural municipality or city government must take into account the interests of children and families and consider the proposal by the board of trustees on the merits (see the opinion on "Changing the opening hours of a kindergarten"). The opinion of the board of trustees helps the local authority better understand what happens in kindergarten on a daily basis. At the same time, the rural municipality or city government does not have to agree with a proposal by the board of trustees. A parent who does not like such an arrangement can have recourse to the court.

According to the law, a child is entitled to receive assistance in kindergarten from a speech therapist, a special educator or other support service provider. A child's development is monitored and evaluated by kindergarten teachers. A child's need for speech therapy is assessed by a speech therapist. Unlike a speech therapist, teachers (including special educators) lack preparation for provision of speech therapy. On the recommendation of the Chancellor of Justice, a rural municipality organised speech therapy assessment and speech therapy for children.

A child is entitled to speech therapy in kindergarten free of charge. The owner of the kindergarten cannot refuse to provide a child the assistance of a speech therapist because there is no speech therapist in the kindergarten. A local authority that fails to fulfil its task, i.e. arrange assistance of a speech therapist, must reimburse the parent for expenses incurred for an appointment with a speech therapist. Sometimes local authorities are unable to observe these principles. For example, in one case, the rural municipality began to provide speech therapy to children in kindergarten only after the intervention of the Chancellor of Justice. At the same time, the parent was reimbursed for the costs

of a speech therapist's appointment which the parent had to incur because the children could not go to a speech therapist's appointment in kindergarten.

If Rajaleidja counsellors have determined that a child needs an adjustment group and if the parent has submitted a relevant application, the owner of the kindergarten must create this possibility. A recommendation by Rajaleidja cannot be ignored or interpreted as meaning that implementing the recommendation is voluntary. Nor is the owner of a kindergarten relieved of the duty to create an adjustment group by the justification that it is difficult to do so. The Chancellor recommended that the child be given the opportunity to attend a kindergarten adjustment group.

General education

A child is entitled to attend a school close to their place of residence. This school is assigned to a child by the city or rural municipality government, taking into account, first of all, the proximity of the child's residence to the school and whether other children of the same family are studying at a particular school. If possible, parents' other wishes are also taken into account. When assigning a school to a child, a local authority is also allowed to take into account other circumstances if more children are eligible than there are places in a particular school (Supreme Court judgment in case No 3-4-1-16-16, para. 21).

For a parent who finds that the rural municipality or city government has violated a child's rights when assigning a school according to the child's residence, it is most expedient to protect the rights of the child through the court. The court can assess whether the rural municipality government has lawfully assigned the school according to the child's residence, and can also oblige the rural municipality government to make a new decision (Tallinn Circuit Court of Appeal judgment in case No 3-20926, paras 21 and 24). All the important circumstances must be taken into account in aggregate.

The Chancellor of Justice has received a number of petitions from parents who are dissatisfied with the way their home municipality has arranged for their child's attending school. Although rural municipalities and cities have broad possibilities to decide how to organise school transport, they must first and foremost take into account the interests of the child, and school transport must also be accessible to the child.

A local authority cannot leave the organisation of school transport to families. If it is found that for some reason a child cannot use the school bus, the municipality must find another solution so that the child arrives at school on time and safely (see the Chancellor's opinion on "Organising school transport"). The school route must be safe and manageable for the child, and the waiting time for the bus after

the school day must be of reasonable length. A local authority can establish the conditions for organising a school route, based on which it can assess how the school transport arrangements suit a particular pupil.

The school educates and nurtures at the same time. The learning environment must be age-appropriate, safe and developing for pupils. A pupil must be supported if everything does not go smoothly for them at school, which can only be done through mutually understanding cooperation between the family and the school. A parent's concern for the child is understandable, but the school nevertheless does not have to agree with all the parent's proposals. In the event of a loss of trust between the school and the parent, the parties may ask for help from the Social Insurance Board or Rajaleidja. In such a situation, the Social Insurance Board will be able to implement a restorative justice programme.

If a pupil violates the school internal rules, the school has the right and obligation to find out all the circumstances of the incident, but such action must not be perceived as a punishment or degrade the dignity of the pupil. In order to ascertain a pupil's point of view, the school could speak with them in an age-appropriate manner, rather than request a written explanation (see the opinion on "Taking explanations from a pupil"). However, the law does not prohibit asking for a written explanation.

Sanctions may be used in respect of a pupil in order to ensure compliance with the school internal rules and to create a mutually respectful and safe learning environment. A written reprimand to a pupil must be in accordance with the law in both substance and form (see the opinion on "The lawfulness of a reprimand").

When planning decisions affect a child, it is necessary to ascertain the child's best interests and rely on them as a primary consideration when making a decision (see the opinion on "Temporary prohibition on participation in studies"). A more effective measure than prohibition from participating in studies may be to offer the pupil the help of a support specialist and a behavioural support plan is drawn up for them. The pupil's behaviour can also be discussed with their parent and, in a situation of conflict, the parties can be reconciled so that an agreement can be reached on how to proceed.

Excluding a pupil from school cannot be decided lightly by the school. Before making a decision on exclusion, the pupil must first be offered support. If, despite implementing appropriate support measures and sanctions, an upper secondary school pupil continues to violate the school internal rules, they must be expelled from school according to the law. Since exclusion from school restricts the fundamental right to education and can have a significant impact on a young person's future life, the reason for exclusion from school cannot be just any repeat violation of the internal rules (e.g. being late for class, lack of indoor footwear, and the like), but only violations which can be said to amount to compelling reasons for restricting access to education, and exclusion must be justified in the specific

case. The decision to exclude a pupil from upper secondary school must be in writing and must also state the reasons. The decision must also indicate the possibilities for challenging the decision (see the opinion on "Exclusion of a pupil from school").

A teacher's intervention in pupils' interaction with each other is justified when someone is being insulted, someone is being excessively loud or discomfort in others is caused because they cannot understand the talk of their peers due to a foreign language. However, in their free time, pupils are entitled to communicate in the language of their choice (see the opinion on "Language of communication between pupils"). Everyone has the right to maintain their ethnic affiliation, and the mother tongue is part of a person's national identity. Everyone is also entitled to free linguistic self-realisation and inviolability of private life.

The daily schedule at school must also provide sufficient time for rest and eating (see the opinion on "The organisation of studies"). Pupils should not become tired at school, the load must be distributed evenly. Each lesson must be followed by a break of at least ten minutes. Pupils must have at least 15 minutes for eating. Although in some cases the school has found that pupils and teachers could agree on the length of the break among themselves, such an agreement does not replace the school's daily schedule or what is established in the school internal rules.

A school may not require an upper secondary school pupil to present an authorisation for leaving the school building during lessons or a break. Therefore, while resolving a complaint the Chancellor found that the requirement to present an authorisation justifying leaving the school restricts freedom of movement, whereas the freedom of movement of upper secondary school pupils may not be restricted. However, for security and supervision purposes, basic school pupils leaving the school building and school grounds may be restricted. Nevertheless, a school may, if necessary, check the entry and exit of pupils (including upper secondary school pupils) to and from the school building, for example by asking them to present a pupil's card.

The law states that a school may not prohibit absence if a pupil wishes to go on a trip, participate in competitions or sports camps, or the like, during studies. However, the school always has the right to assess whether a pupil's absence is justified or not. A pupil has the right and duty to study, so that they may be absent from school only for a compelling reason. According to the law, it is enough for a parent to inform the school about a pupil's absence and the reason for it on the first day of absence. Thus, in order for a pupil to be absent, a parent does not have to apply for permission from the school in advance (see the opinion on "Notification of absence from studies"). If a child is absent from studies at the decision of the parent, but in the opinion of the school the parent has not behaved

correctly, the school can discuss the situation with the pupil and the parent, for example, during a development conversation.

Every child must be able to acquire education in the best possible way in line with their abilities, and teachers must create a good atmosphere for learning. This also means that a pupil must be supported in their studies primarily by the school, a responsibility that cannot be left to the parents. A pupil can receive assistance, for example from a school psychologist or other support specialist. A teacher must have basic skills for teaching pupils with special educational needs (see the Chancellor's opinion). The head of the school is responsible for ensuring that a teacher working at the school has the relevant skills. In addition, the school must ensure that, if necessary, a special educator is also available, who, among other things, instructs the teacher in teaching children with special educational needs.

If necessary, the school must offer a pupil individual supervision, the help of a support specialist, as well as study assistance lessons by group. If Rajaleidja recommends referring a child to home schooling or individual study for health reasons, the school must take this recommendation into account.

A recommendation by Rajaleidja is mandatory for the school if the parent has also given written consent to it. While resolving a petition, the Chancellor found that a school had violated a child's rights by not allowing the child to study in a special class with up to 12 pupils in the 2023/2024 academic year, as had been recommended by Rajaleidja. It is unacceptable to allow a situation to arise in which a child cannot learn to the best of their abilities and is not provided with the necessary support at school. In this particular case, the school agreed to organise studies for the child beginning from the new academic year in line with the recommendation of Rajaleidja, but this does not reverse damage that may have been caused by not providing the child with appropriate support in the previous academic year.

Sometimes a child needs to be transferred to a class with a smaller number of pupils. Before implementing such a support measure, the school must listen to the pupil and justify to them why they are being transferred to the new class (see the opinion on "Transfer to another class"). If the child runs into difficulties in adapting to the new class, once the school has learned about this, it must find out the causes of the problem. To facilitate a child's studies, all possible measures should be considered. Before a decision is made, the pupil and their parent are also heard.

A rural municipality and city, as school owners and providers of social services for residents of the municipality, can organise the necessary assistance for a child through either the social or educational system, or both. While resolving a complaint, the Chancellor found a rural municipality had not acted correctly when deciding to leave a child without a support person. The issue was that the rural municipality government had provided a support person for the child during the

previous two and a half years, and the child's need for assistance had not changed during the current academic year. Although the rural municipality government had taken the position that, in the future, the school but not the rural municipality social welfare department should provide assistance to the child, the municipality should have continued providing assistance until the school was ready to take over this task completely.

A child's development and coping at school is monitored by teachers, based on whose assessment teaching can be adjusted in line with the child's individual needs and abilities. For example, it is possible to implement instructed studies organised by a school, during which a teacher directly supports the pupil. The knowledge and skills check must measure the level of skills and knowledge established by the curriculum and provide feedback to the pupil in a graded form. Based on the grade, it can also be decided whether the pupil might need support in studies. Also, a grade, including a grade for a test retake, can affect the aggregate grade, as well as the child's further education.

After an extended absence, a child may need more support in learning. Absence may lead to lagging behind in studies, but absence from class cannot lead to the conclusion that the pupil's knowledge and skills are insufficient. The Chancellor found that it was not correct to assess a child's knowledge with a grade of "1" simply for being absent from class. What is assessed are a pupil's knowledge and skills, not absence from class. A grade of "1" means that in a particular subject the pupil's knowledge is insufficient.

A pupil is entitled to retake a test that could not be taken before or for which a negative grade was received. If a pupil does not go and retake the test, the teacher may give them a negative grade since the pupil has not been given an opportunity to assess their knowledge and skills. However, when setting the deadline for retaking a test, the school must also take into account, for example, that if a pupil has been absent for a long time, they need to retake tests in several subjects simultaneously. This can be overwhelming for the pupil, as during a short period they will have to retake all the tests that had not been taken due to absence and, at the same time, learn new material with others. The aim is for the pupil to master the material as best as possible and not lag behind others in their knowledge and skills.

A pupil's knowledge is assessed according to the grading scale, which, according to the national curriculum, is the basis for evaluating both the original tests and retakes. It must be objectively clear at what level the pupil's knowledge and skills meet the requirements of the curriculum. Therefore, no reason exists to lower the grade of a pupil who has retaken a test (see the Chancellor's opinion). Nor can it be considered correct if a pupil's grade for a retaken test is raised without justification. Such a consideration is a teacher's subjective decision, though objective feedback on the pupil's knowledge and skills might not be offered in this

way. A teacher may use a grading scale different from the national curriculum only if the test is simpler or more complicated than the grading scale established in the curriculum. A retake test measures the same learning outcomes as are measured by the original test.

The Chancellor has repeatedly been asked how many tests a week can be arranged for one class. Up to three tests may be carried out in one study week, and a test is defined as written work verifying acquisition of the learning outcomes of an academic quarter or of a course. If it is possible to make a note about the planned test in the school's online environment, then teachers must make this note, as failing to make a note can cause unnecessary tension. The more clearly tests are planned, the easier it is for the school to assess pupils' study load. Teachers must organise studies so as to support pupils in their learning.

Transition to instruction in Estonian

The transition of Russian-language schools to instruction in Estonian has made parents worry that too many non-Estonian-speaking children may start studying in classes at the same time. Parents of both Estonian and non-Estonian speaking children, whose children have so far studied in Russian, are concerned.

The Chancellor has said that if a Russian-speaking child needs additional support when studying in Estonian, this does not mean that a pupil whose mother tongue is Estonian can be left uninstructed and unsupported.

For non-Estonian-speaking students, learning in Estonian can be difficult at times. The success of instructed and supported learning depends on the knowledge, skills and attitudes of school staff. It is important that the school environment as a whole should support instruction in Estonian, encourage young people to learn Estonian and show interest in Estonian culture, history and current events. When living in Estonia, one needs to know Estonian.

Transition to instruction in Estonian is compatible with the Constitution. The Constitution does not enshrine the right to request that the state should provide basic education in another language (see Supreme Court order in case No 3-23-2480; the Chancellor's opinion to the Supreme Court on "The language of instruction in public school"). According to the Constitution, the official language of Estonia is Estonian and children are entitled to free basic education in Estonian. Nor does it follow from international law binding on Estonia that a child or a young person should be guaranteed free basic education in their mother tongue which is not the official language.

Children and young people with disabilities who do not speak Estonian are entitled to receive education that supports their ability to cope in the Estonian-speaking environment and participate in society equally with others. Thus, the transition to

instruction in Estonian is also in the interests of children and young people with disabilities (see the Chancellor's opinion on "Transition to instruction in Estonian").

When organising studies, the abilities of pupils in need of support must be taken into account. If properly supported, the vast majority of children with special educational needs are able to learn in a language other than their mother tongue. It is necessary to use a teaching methodology appropriate to the child's development, as well as make greater adjustments in teaching and learning. The law has also taken into account the interests of children and young people who, due to their disability, are unable to learn in Estonian.

Organisation of the online test examination and final examinations

In April, an online test examination in Estonian was organised for basic school leavers. During the examination, pupils were given the opportunity to use the combined dictionary of the Estonian Language Institute's language portal *Sõnaveeb* as a reference material, but not the dictionary of standard Estonian, *Õigekeelsussõnaraamat*.

In her letter to the Education and Youth Board, the Chancellor recalled that the basis for standard written language is the latest dictionary of standard Estonian. Written work in the Estonian language as a subject in the syllabus must follow the orthographic rules, and the teacher must evaluate a pupil's work on the basis of the norms for standard written Estonian.

The Chancellor found that if reference material is to be made available to pupils during the basic school final examination in Estonian, it must be the latest dictionary of standard Estonian, *Õigekeelsussõnaraamat* (ÕS) or its online version. Reference material at an examination must be unequivocally clear for a pupil.

According to the Ministry of Education and Research, the standing recommendation is to provide pupils access only to the dictionary of standard Estonian during the online examination.

An examination may be undertaken in writing on paper or electronically in the test database, or orally. This is decided by the Minister of Education and Research for each subject for the following academic year by 25 May at the latest. If the minister establishes an electronic form for the written part of the exams in these subjects, then basic school graduates must be able to prepare for the electronic examination.

Basic education must give a pupil the opportunity for self-realisation according to their abilities. Computer literacy has become increasingly essential over time, which must be taken into account by schools when organising studies. The task of

the school is to offer all pupils the opportunity to learn how to use a computer well, so that they can also perform learning tasks on a computer. The ability to use a computer is one of the general competences whose acquisition must be supported in order for a pupil to be able, among other things, to make learning more efficient.

The Chancellor of Justice found that although pupils who have completed an informatics curriculum may have better computer skills, in abstract terms this does not give any advantage to an examinee. It is important that all pupils should be able to familiarise themselves with both the structure and form of an examination before the examination itself. The structure and form of an examination must not come as a surprise to a pupil during the examination.

Equal conditions for graduation, including the same exceptions, must be established for pupils with the same level of education. Different conditions may be established for graduating from basic school than apply to graduation from upper secondary school (see the opinion on "Basic school graduation conditions"). In graduating from upper secondary school, it is possible to replace the state examination in a foreign language with an internationally recognised examination, but no such opportunity is laid down in graduating from basic school.

Since, in graduating from upper secondary school, it has been considered possible to replace a foreign language examination with an internationally recognised examination, it may be considered appropriate to introduce a similar possibility for basic school graduates. The Chancellor also forwarded this position to the Ministry of Education and Research, which prepares draft legislation concerning the organisation of general education.

Vocational education

Determining the timing of apprenticeship

Each pupil must participate in studies, so that they must know during which period their studies and apprenticeship take place and when they are entitled to take a break from studies, i.e. when the school holiday occurs. A pupil is entitled to rest according to the plan approved by the school. Absence of such a plan would mean that a pupil must constantly be ready to participate in studies.

The Chancellor found that since the school was late in informing pupils about apprenticeship and failed to establish a holiday period, the school failed to take into account that pupils are entitled to a break from studies. As a result, a pupil in a vocational school had to undergo an apprenticeship during a period for which the school had planned no studies.

Of course, it is not excluded that the school will have to change the study schedule during the academic year, but these changes must be justified and sufficiently foreseeable.

Re-issue of a pupil's card

The Minister of Education and Research agreed with the Chancellor of Justice and, on 8 January 2023, annulled a regulatory provision according to which a vocational educational institution could request a pupil to reimburse expenses arising from re-issue of a pupil's card if the card has been damaged, destroyed, lost or stolen.

According to the law, the minister must establish the procedure for issuing a pupil's card, but the law does not regulate charging a fee for it. Nor does the law give the Minister of Education and Research the power to regulate it.

A pupil studying in a vocational school is entitled to receive a pupil's card so that they can prove their pupil status. The regulation must be enacted on the basis of a law.

Exclusion from a vocational educational institution

Until 6 May 2024, the law did not regulate the conditions for excluding a pupil from a vocational educational institution. Under the regulation of the Minister of Education and Research, a first-year pupil in a vocational educational institution had to be excluded from school if the pupil had not started studying within two weeks of the beginning of studies without a compelling reason. The Chancellor was asked to assess whether this regulatory condition complied with the law.

The Chancellor concluded that the law did not provide for the condition of exclusion from school as laid down by the regulation. The Minister of Education and Research agreed that the regulation must be based on the law.

The Riigikogu laid down the same condition for exclusion in § 34[1] (1) clause 3 of the Vocational Educational Institutions Act.

Higher education

Participation in studies during academic leave

If a student wishes to study during academic leave, stating disability as the reason, they must also prove this. A student who contacted the Chancellor of Justice found that the university was asking them too much information to prove disability.

Proof of disability is a disabled person's card issued by the Social Insurance Board, which states the severity, type and duration of disability. The Chancellor explained to the student that, in granting the right to participate in studies, a university may only verify the circumstances prescribed in the university's rules for the organisation of studies. At the same time, the university cannot decide what data,

for example, will be entered on a disabled person's card. The university may use personal data that has become known to it to the extent allowed by the application submitted by the student.

Applying for scholarship

It is contrary to good administrative practice if the online setting for applying does not actually enable the application to be submitted. For example, it was found that students were entitled to apply for scholarship in September, but the technical solution of the Tartu University study information system was not yet complete by that time. The university did not offer any other solutions to apply for the scholarship in September.

The Chancellor found that by depriving students of the opportunity to submit scholarship applications in a timely manner and by providing misleading information about submitting applications on its website, the university violated the principle of good administration and the rights of students.

By regulation, the Minister of Education and Research has granted an educational institution and the Education and Youth Board the right to establish the exact time and method of submitting applications for a speciality scholarship and a scholarship supporting acquisition of higher education. The Riigikogu has not empowered the minister to do so. The Chancellor made a proposal to the Ministry of Education and Research to bring the regulation into line with the law.

University admission conditions

A university must establish and make public the conditions for admission, including the minimum language proficiency requirements concerning the language of instruction. According to those conditions, the University of Tartu required a candidate to have an Estonian language proficiency certificate on level C1, or passing the C1 level examination in Estonian at the University of Tartu, even though the candidate had acquired education in Estonian.

Universities enjoy a broad right of self-organisation and, among other things, the right to establish admission conditions, but this right is not unlimited.

In the Chancellor's opinion, the condition imposed by the university contravened the Language Act. A person who has acquired basic education, secondary education or higher education in Estonian does not have to prove their Estonian language skills with a proficiency examination.

The university took the Chancellor's recommendation into account and, in 2024, no longer requires candidates to prove their Estonian language proficiency if the candidate has acquired basic education, secondary education or higher education in Estonian.

Children and young people

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

Since 2011, the Chancellor of Justice also performs the function of the independent Ombudsman for Children.

The Ombudsman for Children ensures that all the institutions and persons that pass decisions concerning children proceed from the best interests of the child.

During the reporting year, the Chancellor paid special attention to the right of children and young people to participate in decision-making concerning them. For example, the Chancellor was asked about the constitutionality of lowering the voting age in the elections for the European Parliament. The Chancellor found that the Constitution does not prevent lowering the voting age in elections to the European Parliament and pointed out that all the age limits laid down by law should be reviewed as a whole. In a letter sent to the Chairman of the Riigikogu Constitutional Committee, the Chancellor explained that a thorough analysis and discussion is needed on how the established age limits fit together. The Chancellor recommended to involve also representatives of young people in the discussions, which the Riigikogu Constitutional Committee did.

The UN Convention on the Rights of the Child and the Constitution of Estonia assume that a reasonable balance is found between the need to protect a child and their right to decide. On the one hand, due to their physical and mental immaturity children need special protection and care. On the other hand, a child is an independent person with the right to participate in making decisions about themselves. The underlying basis should be that a child develops so that their decision-making ability and sense of responsibility also increase. The more knowledge and experience a young person has, and the more capable of understanding they are, the more independently they can exercise their rights. When setting age limits, an appropriate balance should be sought between the need to protect the child and their decision-making powers.

In order for young people to participate meaningfully in making decisions concerning them, young advisers to the Chancellor of Justice, under the leadership of the Chancellor's Office, translated into Estonian the summary of General Comment No 26 of the UN Committee on the Rights of the Child. This summary is prepared for children and deals with the impact of climate change on the rights of the child. The Committee stresses that in making decisions concerning environmental and climate change it is necessary to assess their impact on children and give children and young people the opportunity to have a say in these

decisions. It is important to assess the impact of decisions on current and future generations.

A reasonable balance between a child's right to participate and the need for protection must also be found when making decisions about the child's health. The Chancellor's advisers and health professionals jointly drafted a guide titled "Assessing a child-patient's decision-making capacity in provision of healthcare services". The guide explains in which cases a healthcare professional is required to assess the decision-making capacity of a patient under the age of 18 and how this should be done. The guide offers health professionals advice and resources to address such situations.

Children and parental care

The Chancellor's assistance is often sought by parents who have been unable to agree with each other on matters of child custody, maintenance or access. The Chancellor does not resolve such disputes; however, the Chancellor's advisers do help to clarify these situations and, if possible, offer advice.

Certainly, it would be best if separated parents could find consensus on issues concerning the child and make a joint effort for the child's well-being. Agreement is part of parental responsibility and, if necessary, assistance can be sought from an impartial intermediary, i.e. a family conciliator. However, state coercion cannot mend human relationships. If parents are unable to agree on custody of the child and access to the child, the dispute is resolved by a court. When making its decision, the court must take into account the specific circumstances and proceed from what is best for the child.

Child in a foster family

A parent asked the Chancellor on what legal basis their children were staying in a foster family with whom no foster family contract had yet been concluded.

The Chancellor explained that the city government, as the guardian, has the right to determine the child's place of stay, so it can also allow the child to be in a foster family that has been assessed as suitable. The Social Insurance Board assesses the family as suitable after checking whether the family meets the requirements set out in the law and, based on a family survey and a home visit, concluding that the family is able to raise the child.

The Social Insurance Board has explained on its homepage how a suitable foster family for a child is found. Before a city or rural municipality enters into a foster family contract, the child's meetings with the family are organised. Meetings are needed so that the child can get acquainted with the family and their residence. The child's opinion is then heard. Based on this opinion and other important

circumstances, the child protection worker can make sure that concluding a contract with a particular foster family is in the best interests of the child.

Child maintenance

The Chancellor was asked whether a parent who is separated from the child must pay maintenance to the child even if the child is in a closed childcare institution.

A parent must provide maintenance for a minor child regardless of where the child is staying. A minor is entitled to receive maintenance from their parent. The fact of a child being in a closed childcare institution does not relieve the parent from their maintenance obligation.

A child in a closed childcare institution also has costs that must be covered by their parents. A closed childcare institution provides the child with accommodation, food, support and supervision, as well as activities that the child needs and that support their development. Parents need to make sure that the child has clothes, hygiene items and other necessities for everyday life, such as glasses. The childcare institution may also require the parent to cover the child's expenses for medicines, school supplies and hobby activities. The family may also have communication and travel expenses if the child visits home. During the child's home visit, the child is maintained by the family. In addition, in a closed childcare institution children can eat food brought from home.

Parent's right to inviolability of private life

A parent of a child with a disability asked the Chancellor to check whether the local authority could require them to submit an application every time they need a babysitter for their disabled child. Each time, the local authority wanted to decide, on the basis of the parent's application, whether use of the babysitter's help in a particular case was justified.

The Chancellor found that such a condition imposed on the petitioner was not in accordance with the principle of human dignity laid down by § 4 of the General Part of the Social Code Act or the right to inviolability of private life (§ 26 Constitution).

A person must disclose their private data only to the extent necessary to make a decision concerning assistance to them. When providing the parent of a disabled child with the assistance of a babysitter, it should generally be sufficient to provide data showing that raising a disabled child entails a higher care burden than usual, which is why the parent needs time off from care.

In order to assess a parent's burden of care, neither the city nor the rural municipality needs to know what the person raising a child with a profound disability does in their free time. It does not matter whether a parent with a high care burden applies for a babysitter in order to go for a run in the forest, to a hairdresser or to visit a relative. The same things are done by parents who do not

have to care for a child with a profound disability, but who can take their child with them or leave the child at home alone, or ask next of kin to mind the child during this time.

Grant of benefit for families with many children

The Chancellor was contacted by a parent who asked about the lawfulness of actions of the Social Insurance Board where the Board refused to grant family benefits to them and the other parent by turns for their joint child, who is growing up with both parents for an equal time alternately, if no consent is given by the other parent.

In 2020, the Supreme Court declared unconstitutional and invalid the part of the statutory provision that does not allow the Social Insurance Board to decide, without the consent of the parent who has so far received benefit, that separated parents receive child benefit for a joint child and benefit for a family with many children by turns, if that child grows up alternately in the family of both parents for an approximately equal time. The Social Insurance Board resolved the problem after the Chancellor's intervention.

The support person service for a child

A parent was concerned that their child might be left without a support person because the City of Tallinn could not reach agreement on the terms of service provision with the child's current support person, although neither the family nor the city had any complaints about the work of the child's support person.

In view of the circumstances, the Chancellor did not consider the city's actions to be unlawful, but found that the city could have provided clearer and more timely information to the parent about the support person. Tallinn City complied with the applicable laws and legal acts established by Tallinn City when organising the support person service. At the request of the Chancellor of Justice, the city also found a solution by ensuring assistance to the child until new decisions are made.

Entitlement to family benefits when each parent lives in a different country

The Chancellor's help was sought by a parent who lives and works in Estonia while the child's other parent lives and works in Latvia. The Social Insurance Board had suspended paying child benefits to the family because, according to the Board, the child's main place of residence was unclear.

The Chancellor found that the Social Insurance Board had not violated the law. As a general rule, a person is not entitled to receive benefits for the same purpose from several Member States of the European Union at the same time. Nor is a person entitled to choose from which country they want to receive benefits. Regulation No 883/2004 of the European Union lays down rules under which family benefits are paid primarily by the country where the parent works and pays taxes. If each parent works in a different country, benefit is paid by the country

where the child resides. Separate rules apply if the child lives in several countries, in which case the child's main place of residence is determined.

This situation may also affect the right to benefits paid by cities and rural municipalities.

In this particular case, the issue concerned entitlement to childcare service support, which requires that, according to the population register, both the child and their parent must reside continuously in the same rural municipality or city for a certain period.

Childcare service support is paid voluntarily by cities and rural municipalities; the law does not stipulate payment of this support. The Supreme Court has said that cities and rural municipalities may voluntarily pay support only to people who are residents of that city or rural municipality according to the population register.

Family benefit for a non-working parent

The Chancellor was contacted by a parent who lived in Estonia and was not working at the time of submitting the petition. The child's second parent, the petitioner's former spouse, worked in Finland. As the petitioner had stopped working, the Social Insurance Board suspended payment of child benefit to them.

Under European Union regulation No 883/2004, as a general rule, family benefits are to be paid by the country where the person works. If both parents are employed, family benefits are paid by the country where the child lives. The regulation does not exclude the possibility that, if the family benefits are higher in one country, that state will pay supplementary benefits to a family residing in the other country.

As long as the petitioner worked in Estonia, the Estonian state was responsible for paying family benefits. Therefore, during the petitioner's employment, they were paid child benefit by the Social Insurance Board. As Finnish child benefit is higher than Estonian child benefit, the Finnish state could pay a supplementary benefit to the child's parent working in Finland.

When the petitioner stopped working, the responsibility for paying child benefits transferred to Finland. As a result, the Social Insurance Board suspended paying child support to the petitioner. Child benefits continued to be paid to the family by the Finnish state, which paid the benefit to the child's parent working in Finland, but the petitioner did not know this.

The European Union regulation also provides that if a parent who receives family benefits does not use this benefit to support their child, the authority responsible for family benefits will pay the benefit to the person who is actually raising the child.

It was explained to the petitioner that they may request the other parent to voluntarily pass on the child maintenance benefits to the petitioner. In such a case, the parent may also turn to the Finnish social security authority KELA for help.

The right of a beneficiary of temporary protection to family benefits

The Chancellor was contacted by a person to whose partner, who is a Ukrainian citizen, payment of child benefit and benefit for a family with many children was suspended.

According to the Social Insurance Board, many families who have come to Estonia from Ukraine have received benefits from both Estonia and Ukraine simultaneously. Under the Family Benefits Act, residents of Estonia receiving a benefit of the same kind from another country are not entitled to family benefit. Under the social security agreement between the Republic of Estonia and Ukraine, family benefits are paid by the country where the family lives. If entitlement to family benefit arises under the legislation of both Contracting Parties, the benefit is paid by the state in which the child resides (Article 10 of the Agreement).

In such a situation, the Social Insurance Board may suspend paying family benefits and ask the competent Ukrainian authority or the beneficiary themselves for information concerning payment of family benefits. This situation may be burdensome for the person, but it is still necessary to find out whether they are entitled to support from the Estonian state.

Child protection

The Chancellor is often contacted by parents who are dissatisfied with the actions of child protection workers in a situation where the relationship between parents is strained. Alas, child protection workers cannot resolve conflicts between parents. Child protection workers can, above all, advise parents on how to ensure the child's well-being and where to get help to improve cooperation between them. If the parents are unable to agree between themselves or through a state family conciliator, then child access arrangements are established by the court.

Often, parents involved in court litigation consider the position of a child protection worker to be biased. In these cases, the Chancellor's advisers explain that, in litigation concerning a child's living arrangements, a child protection worker must also submit a reasoned opinion. The child protection worker is expected to offer an assessment as to the best solution for the child. In turn, parents can present to the court their views and evidence of the actions and opinions of a child protection worker. The court decides what weight it gives to the position of the child protection worker. The Chancellor of Justice cannot assess a court judgment.

The Chancellor can assess whether a child protection worker acted lawfully when identifying a child's need for help and offering assistance.

Based on a parent's petition, the Chancellor checked whether child protection workers of two city governments cooperated with each other in ascertaining a child's need for assistance and coordinated their actions in a situation where each of the child's parents lived in a different city. In several cases, the parents challenged the competence of the child protection worker handling their case and asked for a check on whether the qualifications of the child protection worker met the requirements laid down by law. The Chancellor found no violations in these cases.

The Chancellor's assistance was also sought in resolving child protection cases abroad. In one case, the petitioner was dissatisfied with the work of Finnish child protection officials and alternative care providers. In the second case, the petitioner sought intervention by the Estonian authorities in ongoing child abduction proceedings in Ukraine.

The Chancellor's advisers explained that in the event of moving abroad everyone must take into account that all that country's legislation will be applicable to them and disputes will be resolved in line with the procedures applicable in that country. A person's country of origin cannot intervene in the activities of foreign officials or administration of justice there. Estonian officials can only provide assistance and explanations. In Estonia, international child protection cases are dealt with by the child protection department of the Social Insurance Board, which can provide advice on how to act in the event of problems with cross-border custody and guardianship and where to obtain legal assistance in such cases.

Kindergarten and school

Children are supported in growing up into independent individuals by their family, teachers, kindergarten, school, as well as the state and society as a whole. Every child is invaluable; it is the duty of us all to help them grow into a good person, to create Estonia's future (see the interview with the Chancellor of Justice published in the *Sirp* newspaper).

A parent is entitled to choose a school for their child within the existing education system. At the same time, neither children nor parents have the right to demand abstention from reorganisation which is necessary in the public and community interests and is not excessively burdensome for individuals. Regardless of their place of residence, parents and home language, all children are entitled to education in line with their abilities, said the Chancellor of Justice at the education network development conference "HaridusLood" in November 2023.

Schools should not be divided into good or bad. All schools should support the desire to learn and develop into a good person. After all, school also means preparing for adult life: for adaptation and effort, for a calm and cordial understanding of what is different from oneself, for being a dignified citizen.

The task of the state and of cities and rural municipalities is to organise school life in a rational way. A city or rural municipality which feels that these tasks are beyond its capacity has the right and duty to take the state to court. Children and young people have the right to education. A local authority may not leave the functions assigned to it by law to the families.

In order to obtain a place at a kindergarten for their child, parents often have to seek help from the court. The reason is that several cities and rural municipalities have failed to create enough kindergarten places. Violation of the rights of parents and children is such an acute problem that judges have also addressed it in their podcast Kohtulood (see "Mida peab teadma lasteaiakoha taotlemisest või koolitranspordist?" (What do you need to know about applying for a place in kindergarten or about school transport?)). Judges from the Tallinn Administrative Court discussed this issue with a Chancellor's Adviser on the podcast.

One of the biggest goals in education in the coming years is the transition to instruction in Estonian.

The unity of a co-operative society also depends on how people understand each other. In Estonia, the basis for this unity is the Estonian language, which is best learned in kindergarten and school.

Kindergarten

A rural municipality or city government must provide a place in kindergarten to all children between the ages of one and a half to seven years whose parents apply for it. Recognition is due to those cities and rural municipalities who are able to ensure kindergarten places for all children by establishing new kindergartens, opening additional groups, involving private kindergartens or cooperating with a neighbouring city or rural municipality.

Several rural municipalities and cities support parents in paying the place fee for a private kindergarten. When offering such voluntary support, a rural municipality or city may decide on the conditions under which this is done. The Chancellor of Justice found that a rural municipality may establish a procedure according to which the parents of a child attending a private kindergarten or childcare are not supported if, by 1 October of the current school year, the child has turned at least three years old and the family has waived a place offered in a municipal kindergarten. So, if a child should go to another kindergarten, they will have to get used to the new environment, which may take some time. However, this need not always be detrimental to the child's well-being. In the specific case, the rural

municipal council gave the rural municipality government the opportunity to consider whether paying support could exceptionally be justified.

If a child's home municipality or city has fulfilled its task, but the parent has chosen for their child a kindergarten maintained by another rural municipality or city, the child's home municipality or city must, according to the law, contribute to the costs of that kindergarten place. Covering the costs of a kindergarten in another city or rural municipality is essentially performance of a state function, the costs of which must be covered from the state budget (see the Chancellor's opinion on "Termination of payment of support for a private kindergarten"). As currently no legal norm stipulates that the costs directly related to performing such a state function should be covered from the state budget, a local authority can demand that expenses incurred be covered by the Ministry of Education and Research. If the ministry refuses to do so, the rural municipality or city may have recourse to the administrative court with a claim for expenses incurred.

Cities and rural municipalities may not impose additional restrictions on obtaining a place in kindergarten. According to the Supreme Court, it is unconstitutional for a rural municipality or city to make grant of a kindergarten place conditional on the availability of vacancies. The court reasoned that, as a result, children enjoying a statutory right to a place in kindergarten may be left without one. The Chancellor of Justice found that a local authority should repeal such restrictions. Cities and rural municipalities should also repeal illusory restrictions that could mislead a parent and leave the impression that a kindergarten place may be denied or postponed. The Chancellor recommended that the Ministry of Education and Research should look for additional ways to help local authorities in predicting the need for kindergarten places and ensuring places.

A family does not necessarily have to obtain a place for their child in the kindergarten that the parent considers most suitable or that is located closest to home. The city and rural municipality government has fulfilled its obligation when it gives the family a place in a kindergarten within the service district. However, the courts have found that the obligation of a rural municipality and a city cannot be considered fulfilled if the family is offered a place in a kindergarten that is not accessible to it, i.e. it is located at an unreasonable distance from where the family actually lives, so that the family would have to incur significant expenses in order to take the child to the kindergarten (see Tallinn Circuit Court of Appeal judgment in case No 3-21-336). If, in the opinion of the parent, a kindergarten place is not accessible, the parent may notify the local authority thereof and apply for a new kindergarten place. If the local authority does not resolve the problem, the parent may have recourse to the court to protect their own rights and those of the child.

A local authority is responsible for the proper maintenance of a kindergarten. For example, a rural municipality or city government decides on the opening hours of a kindergarten, based on a proposal by the board of trustees. The rural

municipality or city government must take into account the interests of children and families and consider the proposal by the board of trustees on the merits (see the opinion on "Changing the opening hours of a kindergarten"). The opinion of the board of trustees helps the local authority better understand what happens in kindergarten on a daily basis. At the same time, the rural municipality or city government does not have to agree with a proposal by the board of trustees. A parent who does not like such an arrangement can have recourse to the court.

According to the law, a child is entitled to receive assistance in kindergarten from a speech therapist, a special educator or other support service provider. A child's development is monitored and evaluated by kindergarten teachers. A child's need for speech therapy is assessed by a speech therapist. Unlike a speech therapist, teachers (including special educators) lack preparation for provision of speech therapy. On the recommendation of the Chancellor of Justice, a rural municipality organised speech therapy assessment and speech therapy for children.

A child is entitled to speech therapy in kindergarten free of charge. The owner of the kindergarten cannot refuse to provide a child the assistance of a speech therapist because there is no speech therapist in the kindergarten. A local authority that fails to fulfil its task, i.e. arrange assistance of a speech therapist, must reimburse the parent for expenses incurred for an appointment with a speech therapist. Sometimes local authorities are unable to observe these principles. For example, in one case, the rural municipality began to provide speech therapy to children in kindergarten only after the intervention of the Chancellor of Justice. At the same time, the parent was reimbursed for the costs of a speech therapist's appointment which the parent had to incur because the children could not go to a speech therapist's appointment in kindergarten.

If Rajaleidja counsellors have determined that a child needs an adjustment group and if the parent has submitted a relevant application, the owner of the kindergarten must create this possibility. A recommendation by Rajaleidja cannot be ignored or interpreted as meaning that implementing the recommendation is voluntary. Nor is the owner of a kindergarten relieved of the duty to create an adjustment group by the justification that it is difficult to do so. The Chancellor recommended that the child be given the opportunity to attend a kindergarten adjustment group.

School

A child is entitled to attend a school close to their place of residence. This school is assigned to a child by the city or rural municipality government, taking into account, first of all, the proximity of the child's residence to the school and whether other children of the same family are studying at a particular school. If possible, parents' other wishes are also taken into account. When assigning a school to a child, a local authority is also allowed to take into account other circumstances if

more children are eligible than there are places in a particular school (Supreme Court judgment in case No 3-4-1-16-16, para. 21).

For a parent who finds that the rural municipality or city government has violated a child's rights when assigning a school according to the child's residence, it is most expedient to protect the rights of the child through the court. The court can assess whether the rural municipality government has lawfully assigned the school according to the child's residence, and can also oblige the rural municipality government to make a new decision (Tallinn Circuit Court of Appeal judgment in case No 3-20926, paras 21 and 24). All the important circumstances must be taken into account in aggregate.

The Chancellor of Justice has received a number of petitions from parents who are dissatisfied with the way their home municipality has arranged for their child's attending school. Although rural municipalities and cities have broad possibilities to decide how to organise school transport, they must first and foremost take into account the interests of the child, and school transport must also be accessible to the child.

A local authority cannot leave the organisation of school transport to families. If it is found that for some reason a child cannot use the school bus, the municipality must find another solution so that the child arrives at school on time and safely (see the Chancellor's opinion on "Organising school transport"). The school route must be safe and manageable for the child, and the waiting time for the bus after the school day must be of reasonable length. A local authority can establish the conditions for organising a school route, based on which it can assess how the school transport arrangements suit a particular pupil.

The school educates and nurtures at the same time. The learning environment must be age-appropriate, safe and developing for pupils. A pupil must be supported if everything does not go smoothly for them at school, which can only be done through mutually understanding cooperation between the family and the school. A parent's concern for the child is understandable, but the school nevertheless does not have to agree with all the parent's proposals. In the event of a loss of trust between the school and the parent, the parties may ask for help from the Social Insurance Board or Rajaleidja. In such a situation, the Social Insurance Board will be able to implement a restorative justice programme.

If a pupil violates the school internal rules, the school has the right and obligation to find out all the circumstances of the incident, but such action must not be perceived as a punishment or degrade the dignity of the pupil. In order to ascertain a pupil's point of view, the school could speak with them in an age-appropriate manner, rather than request a written explanation (see the opinion on "Taking explanations from a pupil"). However, the law does not prohibit asking for a written explanation.

Sanctions may be used in respect of a pupil in order to ensure compliance with the school internal rules and to create a mutually respectful and safe learning environment. A written reprimand to a pupil must be in accordance with the law in both substance and form (see the opinion on "The lawfulness of a reprimand").

When planning decisions affect a child, it is necessary to ascertain the child's best interests and rely on them as a primary consideration when making a decision (see the opinion on "Temporary prohibition on participation in studies"). A more effective measure than prohibition from participating in studies may be to offer the pupil the help of a support specialist and a behavioural support plan is drawn up for them. The pupil's behaviour can also be discussed with their parent and, in a situation of conflict, the parties can be reconciled so that an agreement can be reached on how to proceed.

Excluding a pupil from school cannot be decided lightly by the school. Before making a decision on exclusion, the pupil must first be offered support. If, despite implementing appropriate support measures and sanctions, an upper secondary school pupil continues to violate the school internal rules, they must be expelled from school according to the law. Since exclusion from school restricts the fundamental right to education and can have a significant impact on a young person's future life, the reason for exclusion from school cannot be just any repeat violation of the internal rules (e.g. being late for class, lack of indoor footwear, and the like), but only violations which can be said to amount to compelling reasons for restricting access to education, and exclusion must be justified in the specific case. The decision to exclude a pupil from upper secondary school must be in writing and must also state the reasons. The decision must also indicate the possibilities for challenging the decision (see the opinion on "Exclusion of a pupil from school").

A teacher's intervention in pupils' interaction with each other is justified when someone is being insulted, someone is being excessively loud or discomfort in others is caused because they cannot understand the talk of their peers due to a foreign language. However, in their free time, pupils are entitled to communicate in the language of their choice (see the opinion on "Language of communication between pupils"). Everyone has the right to maintain their ethnic affiliation, and the mother tongue is part of a person's national identity. Everyone is also entitled to free linguistic self-realisation and inviolability of private life.

The daily schedule at school must also provide sufficient time for rest and eating (see the opinion on "The organisation of studies"). Pupils should not become tired at school, the load must be distributed evenly. Each lesson must be followed by a break of at least ten minutes. Pupils must have at least 15 minutes for eating. Although in some cases the school has found that pupils and teachers could agree on the length of the break among themselves, such an agreement does not

replace the school's daily schedule or what is established in the school internal rules.

A school may not require an upper secondary school pupil to present an authorisation for leaving the school building during lessons or a break. Therefore, while resolving a complaint the Chancellor found that the requirement to present an authorisation justifying leaving the school restricts freedom of movement, whereas the freedom of movement of upper secondary school pupils may not be restricted. However, for security and supervision purposes, basic school pupils leaving the school building and school grounds may be restricted. Nevertheless, a school may, if necessary, check the entry and exit of pupils (including upper secondary school pupils) to and from the school building, for example by asking them to present a pupil's card.

The law states that a school may not prohibit absence if a pupil wishes to go on a trip, participate in competitions or sports camps, or the like, during studies. However, the school always has the right to assess whether a pupil's absence is justified or not. A pupil has the right and duty to study, so that they may be absent from school only for a compelling reason. According to the law, it is enough for a parent to inform the school about a pupil's absence and the reason for it on the first day of absence. Thus, in order for a pupil to be absent, a parent does not have to apply for permission from the school in advance (see the opinion on "Notification of absence from studies"). If a child is absent from studies at the decision of the parent, but in the opinion of the school the parent has not behaved correctly, the school can discuss the situation with the pupil and the parent, for example, during a development conversation.

Every child must be able to acquire education in the best possible way in line with their abilities, and teachers must create a good atmosphere for learning. This also means that a pupil must be supported in their studies primarily by the school, a responsibility that cannot be left to the parents. A pupil can receive assistance, for example from a school psychologist or other support specialist. A teacher must have basic skills for teaching pupils with special educational needs (see the Chancellor's opinion). The head of the school is responsible for ensuring that a teacher working at the school has the relevant skills. In addition, the school must ensure that, if necessary, a special educator is also available, who, among other things, instructs the teacher in teaching children with special educational needs.

If necessary, the school must offer a pupil individual supervision, the help of a support specialist, as well as study assistance lessons by group. If Rajaleidja recommends referring a child to home schooling or individual study for health reasons, the school must take this recommendation into account.

A recommendation by Rajaleidja is mandatory for the school if the parent has also given written consent to it. While resolving a petition, the Chancellor found that a school had violated a child's rights by not allowing the child to study in a special

class with up to 12 pupils in the 2023/2024 academic year, as had been recommended by Rajaleidja. It is unacceptable to allow a situation to arise in which a child cannot learn to the best of their abilities and is not provided with the necessary support at school. In this particular case, the school agreed to organise studies for the child beginning from the new academic year in line with the recommendation of Rajaleidja, but this does not reverse damage that may have been caused by not providing the child with appropriate support in the previous academic year.

Sometimes a child needs to be transferred to a class with a smaller number of pupils. Before implementing such a support measure, the school must listen to the pupil and justify to them why they are being transferred to the new class (see the opinion on "Transfer to another class"). If the child runs into difficulties in adapting to the new class, once the school has learned about this, it must find out the causes of the problem. To facilitate a child's studies, all possible measures should be considered. Before a decision is made, the pupil and their parent are also heard.

A rural municipality and city, as school owners and providers of social services for residents of the municipality, can organise the necessary assistance for a child through either the social or educational system, or both. While resolving a complaint, the Chancellor found a rural municipality had not acted correctly when deciding to leave a child without a support person. The issue was that the rural municipality government had provided a support person for the child during the previous two and a half years, and the child's need for assistance had not changed during the current academic year. Although the rural municipality government had taken the position that, in the future, the school but not the rural municipality social welfare department should provide assistance to the child, the municipality should have continued providing assistance until the school was ready to take over this task completely.

A child's development and coping at school is monitored by teachers, based on whose assessment teaching can be adjusted in line with the child's individual needs and abilities. For example, it is possible to implement instructed studies organised by a school, during which a teacher directly supports the pupil. The knowledge and skills check must measure the level of skills and knowledge established by the curriculum and provide feedback to the pupil in a graded form. Based on the grade, it can also be decided whether the pupil might need support in studies. Also, a grade, including a grade for a test retake, can affect the aggregate grade, as well as the child's further education.

After an extended absence, a child may need more support in learning. Absence may lead to lagging behind in studies, but absence from class cannot lead to the conclusion that the pupil's knowledge and skills are insufficient. The Chancellor found that it was not correct to assess a child's knowledge with a grade of "1"

simply for being absent from class. What is assessed are a pupil's knowledge and skills, not absence from class. A grade of "1" means that in a particular subject the pupil's knowledge is insufficient.

A pupil is entitled to retake a test that could not be taken before or for which a negative grade was received. If a pupil does not go and retake the test, the teacher may give them a negative grade since the pupil has not been given an opportunity to assess their knowledge and skills. However, when setting the deadline for retaking a test, the school must also take into account, for example, that if a pupil has been absent for a long time, they need to retake tests in several subjects simultaneously. This can be overwhelming for the pupil, as during a short period they will have to retake all the tests that had not been taken due to absence and, at the same time, learn new material with others. The aim is for the pupil to master the material as best as possible and not lag behind others in their knowledge and skills.

A pupil's knowledge is assessed according to the grading scale, which, according to the national curriculum, is the basis for evaluating both the original tests and retakes. It must be objectively clear at what level the pupil's knowledge and skills meet the requirements of the curriculum. Therefore, no reason exists to lower the grade of a pupil who has retaken a test (see the Chancellor's opinion). Nor can it be considered correct if a pupil's grade for a retaken test is raised without justification. Such a consideration is a teacher's subjective decision, though objective feedback on the pupil's knowledge and skills might not be offered in this way. A teacher may use a grading scale different from the national curriculum only if the test is simpler or more complicated than the grading scale established in the curriculum. A retake test measures the same learning outcomes as are measured by the original test.

The Chancellor has repeatedly been asked how many tests a week can be arranged for one class. Up to three tests may be carried out in one study week, and a test is defined as written work verifying acquisition of the learning outcomes of an academic quarter or of a course. If it is possible to make a note about the planned test in the school's online environment, then teachers must make this note, as failing to make a note can cause unnecessary tension. The more clearly tests are planned, the easier it is for the school to assess pupils' study load. Teachers must organise studies so as to support pupils in their learning.

Transition to instruction in Estonian

The transition of Russian-language schools to instruction in Estonian has made parents worry that too many non-Estonian-speaking children may start studying in classes at the same time. Parents of both Estonian and non-Estonian speaking children, whose children have so far studied in Russian, are concerned.

The Chancellor has said that if a Russian-speaking child needs additional support when studying in Estonian, this does not mean that a pupil whose mother tongue is Estonian can be left uninstructed and unsupported.

For non-Estonian-speaking students, learning in Estonian can be difficult at times. The success of instructed and supported learning depends on the knowledge, skills and attitudes of school staff. It is important that the school environment as a whole should support instruction in Estonian, encourage young people to learn Estonian and show interest in Estonian culture, history and current events. When living in Estonia, one needs to know Estonian.

Transition to instruction in Estonian is compatible with the Constitution. The Constitution does not enshrine the right to request that the state should provide basic education in another language (see Supreme Court order in case No 3-23-2480; the Chancellor's opinion to the Supreme Court on "The language of instruction in public school"). According to the Constitution, the official language of Estonia is Estonian and children are entitled to free basic education in Estonian. Nor does it follow from international law binding on Estonia that a child or a young person should be guaranteed free basic education in their mother tongue which is not the official language.

Children and young people with disabilities who do not speak Estonian are entitled to receive education that supports their ability to cope in the Estonian-speaking environment and participate in society equally with others. Thus, the transition to instruction in Estonian is also in the interests of children and young people with disabilities (see the Chancellor's opinion on "Transition to instruction in Estonian").

When organising studies, the abilities of pupils in need of support must be taken into account. If properly supported, the vast majority of children with special educational needs are able to learn in a language other than their mother tongue. It is necessary to use a teaching methodology appropriate to the child's development, as well as make greater adjustments in teaching and learning. The law has also taken into account the interests of children and young people who, due to their disability, are unable to learn in Estonian.

Organisation of the online test examination and final examinations

In April, an online test examination in Estonian was organised for basic school leavers. During the examination, pupils were given the opportunity to use the combined dictionary of the Estonian Language Institute's language portal Sõnaveeb as a reference material, but not the dictionary of standard Estonian, Õigekeelsussõnaraamat.

In her letter to the Education and Youth Board, the Chancellor recalled that the basis for standard written language is the latest dictionary of standard Estonian. Written work in the Estonian language as a subject in the syllabus must follow the

orthographic rules, and the teacher must evaluate a pupil's work on the basis of the norms for standard written Estonian.

The Chancellor found that if reference material is to be made available to pupils during the basic school final examination in Estonian, it must be the latest dictionary of standard Estonian, Õigekeelsussõnaraamat (ÕS) or its online version. Reference material at an examination must be unequivocally clear for a pupil.

According to the Ministry of Education and Research, the standing recommendation is to provide pupils access only to the dictionary of standard Estonian during the online examination.

An examination may be undertaken in writing on paper or electronically in the test database, or orally. This is decided by the Minister of Education and Research for each subject for the following academic year by 25 May at the latest. If the minister establishes an electronic form for the written part of the exams in these subjects, then basic school graduates must be able to prepare for the electronic examination.

Computer literacy has become increasingly essential over time, which must be taken into account by schools when organising studies. Basic education must give a pupil the opportunity for self-realisation according to their abilities. The task of the school is to offer all pupils the opportunity to learn how to use a computer well, so that they can also perform learning tasks on a computer. The ability to use a computer is one of the general competences whose acquisition must be supported in order for a pupil to be able, among other things, to make learning more efficient.

The Chancellor of Justice found that although pupils who have completed an informatics curriculum may have better computer skills, in abstract terms this does not give any advantage to an examinee. It is important that all pupils should be able to familiarise themselves with both the structure and form of an examination before the examination itself. The structure and form of an examination must not come as a surprise to a pupil during the examination.

Equal conditions for graduation, including the same exceptions, must be established for pupils with the same level of education. Different conditions may be established for graduating from basic school than apply to graduation from upper secondary school (see the opinion on "Basic school graduation conditions"). In graduating from upper secondary school, it is possible to replace the state examination in a foreign language with an internationally recognised examination, but no such opportunity is laid down in graduating from basic school.

Since, in graduating from upper secondary school, it has been considered possible to replace a foreign language examination with an internationally recognised examination, it may be considered appropriate to introduce a similar possibility for basic school graduates. The Chancellor also forwarded this position to the

Ministry of Education and Research, which prepares draft legislation concerning the organisation of general education.

Supporting children with special needs in school and kindergarten

The Chancellor of Justice received a letter from parents whose child had been left without a support person according to a decision of the rural municipality government, although the child still needed the help of a support person at school. The child had been receiving the support person service for more than two years and it was clear that the child's need for assistance had not changed during the school year. Nor was the necessary assistance ensured through support provided by the school. Because of this, the child had to be absent from school for some time.

The Chancellor emphasised that the task of the rural municipality government is to arrange the necessary assistance for the child through either the social or educational system, or both. At the same time, the rural municipality government was both the owner of the school and the organiser of social services for the municipality's residents. The Chancellor recalled that the rural municipality government is responsible for ensuring that assistance offered to a child is not interrupted. Even if the rural municipality government is convinced that the child should receive assistance from the education system, it must continue supporting the child through the social system until the school is ready to adequately support the child.

Thus, the Chancellor asked the rural municipality government to make a new decision to resolve the matter and to provide the child with the necessary assistance. The municipality took the Chancellor's recommendation into account.

One parent was concerned that their children did not receive speech therapy in kindergarten. The parent was dissatisfied that the rural municipality was willing to reimburse them only part of the expenses they had incurred in obtaining the assistance of a speech therapist for their children.

According to the law, a child is entitled to free speech therapy in kindergarten. This opportunity must be created by the owner of the kindergarten, i.e. the local authority. The shortage of speech therapists does not relieve the city or rural municipality of this task. If the owner of the kindergarten fails to fulfil the task, i.e. fails to arrange the assistance of a speech therapist, it must reimburse the parent for the costs of a speech therapist's appointment incurred by the parent.

The municipality government resolved this problem in the course of the Chancellor's proceedings. The Chancellor also recommended that the municipality government reimburse the costs of the speech therapist's appointment incurred by the parent. The municipality government followed the Chancellor's recommendation.

Children and health

The amount of daily in-patient fee

The Chancellor of Justice was contacted by a parent who had to pay a fairly high (caregiver's) in-patient fee so that they could stay in the hospital with the child to whom they wanted to offer essential support during treatment. In view of the child's situation, the parent considered that asking for such a fee was unfair to them and the child and failed to take into account the child's needs.

During a child's hospital treatment, part of the child's health service benefit also includes the in-patient fee for accommodation for the child's caregiver (parent or other trusted next of kin). The amount of the fee has been established by the Government of the Republic in its regulation on "The list of health services of the Health Insurance Fund".

The established procedure is based on the assumption that children acquire the necessary skills at the latest at the age specified in the regulation (by the age of 8 during rehabilitation treatment, by the age of 10 during other hospital treatment, and children with severe or profound mobility or multiple disabilities by the age of 16), so that they can independently cope with the disease, hospitalisation and the accompanying stress. Children who do not fit within these age limits can only be hospitalised with their parent if the parent themselves pays the hospital for accommodation.

In terms of equal treatment, it is important that the needs of each child are taken into account during treatment and not their age, since age may not be an indicator of a child's ability to cope with stress. Nor is age the only criterion in terms of coping with hospital experience. For example, a chronically ill seven-year-old child may be sufficiently accustomed to being in hospital and not need a parent by their side around the clock. At the same time, a child in their early teens may need the support of a loved one due to their first-time experience, trauma-induced shock, and other comorbidities (e.g., a child with autism). Nor can a difference in treatment be justified solely on the basis of the severity or type of disability. For example, a child with visual, auditory, intellectual or other disabilities may need the support of a loved one during hospitalisation in the same way as a child with a severe or profound mobility impairment or multiple disabilities. Children in a similar situation must be treated in a similar way.

Based on these reasons, the Chancellor of Justice proposed to the Government of the Republic that the regulation "List of health services of the Health Insurance Fund" be brought into line with § 12 and § 27(3) and (4) and § 28(1) and (4) of the Constitution insofar as these provisions do not guarantee every child the right to

be in hospital with next of kin, if this is the best solution in the interests of the child.

The Prime Minister tasked the Ministry of Social Affairs with resolving the situation. The Ministry of Social Affairs informed the Chancellor that amendments to the regulation will be prepared and will enter into force no later than 1 January 2025.

Prevention and promotion

The Chancellor's task as Ombudsman for Children involves raising awareness of the rights of children and ensuring that children can actively participate in the life of society. The Ombudsman for Children initiates analytical studies and surveys of the situation of the rights of the child and, on this basis, makes recommendations for improving the situation. 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.

Traditionally, meetings of the Ombudsman for Children with children and young people have played an important role in promoting children's rights. Hundreds of children and young people also visited the Chancellor's Office during the past reporting year: children from Kaarli School, Rocca al Mare School, Vanalinna Hariduskolleegium, Tallinn state upper secondary schools and Tilsi Family House, as well as young people related to the Fridays for Future movement.

The Chancellor's advisers participated in the events of the Estonian School Student Councils' Union and the Estonian National Youth Council and introduced the work of the Chancellor of Justice at Tallinn Tõnismäe State Upper Secondary School, Haabneeme School and Kuie School of the Estonian Open Air Museum. At Mustamäe Upper Secondary School, the Chancellor gave a speech at the ceremony marking the anniversary of the Republic of Estonia.

What is positive, is the will and ability of children and young people to have a say in issues important for them. Last autumn, two young advisers to the Ombudsman for Children took part in the Athens Democracy Forum where a discussion group with young people was organised for the first time. Young people from several countries discussed climate justice and active citizenship with adults.

International cooperation project on alternative care

The Office of the Chancellor of Justice once again participated in the project "Let's Talk Young" organised under the auspices of the European Network of Ombudspersons for Children (ENOC). This year, discussions with children and young people focused on alternative care. Fifteen young people aged 14–17 from all over Estonia participated in the project. Young people growing up in families and in alternative care institutions shared their thoughts.

During the meetings, the Chancellor's advisers introduced their work to young people and listened to young people's ideas and proposals. There were discussions with experts, and the Chancellor's advisers talked about the rights of the child. The topic of mental health was introduced by clinical psychologist Sirje Rass and supervisor Aivar Simmermann from the Moreno Centre. Ingrid Sindi, a lecturer at Tallinn University, spoke about participating in making decisions concerning one's life and knowing one's origin. Financial wisdom and scholarship application opportunities were introduced by Katrin Laks from SEB Pank and Triin Lumi from SEB Charity Fund. Discussions about the future were held with Dagnar Engel, who has won the Kuldne Kartul (Golden Potato) award for an exceptional young person with alternative care experience, and Marina Sepp from the Estonian Association of Alternative Care Workers. On the basis of these discussions, recommendations were put together by young people on how to better organise alternative care.

Young people suggested that every child in alternative care should have a life book in which pictures, videos and important documents from the child's life are collected.

Young people were concerned that children would not always receive equal attention in alternative care. Being deprived of attention can affect a child's behaviour and mental health. Young people wanted to be able to meet a trusted person in a safe environment at a scheduled time to talk about their concerns. Sometimes it is enough just to know that someone is there for the child.

According to young people, many rumours are circulating in communities and people are prejudiced against alternative care. In children's opinion, parents and educators should learn to listen and trust children more, and not base their assessments on rumours and prejudices. Young people felt that child protection workers could be more interested in children's well-being and talk to children.

Young people in alternative care often need the help of mental health professionals. Unfortunately, it happens that children are sent from one specialist to another, and then to a third and a fourth. It can take a long time to get an appointment with a new specialist and build a trusting relationship with them. Young people do not like to re-tell their story to a new person from the very beginning. Young people want specialists to have more diverse skills to offer advice and assistance, so that a young person should not have to go from one specialist to another.

For a young person in alternative care, physical integrity is an important issue. Based on their experience, the young people explained that some young girls and boys only tell their peers about being sexually abused. Young people feel it is necessary that adults in alternative care be able to talk to them about sexuality-related topics; teach young people how to say 'no' and help them seek help if they have been abused. At the same time, young people in alternative care feel that

they are often not allowed to decide about their bodies and appearance in the same way as other young people.

Two young people presented the proposals of Estonian youth at the ENOC young advisors gathering in Slovakia. Based on the opinions of young people, European ombudsmen for children will draw up proposals on how to make alternative care more child-friendly. Proposals from Estonian young people have already been presented to the members of the Estonian Association of Children's and Youth Welfare Institutions. Young advisers also plan to submit proposals to the Minister of Social Protection and other actors in the field of alternative care.

Perhaps the thoughts, experiences and suggestions of young people will help alternative care professionals better understand the needs, joys, and concerns of young people.

Young advisers to the Chancellor of Justice participated in responding to a petition about bullying at school. A parent whose child was bullied at school wrote to the Chancellor of Justice. The parent thought it would help the child if the child received supportive messages from both children and adults. Young people sent good wishes, which they themselves would like to hear if they had been hurt, to the child who had suffered bullying.

Information materials, training and debates

The Chancellor's advisers help to prepare video and printed materials introducing the rights of the child. During the reporting year, in cooperation between the Chancellor's Office and health professionals, a guide was prepared on "Assessing a child-patient's decision-making capacity in provision of healthcare services". The guide explains in which cases a healthcare professional is required to assess the decision-making capacity of a patient under the age of 18 and how this should be done.

Usually, the child and the parent make decisions concerning the child's health together, by discussion between themselves. In such cases, there is no need for a health professional to assess the child's decision-making capacity. The need to assess a child's decision-making capacity arises primarily when, for some reason, the child does not wish the parents to be aware of an issue or it is not possible to contact the parents. The completed guide advises healthcare professionals on how to deal with such situations.

The Chancellor's adviser Kristi Paron presented the guide at the general meeting of the Estonian Gynaecologists Society in May and to family doctors at an information day of the Health Insurance Fund. The adviser wrote about child-friendly healthcare in the nurses' magazine *Eesti Õde* and about assessing the child patient's decision-making capacity together with Marje Oona, Associate Professor of family medicine, in the family doctors' magazine *Perearst*. On 13 March, an adviser to the Chancellor of Justice participated in the webinar "Lapsed ja tervis"

(Children and health) organised by the Social Insurance Board, where she spoke about legal issues in relation to a child patient.

The Chancellor's young advisers translated into Estonian the summary of General Comment No 26 of the UN Committee on the Rights of the Child. This summary is prepared for children and deals with the impact of environmental and climate change on children's rights. Young people also prepared illustrations for the summary. In this comment, the Committee explains that children have the right to live in a clean, healthy and biologically diverse environment, so that their human rights are guaranteed. The Committee impresses on countries the need to assess the impact on children and future generations of decisions on environmental and climate change.

The Chancellor sent the summary of the general comment, translated and illustrated by young people, to ministers and organisations dealing with the topic. Those interested can find the summary on the Chancellor of Justice's website.

The Chancellor's advisers constantly train specialists working with children. During the reporting year, study days were organised for child protection workers, judicial clerks, doctors, psychologists, child psychiatrists and employees of several establishments for children.

An adviser to the Chancellor of Justice participated in a debate on children's privacy at the Opinion Festival.

Overview to the UN Committee of the Rights of the Child

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

The Estonian government submitted its report on implementation of the Convention to the UN Committee on the Rights of the Child in May 2023. The Chancellor of Justice also prepared an overview of the situation of children's rights in Estonia.

The Chancellor submitted her report to the Committee on the Rights of the Child in August 2023. In November 2023, Estonian children and young people also submitted their report on the situation of the rights of the child to the UN Committee on the Rights of the Child.

On the initiative and under the aegis of the Chancellor's Office, a report was prepared by the children's rights ambassadors of the Union for Child Welfare. In drafting the report, children and young people were supported by advisers from the Children's and Youth Rights Department of the Chancellor's Office and staff of the Union for Child Welfare.

In February 2024, youth representatives met in Geneva with members of the UN Committee on the Rights of the Child, discussing important topics for Estonian children. This was the first time that Estonian children submitted their messages to the UN Committee on the Rights of the Child.

To collect children's ideas, workshops were organised for introducing to children of different ages their rights and explore what could be improved in their lives. Workshops were organised for children in several regions of Estonia. Discussions were held in schools and kindergartens, at meetings of children's and youth organisations, at the opinion festival, and conversations took place with children in alternative care and children who had fled from Ukraine to Estonia.

The workshops were mostly led by children's rights ambassadors, who were supported by staff from the Office of the Chancellor of Justice and the Union for Child Welfare. The suggestions and thoughts expressed by the children participating in the workshops were collected anonymously. An anonymous online questionnaire was also opened, which could be answered in both Estonian and Russian. Schools and youth centres were informed about the possibility to answer the questions, a call was published in the media and on social media, and the event was also presented at the annual conference of the Union for Child Welfare, as well as in the frame of the programme on the rights of the child featured at the Black Nights Film Festival.

In workshops and through the online survey, nearly a thousand children and young people shared their thoughts. Based on the children's thoughts, in the animation school of the children's studio of the non-profit association Nukufilm the ambassadors of the rights of the child also prepared a video clip, which has been translated into Russian and English.

In spring 2024, under the aegis of the Children's and Youth Rights Department of the Chancellor's Office, the children's rights ambassadors also presented children's thoughts and the overview to the prevention council. Meetings were held with several ministers and ministry officials (the ministers of Social Protection, Health, Culture, Education and Research and their teams) to find solutions to children's concerns.

In June 2024, the Committee sent to Estonia its recommendations on how better to ensure the rights of the child. Many of the Committee's recommendations were based on the observations and recommendations in the reports by the Chancellor of Justice, NGOs and children.

The Chancellor of Justice plans to monitor how government agencies implement the Committee's recommendations.

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

The children's rights programme as part of youth and children's films (Just Film) featured at the Black Nights Film Festival for the thirteenth time. The programme was once again prepared in cooperation between several organisations (the Chancellor of Justice, the Ministry of Justice, the Social Insurance Board, and the Estonian Union for Child Welfare) and, as has become a tradition, children and young people were also invited to help select the films.

The children's rights programme opened on 4 November with the Estonian premiere of the domestic documentary "Kellele ma naeratan?" (Who am I smiling at?). Screening of the opening film was followed by a discussion on family relations and child protection. Indrek Vaheoja, the ambassador of the children's rights programme, and the filmmakers spoke about the film with the audience.

Traditionally, the authors of the programme contributed to collaboration with teachers to encourage them to come to the cinema with pupils and discuss films in school lessons. Before the festival, the organisers introduced the programme of children's and youth films in 29 schools. The organisers prepared worksheets to support discussions about five of the films screened in the programme and sent them to the teachers, who went to see these films with their pupils. In addition, schools were able to invite programme makers to schools to carry out discussions about a film. This time, two schools took advantage of this opportunity. 150 pupils participated in discussions.

A total of 2603 cinema lovers went to see the films in the special programme on the rights of children.

Merit awards event "Lastega ja lastele"

The Ombudsman for Children can further contribute to making society more child-friendly by helping children and young people speak out on issues important for them and by recognising those children and young people who have done something remarkable for other children.

Under the leadership of the Chancellor's Office, the television programme "Lastega ja lastele" (With and For Children) was produced: this was aired on TV3 on 1 June. Programme hosts Otto and Aksel Kahar explored the life and well-being of Estonian children. In addition to children and young people, President Alar Karis and Chancellor of Justice Ülle Madise also spoke on the programme.

International cooperation

International cooperation also plays an important role in promoting the rights of the child. Meetings and discussions with colleagues from other countries offer an opportunity to learn from colleagues and exchange knowledge.

On 3-4 June, the Chancellor of Justice hosted the spring seminar of the European Network of Ombudspersons for Children (ENOC). The seminar was attended by 60

ombudsmen and specialists from a total of 33 European countries. On the first day, the situation of the rights of children in alternative care was discussed, experiences were shared and preparations were made to form the network's position on the subject. The second day focused on the rights of children whose parent or other next of kin is in prison. Specialists from Children of Prisoners Europe (COPE) shared their knowledge and experience on this topic with ombudsmen for children.

The Chancellor's Office helped to translate into Estonian the COPE online survey, seeking responses from children and young people whose parent or next of kin is or has been in prison. These children are in a particularly vulnerable situation and need understanding and support from adults. In cooperation with the Office of the Chancellor of Justice, the Ministry of Justice, and prisons, an opportunity was created for Estonian children and families to participate in this study. Children and young people were asked how they thought prison premises could be made more child-friendly and hospitable.

Children taking part in the survey considered it important that they could also spend time with their parents playing outdoors or in the sports hall. It can be difficult for children to see their imprisoned parent leave the meeting, which is why they wanted to be able to leave the visiting room before the parent at the end of the visit. The bars in front of the windows of the visiting rooms were intimidating for children, and they would like to have more pictures on the walls.

The Children's and Youth Rights Department of the Chancellor's Office was visited by representatives of the Latvian Child Welfare Union. The Chancellor's advisers explained to the guests how children and young people participate in the work of the Chancellor of Justice.

Inspection visits

Viru Prison

During the reporting year, the Chancellor of Justice scrutinised detention conditions in Viru Prison. The Chancellor complimented Viru Prison for the significant efforts it has made to improve organisation of visits. The prison's waiting and visiting rooms are now more child-friendly and comfortable. Children who come to the meeting are searched differently from before. Officers are friendly and supportive with children. In prison, the opportunity to take pictures together has been created. Capturing the time spent together with the parent is important for children and also supports the return to society of parents in prison.

Although the prison has made significant changes to the organisation of visits, the issue of the fee for long-term visits remains unresolved. The Chancellor is still of the opinion that the fee imposed on long-term visits is not conducive to visits. The

fee charged for a visit turns the right to a visit into a privilege that less well-off families cannot afford or can rarely afford. In particular, charging such a fee may affect the situation of a child who, as a result, is unable to exercise their right to regular and direct contact with their parent in prison.

According to the Chancellor's assessment, a parent in prison should be able to wear their own clothes instead of prison uniform when meeting their child. This would help alleviate the strict and punitive impression of the prison in the eyes of children. Meeting with a parent wearing ordinary clothes would help a child to maintain, and in some cases also create, as positive an image of their parent as possible. This would enable a prisoner to feel dignified as a parent even while in prison and would thus promote a prisoner's communication with the world outside and support a prisoner's reintegration into society.

During the reporting year, the Chancellor also had to resolve a number of misunderstandings due to which, for example, children could not meet with their parent in prison or the parent could not call from prison. The Chancellor of Justice considered it understandable that children may not be available by phone at the time when calls take place in prison. It may therefore be justified to allow a prisoner to make such calls at a different time than usual. When deciding on requests to call children, the prison must take into account the interests of children, among other circumstances. However, in prison conditions, it must be taken into account that the phone might not always be accessible at the exact time requested or for the same length of time as at liberty.

The department for children and adolescents at the North Estonia Medical Centre

In the past reporting year, the Chancellor of Justice inspected the work of the department for children and adolescents at the North Estonia Medical Centre. The inspection revealed that children and adolescents are often restrained in the acute treatment unit of the psychiatric clinic of the North Estonia Medical Centre. This led the Chancellor to ask the hospital to find ways to avoid mechanical restraint of minors. If restraining a minor is unavoidable and still necessary as a measure of last resort, it should instead be arranged in the clinic's department for children and adolescents. The Chancellor also drew attention to this in 2019.

The Chancellor has explained that if the hospital to which a child is taken has a child psychiatry department, then the child should be treated separately from adults. In the department of child psychiatry, it is possible to offer children an environment adapted to their needs. Also, the segregation of children and adults in separate departments helps reduce the risk of child abuse.

Closed childcare institutions

The Chancellor of Justice inspected the Nõmme tee facility of the Tallinn Centre for Children at Risk and the Youth Home of the Hiiumaa Social Centre, where young people receive the closed childcare institution service.

In both institutions, the supportive and empathetic attitude of the staff towards young people left a very good impression. While, in addition to social pedagogues, psychologists and medical nurses also work at the Nõmme tee facility, unfortunately no such support was provided in the youth home. The healthcare expert participating in the visits stressed that the staff in both facilities should work more closely with a young person's treatment team.

The Chancellor found that, in fact, for several young people participation in the social programme offered at the Nõmme tee facility was not voluntary. This led the Chancellor to ask to be ensured that only those young people join the social programme who are really ready to receive and participate in this service. A voluntary-based service cannot be imposed or provided under pressure.

The living conditions at the youth home were not suitable for clients with challenging behaviour and did not ensure them safe living. The Nõmme tee facility must ensure that the doors of the toilets and showers can be locked from the inside (for example, with a thumb turn lock), so that staff can quickly open the door from the outside if necessary.

Separation of a young person receiving the closed childcare institution service from others must be carried out in accordance with the requirements laid down by law. A young person may be held in a seclusion room until they calm down, but not longer than three hours, and the stay in a seclusion room must also be documented. A young person and their belongings may be inspected only if a reasonable suspicion exists that they are in possession of prohibited substances or objects.

Some of the children brought into the youth home behave defiantly and aggressively. Unfortunately, the youth home team lacked the necessary training to deal with young people behaving aggressively. The sense of security and willingness to work of some of the employees at the Nõmme tee facility had decreased significantly due to serious incidents. The Chancellor offered solutions on how the staff's sense of security could be restored and increased. Among other things, it is necessary to constantly offer training and mental health support to staff, especially after resolving difficult situations.

The Chancellor asked that the Nõmme tee facility make sure that a young person can always address their concerns to an employee of the same sex as them. Young people who find themselves in difficult situations should also be dealt with by staff of the same sex as them. Some measures taken against young people, such as

collective punishments, are not lawful. Communication based on punishment and restrictions does not support rehabilitation of young people.

Supervision

The principle of legality

Under § 3 of the Estonian Constitution, state power is exercised solely on the basis of the Constitution and laws in conformity therewith. In simple terms, this means that the state and cities and rural municipalities cannot come up with and make mandatory something for which the law does not empower them. So, for example, regulations imposing additional obligations on individuals that are not laid down by a law are not compatible with the principle of legality.

The principle of legality is also tested by official guidelines, recommendations and action plans, as well as, for example, by a coalition agreement. Although following these is not mandatory, and formally they should not play any role, at times real life tends to prove otherwise. In practice, guidelines sometimes have greater significance than a legal norm.

The Chancellor's supervision of such guidelines and instructions of a general nature is limited to ombudsman proceedings. For example, the Chancellor of Justice can check whether guidelines comply with the principles of good administration. However, since guidelines are not formally a legislative act, it is not possible to initiate constitutional review proceedings.

Cities and rural municipalities have no right to impose additional restrictions on obtaining a place in kindergarten. In the opinion of the Supreme Court, the condition that a family is granted a place in kindergarten only if there are vacancies is unconstitutional. The court reasoned that this could lead to depriving children of their statutory right to a place in kindergarten. In the opinion of the Chancellor of Justice, cities and rural municipalities must repeal such conditions. They should also repeal illusory restrictions that could mislead a parent and leave an impression that a kindergarten place may be denied or postponed. The Chancellor recommended that the Ministry of Education and Research should look for additional ways to help local authorities in predicting the need for kindergarten places and ensuring places.

The Minister of Education and Research agreed with the Chancellor of Justice and, on 8 January 2023, annulled a regulatory provision according to which a vocational educational institution could request a pupil to reimburse expenses arising from re-issue of a pupil's card if the card has been damaged, destroyed, lost or stolen. According to the law, the minister must establish the procedure for issuing a pupil's card, but the law does not regulate charging a fee for it. Nor does the law give the Minister of Education and Research the power to regulate it. A pupil studying in a vocational school is entitled to receive a pupil's card so that they can prove their pupil status. The regulation must be enacted on the basis of a law.

Until 6 May 2024, the law did not regulate the conditions for excluding a pupil from a vocational educational institution. Under a regulation of the Minister of Education and Research, a first-year pupil in a vocational educational institution had to be excluded from school if, without a compelling reason, the pupil had not started studying within two weeks of the beginning of studies. The Chancellor was asked to assess whether this regulatory condition complied with the law. The Chancellor concluded that the law did not provide for the condition of exclusion from school as laid down by the regulation. The Minister of Education and Research agreed that the regulation must be based on the law. The Riigikogu laid down the same condition for exclusion in § 34^1 (1) clause 3 of the Vocational Educational Institutions Act.

A problem also appeared in the evaluation of the guide "Defining *gin*, distilled *gin* and London *gin* of the categories of spirit drinks" prepared by the Agriculture and Food Board. Under § 19(1) of the Chancellor of Justice Act, the Chancellor of Justice can check whether an authority follows the principles of good administrative practice in its activities (including instructions and guidelines that it issues) and whether the fundamental rights of individuals are protected in doing so. Against this background, the Chancellor of Justice examined whether point 4.1 of the Agriculture and Food Board guideline complies with the principles of good administration and is in line with the provisions of Regulation (EU) 2019/787 of the European Parliament and of the Council of 17 April 2019. This regulation concerns the definition, description, presentation and labelling of spirit drinks, protection of geographical indications for spirit drinks, and the like. The definition of *gin* given in the Agriculture and Food Board guideline differs from that given in the regulation and may thus lead to unnecessary confusion.

Through its interpretation provided in the guideline, the Agriculture and Food Board may not restrict the rights of gin producers or distort the spirit of the rules on which the guideline is based. The Chancellor therefore asked the Agriculture and Food Board to amend point 4.1 of the guideline. Although the guideline states that its author is not responsible for any interpretations of the guideline and their consequences, its implementation may nevertheless begin to limit lawful application of the legal norm or lead to administrative practice that does not comply with the norm. In accordance with the principles of good administration, guidelines must be reliable and may not result in a disadvantage compared with the legal norm.

Last year, the Chancellor issued an opinion on regulation No. 24 "Procedure for the construction of publicly used construction works and their financing" (hereinafter the regulation), adopted by Tallinn City Council on 15 December 2022. Under § 131(2^1) of the Planning Act, the regulation should deal with agreements between the city and a developer entered into in relation to constructing publicly used civil engineering works or in relation to bearing the cost of constructing them.

Unfortunately, with this regulation, the city government imposes its obligations on the developer.

Although the principle of legality in general is dealt with in analysis of the substance of legislative acts, sometimes cases where a city or rural municipality regulation is based on an invalid legal act also attract the Chancellor's attention. The Chancellor has to address this issue in connection with the Pärnu City Government Regulation No. 10 of 16 April 2018 on the "Procedure for the seasonal extension of a point of sale and installation of a temporary point of sale". This regulation was not lawful because it was based on the repealed Trading Act and the Pärnu City Property Management Procedure. For the sake of legal clarity, the city government must repeal the regulation.

The Chancellor of Justice checked whether the regulation of the Minister of Regional Affairs on the "Hourly rate charged for the performance of food, feed and veterinary supervision activities in 2024" was in conformity with the Constitution. In particular, examination covered whether the regulation complies with the principles for determining the supervisory fee laid down by § 49^3 of the Food Act and § 87 of the Veterinary Act, and whether the fact that the hourly rates for food and veterinary supervision are set by the Minister is compatible with the Constitution.

The Chancellor of Justice concluded that the hourly rates may be set by the Minister by regulation, as the conditions for setting the fee are laid down in sufficient detail in Regulation (EU) 2017/625 of the European Parliament and of the Council and in law. The Minister is essentially implementing a predetermined calculation, not making fundamental choices. However, it turned out that the hourly rates for food and veterinary supervision laid down in the regulation were established on unclear grounds.

In a memorandum to the Minister of Justice, the Chancellor of Justice drew attention to the fact that the provisions on law enforcement and processing of personal data need to be clarified (see also the subsection on "Protection of personal data" in the chapter "E-Estonia") Among other things, the Chancellor proposed laying down the exact grounds for intervention in order to resolve frequently arising problems of law enforcement, since the very general basis for intervention (general empowerment) laid down by § 28 of the Law Enforcement Act is not intended to apply in typical situations, but in exceptional situations. In his response, the Minister of Justice expressed readiness to tackle this problem.

Covert processing of personal data

The Chancellor of Justice regularly checks the work of those agencies that organise interception of phone calls and conversations, surveillance of correspondence,

and otherwise covertly collect, process and use personal data. With constant supervision, we wish to ensure that all covert measures are carried out for a reason, i.e. in accordance with applicable rules and by respecting fundamental rights. Even when the actions of the relevant agencies are formally lawful, the Chancellor tries to ensure that people's fundamental rights are always taken into consideration.

During the reporting year, the Chancellor's advisers checked the work of the Internal Control Bureau of the Police and Border Guard Board (PBGB), the Central Criminal Police and prefectures, as well as the investigation department of the Tax and Customs Board.

Detailed summaries of inspection visits to surveillance agencies are not public since they contain information classified for internal use only. These summaries are sent to inspected agencies as well as public authorities (the court, the Security Authorities Surveillance Select Committee of the Riigikogu) which are responsible for the legality of activities of surveillance and security agencies.

Inspection of Police and Border Guard Board surveillance files

During the past reporting year, the Chancellor's advisers made a total of 18 inspection visits to the Internal Control Bureau of the PBGB, the criminal bureaus of prefectures, and the Central Criminal Police, and inspected surveillance files opened in 2021-2023. A total of 132 files were examined across all structural units (including the regional divisions of the Central Criminal Police and the Internal Control Bureau), for which active proceedings had been completed by the time of inspection. Data contained in paper files as well as in the surveillance information system were examined and compared, and officials of the surveillance authorities were interviewed on the spot.

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 entirely by chance). The assessment focused primarily on whether, in each specific case, opening a surveillance file and conducting the surveillance measure for the purpose of collecting information about a criminal offence had been lawful, as well as unavoidable and necessary. Also examined was how the surveillance agencies complied with requirements to notify people about a surveillance measure.

During the inspection visits, interviews with heads of surveillance also covered the issues of planning, carrying out and internal control of surveillance measures. In terms of protection of fundamental rights, it is important to note that no structural unit of the PBGB lightly makes decisions on use of surveillance measures. The decision takes into account the type and danger of the criminal offence and

whether evidence can also be collected by so-called overt measures. Existing resources and technical capabilities are also taken into account.

For the purpose of more effective protection of fundamental rights of individuals (including to enable effective supervision), the Chancellor made some proposals to the PBGB and the prosecutor's office for improving the quality of organising surveillance measures. All proposals were based on specific circumstances identified in surveillance files and from interviews with officials.

Organisation of surveillance measures

The overall quality of processing of surveillance files has improved significantly compared to the past. When surveillance files were opened, the reasonableness of suspicion of a criminal offence and other relevant circumstances justifying interference with fundamental rights had been sufficiently assessed. This was also the case for those entities that had previously had problems justifying the opening of a file.

The Chancellor's advisers were satisfied that all surveillance measures had been carried out legally, i.e. in accordance with an authorisation issued by the prosecutor and the preliminary investigation judge. Based on the files, it may be concluded that without surveillance and without interfering with people's fundamental rights it would indeed have been complicated, and at times even impossible, to gather the evidence necessary to verify a particular suspicion of a criminal offence.

A surveillance measure is lawful only if the prosecutor's office or the court has issued an authorisation meeting the statutory requirements. Authorisations for surveillance contained in the surveillance files examined were generally justified. They demonstrated that surveillance measures were indeed necessary to verify suspicion of a criminal offence. Special mention should be made of those authorisations containing reasoning for the existence of a suspicion of a criminal offence, the necessity of a surveillance measure (the principle of *ultima ratio*), as well as the impact of measures on the subject of surveillance and third parties linked to them.

However, not all surveillance authorisations were properly substantiated: some authorisations issued both by a court as well as a prosecutor's office were found where sufficient reasoning was not given to justify an overriding need to carry out surveillance. Typically, the problem was that the *ultima ratio* reasoning was too general and did not meet the standards adopted in case-law.

Officials in charge of surveillance must always follow the specific surveillance authorisation. In addition to deadlines, the conditions imposed on a measure by the authorising authority must be observed. So it is extremely important that all surveillance authorisations are properly substantiated and also formally correct. For example, the operative part of each authorisation must set out clearly

(measure by measure) and comprehensibly which surveillance measures may be carried out and to what extent. Similarly, any permissible measure must be justified in terms of its objectives and necessity.

From some of the authorisations issued by a prosecutor, it was not completely clear which of the surveillance measures mentioned in § 126^5 of the Code of Criminal Procedure were authorised, since this section deals with three different measures: covert surveillance, covert examination of items, and covert collection of reference material. In contrast to normal practice, the operative part of some court orders also failed to clearly distinguish whether authorisation was granted for interception of telephones and other means of communication or for interception of other information (including on-the-spot conversations between people).

Examination of surveillance files revealed that in the case of some surveillance measures still no substantive summary had been included in the file. Although the situation has improved from year to year, some files did not contain a summary at all, or the summary was limited to a laconic statement that the data obtained had been transmitted to the authority in charge of proceedings digitally or added to the police database. In those cases, it was not possible to carry out a full assessment of the legality and justification of surveillance on the basis of the surveillance file.

Notifying a surveillance measure

Under the Code of Criminal Procedure, a surveillance measure is notified to people with respect to whom the surveillance measure was carried out, as well as individuals identified during the proceedings whose 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 has been given by a prosecutor or the court.

The PBGB Internal Control Bureau and the West and the South Prefectures had informed all people of the surveillance measures in a timely manner. This ensured the rights of defence of suspects and accused persons. Suspects and accused persons, as well as other persons whose rights had been significantly interfered with by surveillance, were thus guaranteed access to the information gathered about them and exercise of the right of appeal laid down by law.

The Central Criminal Police and the East and North Prefectures had delayed notification in some cases. In these cases, people had been notified of surveillance 5 to 11 months later than the prescribed time limit. This concerns those people directly subject to the measure, as well as those whose rights were significantly interfered with by the measure.

However, the wider problem was that the notice sent to people did not meet the statutory requirements: for example, instead of the time of surveillance, the notice

indicated the period of validity of the authorisation. Many notices did not state clearly what type of surveillance measure had actually been carried out. Sometimes it was also not distinguished whether the notification was sent to a person directly subject to surveillance or a person whose right to inviolability of family or privacy was significantly affected by surveillance. A misleading notice does not enable the recipient to understand the circumstances of surveillance concerning them or to decide whether and how they need to protect their rights.

Inspection of Tax and Customs Board surveillance files

The Chancellor's advisers examined surveillance files opened in 2021–2023 at the investigation department of the Tax and Customs Board (a total of 31 files were examined) and on that basis assessed whether surveillance had been carried out lawfully.

When inspecting the surveillance files, the advisers focused on the justification for opening a surveillance file as well as justification for authorisation of a particular surveillance measure (*ultima ratio* or the necessity of the measure), and whether surveillance had been carried out in accordance with an authorisation granted by a judge or prosecutor and within the time limit specified in the authorisation. Also monitored were whether the fundamental rights of third parties were protected and whether all the requirements for notification of surveillance and presentation of the collected material were met.

Also assessed was whether the Chancellor's previous comments and proposals had been taken into account and to what extent surveillance files had been checked by the prosecutor's office.

Similarly to the PBGB, the opening of surveillance files by the Tax and Customs Board was justified. The files had been processed in compliance with the requirements of the Code of Criminal Procedure and other legislation. Based on the files, it may be concluded that without surveillance and without interfering with people's fundamental rights it would have been complicated or even impossible to gather the evidence necessary to verify suspicion of a criminal offence.

Surveillance had been carried out under authorisation by a prosecutor and a preliminary investigation judge and by complying with the conditions and time limits set out in the authorisation. In general, the authorisations complied with the rules adopted in case-law, i.e. they set out in sufficient detail the reasons why surveillance was absolutely necessary. In only two files were some authorisations found where the reasoning given by the authorising body was too scant and general. It had not been justified why it was absolutely necessary to carry out each specific measure authorised in the operative part.

The surveillance files of the Tax and Customs Board contained (with two exceptions) substantive summaries of surveillance measures, enabling an overview as to the persons in respect of whom and to what extent surveillance

had been carried out. The summaries also reflected whether and what evidence or other relevant information was obtained through the measures. Inclusion of such summaries in the file is extremely important in terms of fundamental rights protection since the summaries enable retroactively – and without having to re-examine the materials in the criminal case – assessing the effectiveness of the surveillance measure, the intensity of instances of interference involved, and other essential facts.

Although in most cases people had been informed of surveillance measures in a timely manner, some delays were also detected during the inspection. Two people had been notified 11 months later than prescribed; in other cases, notice of the surveillance had been sent with a delay of 5-6 months. Everyone who so wished had also been enabled to access data collected on them in the course of surveillance.

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

Resolving petitions by individuals

Besides carrying out own-initiative supervision over surveillance agencies, the Chancellor also resolves complaints concerning surveillance measures and, if necessary, verifies other publicly raised claims (e.g. in the media) about illegal or insufficiently justified surveillance. The Chancellor of Justice is occasionally also contacted by people who believe that their rights have been violated when notifying them of a surveillance measure or giving access to the data collected by surveillance.

Courts and judicial proceedings

The Chancellor comes into contact with the work of the courts in three ways. The Chancellor of Justice participates in the work of the Council for Administration of Courts; she may initiate disciplinary proceedings in respect of all judges, and she submits opinions for the Supreme Court in constitutional review court proceedings.

In the second half of 2023, the Council for Administration of Courts convened twice, and in the first half of this year also twice.

Complaints against the work of judges

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

disciplinary case is made by the disciplinary chamber operating under the Supreme Court.

The Chancellor does not assess substantive issues concerning administration of justice. She can only assess whether a judge has failed to fulfil their official duties or has behaved disreputably.

However, the Chancellor is mostly contacted about issues in which she cannot intervene. Most often, people are not satisfied with a court decision or how the court has assessed evidence. For that reason, people expect the Chancellor to intervene in judicial proceedings and assess a court decision. The Chancellor cannot do this since, under the Constitution, justice is administered by the courts, and only a higher court can assess substantive issues of administration of justice.

Nevertheless, every year there are also cases where the Chancellor examines the work of judges more specifically in the information system of the courts in order to decide whether a reason exists to initiate disciplinary proceedings. During the reporting period, there were ten such cases. On some occasions, the Chancellor also asked for an explanation from a judge and/or chair of the court. In none of the cases did the Chancellor find a reason to initiate disciplinary proceedings in respect of a judge.

Complaints to the Chancellor mostly concerned the issue that judicial proceedings become protracted. In particular, this concerned civil proceedings; one complaint also concerned a delay in administrative court proceedings. While in previous years the issue of a reasonable duration of proceedings primarily arose in relation to cases pending before Harju District Court, in the past reporting year complaints were also filed about the activities of Viru District Court and Pärnu District Court.

A *reasonable duration of proceedings* is an undefined legal concept and its substance is interpreted on a case-by-case basis. The Supreme Court disciplinary chamber has explained that assessment of the reasonableness of judicial proceedings depends on several circumstances. In order to conclude whether judicial proceedings took place within a reasonable time, it is necessary to assess the complexity of a case, the importance of the benefits involved, and the conduct of parties to the proceedings. Certainly, the workload of a particular court and judge and the resulting objective circumstances must be taken into account: the court's resources, availability of support staff, the number of complaints, and the like.

During the reporting year, the Chancellor of Justice considered initiating disciplinary proceedings against one judge, as one of the judge's cases has been ongoing for six years. After examining the explanations by the chair of the court and the judge, the Chancellor decided not to initiate disciplinary proceedings.

This is a complex case whose delay has been caused by a combination of several adverse circumstances. In this case, the court has received a large number of

applications, evidence and positions, which, unfortunately, have constantly changed over time. As a result, the delay in the case is largely caused by the parties themselves, who have overwhelmed the court with their submissions. In addition, in the course of judicial proceedings, professional participants in the proceedings – attorneys assigned under the state legal aid procedure – have changed repeatedly.

The chair of the court assured the Chancellor of Justice that they would follow the proceedings until the final judgment and would react decisively if necessary.

A number of complaints concerned disputes between separated parents over allocation of custody, payment of maintenance, as well as individual issues concerning practical living arrangements. One such issue, for example, is travelling abroad with a child if the other parent does not give permission for this. In such cases, parents are often dissatisfied with the judge's decision and question the judge's impartiality. After examining the case materials (including listening to the recordings of the court hearing), in none of the instances did the Chancellor find the judges to have been biased in resolving the case.

Avoiding court proceedings and § 15 of the Constitution

Section 15 of the Constitution of the Republic of Estonia states that everyone has the right of recourse to the courts in case of violation of their rights and freedoms. As a rule, this right is indeed guaranteed, and it is also clear to the parties to the dispute what needs to be challenged. At the same time, in several cases it has become clear that, either accidentally or maliciously, obstacles have been created to the possibility of recourse to the court to protect one's rights, and a separate dispute needs to be entered into to overcome those obstacles.

Restrictions on the activities of coaches

The Chancellor of Justice has been asked what to do if the board of a sports federation has imposed a ban on a person to act as a coach, but the person has not been deprived of the profession of coach.

In sport, as in other walks of life, the established requirements and rules must be observed. The field of sport is largely governed by private law; sports organisations are predominantly autonomous, i.e. they have the right to organise their activities themselves, as well as to establish rules on the imposition of penalties (e.g. bans on competition and disqualification from professional activity). If the prohibitions resulting from these rules prevent or restrict a person's – in this case, a coach's – constitutional right to free self-realisation, they can defend their rights through the court. The Chancellor explained how rights are protected in such a situation and what are the limits of federations in imposing prohibitions.

The Sport Act regulates the activities of a coach through professional qualifications. Decisions to award and withdraw the profession of a coach must be

based on the Professions Act. Under the Act, the professional qualifications committee may propose to revoke a professional certificate if there is reason to believe that the activities of the coach do not meet the requirements of the professional standard. So, the professional qualifications committee only makes a proposal; the decision can be made by the awarder of the profession, i.e. the Estonian Olympic Committee.

The coach concerned may challenge the decision to revoke their professional certificate. To do this, they must lodge a challenge with the awarder of the profession or a complaint with the administrative court. A sports federation cannot revoke a coach's professional certificate.

Ensuring access to civil proceedings

The Chancellor of Justice made a proposal to the Riigikogu to bring § 182(2) clause 1 of the Code of Civil Procedure into line with the Constitution. The Chancellor considered that this provision in the Code of Civil Procedure is unconstitutional as it does not allow the costs incurred by a person when obtaining essential food and medicines, as well as communication and hygiene supplies, to be taken into account when granting procedural assistance to a natural person in non-contentious proceedings. The Riigikogu supported the Chancellor's proposal and has started to prepare a legislative draft to amend this provision.

In her memorandum, the Chancellor drew the attention of the Minister of Justice to a number of other problems concerning civil procedure. According to the current Code of Civil Procedure, an application for interim protection of a court claim must be denied if deficiencies are found in the statement of claim. Refusal to grant interim protection of a claim does not depend on whether or not the deficiency in the statement of claim was material in substance. The Chancellor pointed out that this could lead to irreversible adverse consequences. She suggested that, in such a situation, the court could be given discretion in deciding whether to deny the application for interim protection of the claim, or provide for refusal to grant the application for interim protection of the claim only in the case of material defects.

Another problem concerns the situation when a kindergarten violates a child's rights: for example, the right to choose another peaceful activity instead of a midday nap. If a parent decides to have recourse to the district court to protect the rights of their child, they must pay a state fee in the usual amount. Similarly, a high state fee must be paid, for example if an adult under guardianship is in a care home and their guardian wishes to have recourse to the court against the care home in order to protect them. The Chancellor considered that, in such situations, access to the courts should be facilitated. To this end, the case could be exempted from the state fee or at least the amount of the state fee reduced, the case could be resolved in non-contentious proceedings, or adjudication of the case could be assigned to the administrative court instead.

Thirdly, the Chancellor asked that rules be added to the law concerning suspension of the deadline for remedying deficiencies if an application for procedural assistance has not yet been resolved.

In his reply, the Minister of Justice thanked the Chancellor of Justice for her observations and promised to take them into account where possible.

Closing a bank account

Recourse to a court may be hindered by the fact that a person's bank account has been closed. A state fee must be paid when applying to the court. Under the State Fees Act, the body charging the state fee is required to accept a state fee of up to 10 euros in cash, if the payer of the state fee so requests. However, in most cases the fee is higher.

If a person's bank account has been closed, for example under the Money Laundering and Terrorist Financing Prevention Act or another law, it may be difficult, if not impossible, for the person to have access to the court because they cannot pay a state fee higher than 10 euros.

As a result, many cases do not even reach the court. This also inhibits development of case-law and limits the possibility that concerns about closing a bank account (or refusing to open an account) could be resolved through the courts without changing the law. In sum, the court cannot initiate review of the constitutionality of both the rule on state fee and the rules on prevention of money laundering.

To ensure that everyone has the possibility of access to the court to defend their rights – for example if only to challenge closure of a bank account – the Chancellor of Justice submitted a proposal to the Riigikogu. The state fee must be paid, for example for issuing a driving licence (§ 19 Constitution), registering a marriage (§ 27 Constitution), applying for recognition of professional qualifications (§ 31 Constitution), making an entry on ownership in the land register (§ 32 Constitution) and issuing an identity document (§ 35 Constitution).

A difficult situation arises for someone in respect of whom a harmful decision has apparently been made, but that person themselves is not aware of this because they have not been made informed of the decision. This means that the person is not able to challenge anything to protect their rights. The Chancellor found such examples in the field of financial supervision and nature conservation.

Supervision of the Financial Intelligence Unit

The Chancellor of Justice checked the administrative proceedings completed by the Financial Intelligence Unit (FIU) and made some recommendations to facilitate access to court proceedings.

According to explanations by FIU officials, background checks of persons are also based on data that are not disclosed to the applicant or the inspected person. At the same time, the reason why the data cannot be released is also not disclosed.

Unfortunately, it was also not explained to the Chancellor's advisers exactly which databases are used for such activities and on what legal basis. Thus, an applicant for an activity licence cannot verify the data on the basis of which the FIU makes its decisions.

The Chancellor recommended that the FIU refrain from informally influencing the representatives of an applicant for an activity licence in the future. The FIU may draw up a written opinion on a person, which is also submitted to the person themselves, so that they would be able to defend their rights if they so wish. The FIU can also submit a draft refusal to the applicant with assessments of the persons named in the application for an activity licence. In that case, the person can decide, based on verifiable and specific data, what they wish to do with regard to their application in the future.

The Chancellor recommended that the Ministry of Finance assess whether the regulatory provisions on assessing a person's reputation sufficiently ensure protection of the rights of persons whose reputation is assessed by the Financial Intelligence Unit. People's rights would be better protected in a procedure where preliminary assessments of their reputation must also be submitted to the person themselves and where they would have the right to submit objections. This also contributes to the self-monitoring function of administrative authorities, as the FIU is able to assess its decision on the basis of concrete evidence and explanations. The sources of information based on which a person's reputation is assessed should also be clearly delineated.

Opinions in constitutional review court proceedings

The Supreme Court may ask for the Chancellor's opinion in constitutional review court proceedings. During the reporting year, the Chancellor of Justice prepared the following opinions for the Supreme Court.

Opinion in case No 5-23-29 (11 September 2023)

The Supreme Court asked the Chancellor of Justice's opinion on whether § 111^{3}(14) of the Electricity Market Act is compatible with the Constitution insofar as it lays down a transition period shorter than nine months for implementing the security deposit specified in § 87^{1}(1) of the Act.

The contested provision lays down 60 days from the date of entry into force of the legislative amendment for implementing the security deposit for generation-oriented connection to the power grid. That period began to run on 17 March 2023 and expired on 17 May 2023. The court case involved a number of complex procedural issues (initiation of constitutional review proceedings by an order for interim relief, jurisdiction of the administrative court).

In the Chancellor's opinion, this constitutional dispute before the Supreme Court needs to be resolved on its merits. The legal relations in question are a

combination of private and public relations. Although the relationship between the two parties in this case is framed in the legal sense by a private contract, it must be borne in mind that the state intervened in that private relationship by adding a public obligation within the meaning of § 113 of the Constitution, the implementation and consequences of which do not depend on the contracting parties. Thus, in the present case, the jurisdiction of the administrative court can be affirmed in the light of maximum protection of fundamental rights and the possibility of effective legal protection. In doing so, the administrative court effectively ensured the task of protecting the rights of the person before it, within a limited time frame.

The Chancellor asked the Supreme Court, taking into account the principles of legal protection and the economy of court proceedings, to accept the application of the administrative court (§ 15 Constitution) and to assess the constitutionality of the contested norms in the course of specific constitutional review.

Opinion in case No 5-23-38 (5 December 2023)

The Supreme Court asked for the opinion of the Chancellor of Justice on the assessment of Räpina Rural Municipal Council, Põlva Rural Municipal Council and Tartu City Council that with § 221(2) and (5) of the Social Welfare Act the Riigikogu unconstitutionally increased the financial obligations of local authorities in organising 24-hour general care service provided outside the home.

The Chancellor found that the contested provisions were not unconstitutional. The Riigikogu restricted the local authority's ability to decide on the amount of the fee for a place in a care home (i.e. 24-hour general care service provided outside the home), i.e. a person's own contribution. A person's own contribution must cover the costs of accommodation, meals and other expenses. A local authority was obligated to cover the costs related to carers from its budget.

If the income of a person in need of a place in a care home (pension, work ability allowance and income subject to social tax) is not sufficient to pay for accommodation, meals and other expenses, the rural municipality or city must cover this difference under the conditions and to the extent provided by law. The rest must be paid by the person themselves if they and their next of kin have enough assets to do this. It should also be taken into account that people must have money left to buy, for example, prescription medicines, assistive devices, etc., as well as money for their petty expenses.

Thus, the share of a rural municipality or city in paying for a place in a care home may turn out to be greater than just covering the costs related to carers. All in all, people's own contribution should decrease, but the expenses of a rural municipality and city increase. This limits the local authority's possibility to use the budget money for the purposes set by itself.

The aim of the Riigikogu has been to make the 24-hour general care service provided outside the home more financially accessible to people. To this end, with § 221(2) and (5) of the Social Welfare Act, the Riigikogu made the rules for charging for the 24-hour general care service more favourable for people.

This aim is in accordance with Article 14 of the Revised European Social Charter, binding on Estonia, as well as §§ 10, 11, 12 and 28(2) and (4) of the Estonian Constitution. Better enforcement of fundamental rights is a compelling aim that outweighs the accompanying restriction on the right of local government self-organisation, by which the state restricts local authorities' possibilities to decide how to make the social service available (affordable) to people who need it.

Opinion in case No 5-24-1 (29 January 2024)

The Supreme Court asked for the opinion of the Chancellor of Justice at the request of the President of the Republic to declare the Act amending the Land Tax Act and the Taxation Act unconstitutional. The crux of the matter was not so much substantive issues related to the land tax but rather the extensive manifestations of obstruction, i.e. barriers that occurred in the work of the Riigikogu, as well as the decisions of the majority of the Riigikogu in overcoming these barriers.

The Chancellor found that the Act amending the Land Tax Act and the Taxation Act adopted by the Riigikogu on 18 December 2023 (hereinafter also the Amendment Act) is unconstitutional. It is probably not possible in a law to regulate the techniques used to deliberately block the work of the Riigikogu or the measures to overcome barriers to work in detail, ruling out all future disputes. Nor can positions or explanations precluding all future disputes in these cases be given in a court judgment. Clearly, if necessary, the Supreme Court should continue to decide on the relevant applications based on the circumstances of a particular case.

When deciding on promulgation of an Act, the President of the Republic is also entitled to evaluate the procedure for adopting the Act and, in the event of significant procedural errors, to refer the Act back to the Riigikogu for debate and decision. If the Riigikogu re-adopts the Act without correcting the procedural error indicated, the Head of State has the right to apply to the Supreme Court for constitutional review.

The Government of the Republic linked adoption of the Amendment Act to the matter of confidence, arguing that swift adoption of the Act was necessary for adopting the 2024 state budget before the beginning of the financial year. Some members of the Riigikogu had started to block the work of the Riigikogu as a whole and for a prolonged time, wishing to artificially bring about extraordinary elections in this way. On the basis of amendments tabled to the draft Amendment Act, it can be said that the work blockage was not directed against the substance of this law.

This type of work blockage should be treated differently from blocking work for other purposes. This time, the fact that the Amendment Act was not relevant to adoption of the annual state budget would be sufficient to render linking adoption to the matter of confidence unconstitutional. Linking to the matter of confidence in this case would not have been constitutional even if the purpose of the work blockage had been substantive opposition to passing the Amendment Act: achieving a more favourable outcome for the social groups represented, or at least showing the struggle for their interests and sense of justice.

In the Chancellor's opinion, in addition to procedural issues, the substantive amendments introduced by the Amendment Act also deserved the attention of the Supreme Court.

Opinion in case No 5-24-5 (9 May 2024)

The Supreme Court asked the Chancellor of Justice for an opinion on whether § 29(5) of the European Parliament Election Act is compatible with the Constitution and European Union law and what the legal consequences would be for the 2024 European Parliament elections should the Supreme Court conclude that this legal norm is not in accordance with the Constitution and/or European Union law.

Under § 29(5) of the European Parliament Election Act (EPEA), before registration of candidates, a political party or an independent candidate must transfer to the Ministry of Finance bank account a deposit in the amount equal to five minimum monthly salaries established by the Government of the Republic for each person (candidate) submitted for registration.

The Chancellor of Justice concluded that § 29(5), (3) clause 3 and (4) clause 2 of the EPEA (hereinafter also referred to as the deposit requirement) were constitutional. The deposit requirement does not excessively restrict the right to stand as a candidate in elections to the European Parliament. In the 2024 European Parliament elections, the deposit is five minimum monthly wages, i.e. 4100 euros. Those party electoral lists and independent candidates who receive at least 5 per cent of the vote nationwide will have their deposit refunded.

There is one electoral district in the European Parliament elections and seven deputies are elected from Estonia. To be elected, a significantly higher vote result than 5 per cent is required. The purpose of the deposit requirement is to prevent too many voters from being left unrepresented because their votes went to a list or to an independent candidate who was not elected to the European Parliament.

Opinion in case No 5-24-3 (7 June 2024)

The Supreme Court sought the opinion of the Chancellor of Justice on whether the sanction imposed by § 141(2) clause 1 of the Penal Code is constitutional.

Section 141 of the Penal Code deals with rape. Under subsection (2) clause 1, commission of this criminal offence against a person of less than eighteen years of age is punishable by at least six years' imprisonment.

By its judgment of 29 April 2024, Tartu Circuit Court of Appeal declared this provision unconstitutional (criminal case No. 1-23-2431). In this criminal case, the Circuit Court of Appeal held that the minimum penalty disproportionately restricts the fundamental right to liberty and does not take into account the seriousness of the offence committed and the person's degree of guilt.

The Chancellor of Justice considered that the penalty laid down by § 141(2) clause 1 of the Penal Code was not unconstitutional. The Constitution, by its very nature, does not prohibit imposition of a minimum penalty of six years' imprisonment for commission of serious crimes, including for the rape of a person under the age of 18. Therefore, such a penalty is clearly not excessive.

Opinion in case No 5-24-7 (5 August 2024)

The Chancellor of Justice found that § 19(2) of the Regulation No 7 of 26 February 2020 of the Minister of Public Administration on "The conditions and procedure for the use of support for achieving energy efficiency of local government buildings" (hereinafter: ministerial regulation) contravenes §§ 94 and 113 of the Constitution.

Põltsamaa rural municipality applied for support from the national measure to improve the energy efficiency of an educational building and organised a public tender for implementing the project. The State Shared Service Centre identified deficiencies in conduct of the tender, due to which the municipality was requested to return part of the grant. The State Shared Service Centre decided that 10 percent of the grant amount would be recovered. The reason given for the recovery rate was, inter alia, that it was not possible to apply a lower recovery rate under § 19(2) of the ministerial regulation.

The Act contains no sufficiently clear and precise delegating norm corresponding to the severity of the restriction that would confer on the Minister the power to establish recovery rates and define the principles according to which the Minister must set those rates.

Given that Tallinn Administrative Court considered one of the allegations of violation to be well founded, but the other unfounded, the application of a recovery rate lower than 10% may be relevant in this case. However, the recovery rates set out in the ministerial regulation do not allow applying a lower rate. As the Riigikogu has not empowered the Minister to establish recovery rates, the rates have been set unconstitutionally.

Proceedings respecting fundamental rights

Every administrative proceeding affects our rights. Petitions to the Chancellor of Justice reveal that the fundamental rights of individuals are not always respected. The state sometimes communicates unpleasantly with the citizen, time and money are wasted due to mutual distrust, and sometimes the result is poor as well.

Respect for fundamental rights is based on civility and the golden rule that do not do to others what you do not want to be done to you. That is why, in proceedings concerning an individual and their rights, the individual must be kept informed of the progress of matters and decision-making: in other words, involved. Of course, legitimate decisions must be based on convincing and reproducible evidence. Mostly, a person's problem does not concern state secrets, which is why withholding information and secrecy is inappropriate. If a person in need of assistance makes a mistake in submitting an application, the official must instruct them on how to correct the application. It is not right to put an applicant in an unnecessarily awkward position, for example because it is not clear when their application will be resolved.

The actions of the state must also be well-considered if an obstacle arises in the procedure: for example, the electronic environment does not withstand the load. It is unacceptable to mislead a person: for example, not initiating a statutory tax procedure and instead sending out a request that is essentially similar to a measure in tax proceedings. In this case, the person is pressured to provide information outside the tax proceedings, suggesting that if the person fails to provide information voluntarily, it is also possible to initiate tax proceedings.

Notifying about land inventory

Landowners are concerned that the state does not inform them about the inventory of land. As a result of the inventory, the state may decide to take land under nature conservation or to tighten the current protection regime and thereby restrict the right to property.

The Chancellor explained that staying on a plot of land owned by another person is allowed only with permission of the owner. This requirement also applies to the state. The law does give a state representative or inventory taker permission to stay on protected land, but this does not mean that notifying the owner is unnecessary. If the owner has marked or enclosed their land, then in order to take an inventory outside the protected area, consent of the landowner is required anyway.

Informing the owner complies with good administrative practice; besides, it is simply polite. The state may not act behind a person's back, but this is exactly how the state's actions may seem to a person if the state sends an inventory taker to make an inventory of the natural values on the plot, but fails to notify the owner.

The Environmental Board confirmed that it is looking for ways to improve notifying landowners.

Determining a species protection site for rare species

The Chancellor of Justice received a petition, pointing out that it is becoming increasingly common for habitats of protected species (e.g. the eagle owl) to be determined solely on the basis of allegations that the sound of a representative of the species was heard there. This means that a species protection site is formed in a place where the voice of a protected bird is said to have been heard a couple of times, but the bird's nest has not been identified. There is also no evidence (recordings) allowing subsequent verification of occurrence of the bird song (sound) and identification of the place and time of the song (sound).

This situation raises the question whether protection of property is guaranteed in such a procedure and how the state's conduct can be verified in retrospect. Until now, there has been a rule that the existence of a detected natural value must be demonstrated in an appropriate, reliable and verifiable manner. This will help to prevent arbitrary decisions that lead to unnecessary and unlawful restrictions on the right to property.

The Chancellor of Justice recommended that before imposing property restrictions for protection of nature, evidence of the particular natural value be collected and presented in a reproducible and verifiable form. Even if collecting the relevant evidence is more complex or costly compared to the current administrative practice, it ensures the lawfulness of the restriction on property and gives both individuals and the state confidence that establishing a species protection site in that place is necessary and appropriate. If the property restriction turns out to be unlawful, it will reduce the credibility of the state in people's eyes and may result in the state being obliged to compensate for damage.

Financial Intelligence Unit proceedings

Companies have contacted the Chancellor of Justice with concerns that the Financial Intelligence Unit (FIU) does not comply with the statutory procedural deadlines, so that proceedings for applications for activity licences become excessively prolonged. In addition, it has remained unclear to undertakings applying for an activity licence, on what basis the FIU assesses the reputation of the persons associated with them in activity licence proceedings. Applicants are dissatisfied because, instead of making a decision on the merits, the FIU asks them to withdraw their application.

It is important that proceedings for an activity licence should ensure equal and legitimate treatment of companies and natural persons associated with them, as well as provide an opportunity to defend their rights in the manner prescribed by the Constitution and the laws.

The Chancellor's advisers examined the materials of the licence applications, submitted to the FIU from January to June 2023, in which proceedings had ended. The materials of ongoing proceedings were not analysed.

Based on the findings, the Chancellor drew up a comprehensive summary which included recognition, as well as observations and recommendations for better and legitimate organisation of work. The results of the inspection are dealt with in more detail in the chapter on "Money and taxes".

Proceedings for amending a detailed spatial plan

Pärnu City Government had prepared a draft of design specifications aimed at amending the detailed spatial plan. The Chancellor explained that a detailed spatial plan cannot be changed through design specifications. To do this, the procedure for processing a detailed spatial plan must be followed.

Under § 27 of the Building Code, where a detailed spatial plan exists, design specifications may be issued if these are used to specify a condition in the detailed spatial plan without essentially changing the planning solution. This is an exceptional procedure which can only specify a detailed spatial plan to a limited extent. Another condition is that five or more years must have passed since establishment of the detailed spatial plan but implementation of the plan has not yet started.

The law also sets out the aspects which can be dealt with in this way (§ 27(4) Building Code).

Declining to examine a building notice due to a valid building permit

The Chancellor explained the legal difference between a building notice and a building permit by the example of solar panels installed on the roof of a building. A building permit is a permissive administrative act, while a building notice is an act that may reveal the need to issue an administrative act with mandatory content.

The general rule of administrative law is that an administrative act can only be amended through the procedure for an administrative act, i.e. a building permit can also be amended only in the building permit procedure.

Although, under Annex 1 to the Building Code, a building notice (and building design documentation) should be submitted for installing a solar panel on the roof of a house, a building notice cannot be submitted if the building permit for constructing the same house is still valid. During the period of validity of the building permit, in order to obtain the right to install solar panels, the need to amend the building permit must be assessed instead. So, no need exists to submit a building notice during the period of validity of the building permit. However, if a person nevertheless submits a building notice during the period of validity of the

building permit, the city must return the building notice to the person without examining it, because the wrong procedure has been chosen.

The validity of a building permit expires when the building permit has been revoked or when the building permit has been exhausted, i.e. when the building constructed on the basis of the permit has been properly completed and this is confirmed by an occupancy permit. Legally, a building is considered to be in progress as long as it has a valid building permit, even if the building is actually complete and is in use.

Involvement of affected persons in building right proceedings

The Chancellor drew attention to a mistake in building permit proceedings. Specifically, an authority in Tallinn failed to involve the representatives of an apartment building in the vicinity of a planned apartment building in building permit proceedings. Only neighbours directly adjacent to the building were involved in the proceedings.

The city erred in failing to correctly assess the impact of the planned building. The need for privacy was not taken into account (from the windows of the new house it is possible to look across the street to the windows of the other house) as well as the need for natural light (the new house would have started to block the daylight).

All persons whose rights may be affected by an administrative act must be involved in the proceedings of that administrative act. Thus, in addition to direct neighbours adjacent to the building, those whose rights are likely to be affected by the proposed construction must be involved in building right proceedings.

Tallinn city guidelines for planning a good apartment building

The Chancellor explained that guidelines (administrative rules) cannot resolve issues that need to be resolved by a spatial plan. This position of the Chancellor of Justice was prompted by a petition alleging that the city makes unlawful demands in building permit proceedings arising from guidelines prepared by city officials.

Administrative bodies may draw up guidelines for the organisation of their work, but these must comply with legislation and facilitate legitimate implementation practice. No new law may be created by guidelines. Guidelines cannot be used to resolve problems that should be resolved by other means. For example, a building permit must be granted if the application and the accompanying building design comply with the legislation and the spatial plan. A building permit cannot be refused because it is contrary to guidelines.

The guidelines at issue addressed a number of urban building issues. These should be dealt with in the spatial planning procedure. If urban design perceptions and needs have changed and the current spatial plan no longer meets them, then the spatial plan must be changed.

In the proceedings of new detailed spatial plans, the principles of designing a good and high-quality urban space can already be taken into account. The city may also consider amending or repealing existing but essentially outdated detailed spatial plans. Guidelines cannot solve the shortcomings of a spatial plan.

According to the principle of legality, all questions must be resolved in the correct procedure and in compliance with the prescribed procedural requirements. This will ensure that only those requirements are imposed that arise from a generally valid legal act (a law, or a regulation established on the basis of a law and complying with it) or a spatial plan. This will also ensure that everyone has the opportunity to defend their rights and interests.

Rules for distribution of support

The Chancellor of Justice was contacted about the conditions for submitting applications and resolving them in the frame of the project "Construction of water and sewerage infrastructure for private individuals". The project is carried out by the Environmental Investment Centre and financed by the European Union Cohesion Fund.

The petitioner was concerned about how a technical failure in the e-environment for submitting applications would affect resolution of their application. The petitioner also wanted to know why applications were granted in the order in which they were received.

The Minister of the Environment regulation on "The conditions for support for connecting to the public water supply and sewerage system" lacks a legal basis according to which a choice is made between eligible applications. This contravenes the constitutional requirement of legal clarity. If the Minister wanted to impose a condition according to which applications are dealt with in the order in which they were received, this should have been expressly set out in the regulation.

The Chancellor proposed to the Minister for Climate that the criteria on which selection is based be established in a ministerial regulation. The Ministry promised to take the Chancellor's proposal into account when preparing regulations concerning this support in the future.

Unfortunately, the country as a whole lacks a broader understanding of how it would be best to process applications submitted through the e-environment and distribute support in a situation of numerous applicants. In spring, problems arose in distributing support for reconstruction of small houses. The conditions for granting this support (§ 11) were the same as those which the Chancellor of Justice had recommended to the Ministry of Climate to revise in another regulation.

At the same time, the regulation on support for renewal of heating equipment for small houses is a good example of how the criteria for selecting projects have been

written down and how attempts have been made to resolve cases where failures occur when applying in the e-environment.

When establishing selection criteria, first of all it should be taken into account to whom support is granted and for what purpose. In addition to equal treatment of applicants, careful consideration should also be given to whether, in granting support to private individuals, it is most appropriate to take into account the order in which applications arrive. The time allowed for submission of applications should not be unduly limited; in addition, the time for submitting an application should not coincide with working time. Otherwise, for example, teachers, medical professionals and bus drivers, who cannot be at the computer at a certain time on a certain date in order to submit an application because they have to do their job at the same time, will be put at a disadvantage.

However, if it is nevertheless decided to satisfy applications in the order in which they are received, the reliability of the e-environment created for applying must be ensured. If it happens that, due to circumstances beyond a person's control, a technical failure occurs in submission of the application, then the person is immediately at a disadvantage compared to others. The risks arising from technical failure cannot be left to the applicant to bear.

Requesting information and documents outside tax proceedings

The Chancellor of Justice was approached with a concern that the Tax and Customs Board asks companies by e-mail for information and documents in the same volume as is usually requested in tax proceedings.

Explanations provided by the Tax and Customs Board revealed that the Board has sent thousands of e-mails to persons to obtain information outside tax proceedings.

The Chancellor found that the Tax and Customs Board may not ask for information and documents from persons without a legal basis. The Taxation Act allows the Tax and Customs Board to request such information only in the course of tax proceedings. Otherwise, the Tax and Customs Board violates the principles of good administration and fails to protect a person from the arbitrary exercise of state power.

The legal meaning of an e-mail sent to request information and documents is not always understandable to a person. For example, it was not possible to find out from the e-mails from the Tax and Customs Board that replying to these letters and submitting information and documents is not mandatory. Where the Board communicates with a person and asks them for information outside tax proceedings, the rights of the taxable person and of third parties are not protected to the extent that they are protected in tax proceedings. In this case, the person's ability to defend their rights is also limited.

In its reply to the Chancellor of Justice, the Tax and Customs Board agreed that it must be unambiguous for a person whether or not tax proceedings are being carried out in respect of them. The Board affirmed it will thoroughly review its work processes and interactions with taxpayers.

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. 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.

Kaarel Tarand: "Like any machine, every law affecting the way people live begins to age and depreciate from the moment of adoption. This also surely applies to the laws that determine the structure, power and decision-making mechanisms of a democratic state. They need regular maintenance and, as the living environment, technology, customs and practices are constantly changing, they also need to be updated and some elements improved. Otherwise, the law will lose its closeness to life and will no longer fulfil its original meaning and task.

The Political Parties Act is an example of how and what risks materialise if a law remains unmaintained for a long time. A lame law not only affects the activities of the political parties themselves, but forces those who implement the law to do meaningless work.

For years, the Riigikogu has been in a wait-and-see position as regards amending and supplementing the Political Parties Act, hoping that the Ministry of Justice will present a ready-made solution to the parliament through the government. However, officials cannot make big political choices, the place to discuss and decide them is in the Riigikogu.

One example. Worldview has become a free, flexible and dynamic phenomenon. In the Riigikogu, this manifests itself in the movement from the doors towards the windows. Worldviews change, people move, but money does not. Is it a fair and satisfactory situation for all – and not only for political parties and members of the Riigikogu, but also voters – that state budgetary support for political parties does not depend at all on where someone actually belongs and who they represent, but only on the election result?

More similar questions can be raised about the political reality and the consistency or inconsistency with it of the Political Parties Act. With regard to some sections,

the issue is again actually urgent, as only a year is left until the municipal council elections."

Allegedly illegal donation by a legal person

Among the dozens of questions submitted to the Political Parties Financing Surveillance Committee, the case of the Liberal Citizen Foundation (SALK) stood out due to its exceptional nature and the high level of public attention. After the 2023 Riigikogu elections, the attention of the Political Parties Financing Surveillance Committee was drawn to the allegation that SALK had made a prohibited donation to some political parties by allowing them to get acquainted free of charge with the data of studies and analyses conducted by the foundation.

At its meeting on 25 September 2023, the Surveillance Committee examined the responses received from political parties on the way in which they had accessed the SALK materials and how they had used that data. Tarmo Jüristo, the head of SALK, also gave testimony to the Surveillance Committee, presenting the work and goals of the foundation, as well as the conditions under which SALK allowed access to its work. SALK argued that in principle the foundation does not do contract work for political parties. However, the foundation had decided that some of the parties running in elections to the parliament would not be allowed access to the surveys.

This gave the Surveillance Committee a basis to investigate whether the political parties that were part of the SALK information circle had received a free service from the foundation in the run-up to the elections, which under the Political Parties Act qualifies as a prohibited donation by a legal person.

A month later, the Surveillance Committee decided that indeed four political parties that ran in elections – the Reform Party, Estonia 200, the Social Democratic Party and the Centre Party – had received a prohibited donation in the run-up to the 2023 elections, which, according to the law, must be returned to the donor. SALK objected that the foundation is not engaged in provision of services, but strives to attain the goals set out under its statutes. These goals are to represent a liberal worldview and to identify the views and preferences that exist in society.

By July 2024, the Surveillance Committee had calculated the amount of the alleged prohibited donation based on SALK's financial reports and overviews of the cost of specific surveys, and sent a precept to four political parties to refund that amount. Since the results of the surveys had also been partially available to the public, the Surveillance Committee decided that the political parties should pay 80 percent of the money spent on carrying out the surveys.

Three political parties – the Reform Party, the Social Democratic Party and Estonia 200 – were asked to repay 26 449 euros and the Centre Party 13 225 euros. The difference arose from the fact that the Centre Party had gained access to a smaller amount of data compared to the other parties.

The Chair of the Surveillance Committee, Liisa Oviir, commented on the Committee's decision: political parties should think more carefully about accepting services from legal persons that can be measured in money.

The head of SALK, Tarmo Jüristo, however, felt that the Political Parties Act should be updated and ways in which the third sector can have a say in politics should be formulated.

At the time of completion of the annual report, it was not known whether the political parties that received the claim for refund would challenge the Surveillance Committee's decision or not, and how the case will affect amendment of the Political Parties Act. In a presentation to the Riigikogu in 2017 (see para. 20 et seq.), the Chancellor of Justice already pointed out that the provisions regulating prohibited donations may excessively restrict the freedom of action of non-governmental organisations.

Environment and infrastructure

Some topics reappear in the Chancellor of Justice's report year after year. One such issue is the designation of a no-build zone, and the other is the quality of drinking water. Property restrictions imposed for nature conservation purposes are also an area about which petitions are submitted every year.

Clean drinking water is often spoiled by people themselves if wastewater is treated simply to the best of one's own knowledge or as people are used to doing but no particular attention is paid to environmental protection requirements. Therefore, the Chancellor began reviewing wastewater treatment regulations of cities and rural municipalities and, where necessary, made relevant proposals.

Power outages emerged as a new problem this year. As a follow-up topic, more general climate protection rules were discussed, on which the Chancellor of Justice made a presentation to the Riigikogu. Climate protection and its legal aspects are expected to continue to be on the agenda. During the reporting year, a Chancellor's representative participated in the work of the steering committee of the Climate Act as an observer and speaker.

Achieving climate goals

In 2023, the Chancellor of Justice presented a report to the Riigikogu, the purpose of which was to show the Riigikogu, relevant ministries and agencies, entrepreneurs and the public that norms necessary for fulfilling fixed-term international obligations which Estonia has assumed in the name of stopping climate warming have mostly not been enacted in legislation. However, without clear statutory obligations and restrictions, it is not possible to achieve these goals within the framework of the Constitution. In 2024, a Draft Act on a Climate-Resilient Economy was submitted for discussion. The debate on its constitutionality lies ahead.

The people have decided that the Estonian state exists for defence of internal and external peace and serves as a pledge to present and future generations for their social progress and general welfare. Under § 5 of the Constitution, the natural wealth and resources of Estonia are national riches which must be used sustainably. Climate is an inseparable part of the natural living environment of the world and of Estonia. Section 53 of the Constitution imposes a basic duty on everyone to preserve the living and natural environment. The social and economic livelihoods of present and future generations must be ensured. Climate change that leads to stronger storms, heat waves, floods and droughts poses an immediate threat to the Estonian people.

Constitutional principles and basic duties to protect the environment may justify restrictions on the fundamental rights of individuals, such as the freedom to conduct a business or the right to property. However, these restrictions must be well-considered, reasonable and fair. Crop and livestock farming, manufacturing companies, entrepreneurship in general are similarly under the protection of the Constitution. The Constitution also strongly protects property.

The Chancellor of Justice heard serious concerns from young people fighting climate warming, as well as from entrepreneurs and owners. It is important to avoid a quarrel between generations. It is hardly unlikely that anyone here knows anyone who is sincerely indifferent to the well-being of future generations and Estonia. Totalitarian-like orders and prohibitions and excessive restrictions on the fundamental rights of owners and businesses spark protest. This, in turn, can mean abandoning necessary changes, a big setback. That this may be the case is confirmed by the experience of excessive political correctness and the onslaught of a culture of cancellation: society has not become safer, extremes have arisen instead. This has now been confirmed both by election results and by theorists such as Francis Fukuyama and Slavoj Žižek. Rules-based, balance-seeking, peaceful governance will bring desired results with greater certainty. Consensus democracy is better than pendulum democracy in terms of people's well-being and safety.

Restrictions in construction and nature

Issues of a no-build zone

Regarding a no-build zone, the Chancellor of Justice has been making appeals and written presentations to the Riigikogu since 2016. Everything repeated itself in the last reporting year. A new report was sent to the Riigikogu, and additionally the Chancellor had to submit a proposal to the parliament to bring the Nature Conservation Act into line with the Constitution. On 6 June 2024, the Riigikogu supported the proposal. Hopefully, at next year's review, we can rejoice at amendment of the Nature Conservation Act.

Consistently addressing the problems of the extent of the no-build zone arises from a practical need, i.e. a forced situation. Unfortunately, in this balancing of human and conservation interests, individuals often find themselves in conflict with the state. Protection of natural values is indisputably important, but alongside this a person's desire to build a home or a summer house for themselves must not be underrated.

When the Chancellor of Justice first analysed the issues of a no-build zone and flood zone in 2016, merging of the two zones was not yet very common in administrative practice. Merging of the zones did happen, but the practice was not

predominant or systematic. In recent years, the law has not been changed. The width of the no-build zone is the same, and so is the baseline for the prohibition zone laid down by law – the boundary of the water body. However, merger of the flood zone and the no-build zone has become a practice where the flood zone starts at the waterline and the no-build zone starts at the boundary of the flood zone.

This means that the restriction on property has been extended and this has been done in accordance with the administrative practice of the Environmental Board, but not on the basis of changes in the law. The decisions of the Environmental Board are reflected in the planning procedure of cities and rural municipalities. A spatial plan needs approval from the Environmental Board (§ 133 Planning Act). If a municipality does not add the flood zone to the no-build zone in the plan, the Environmental Board will probably not approve the plan. For this reason, cities and rural municipalities are no longer guided by the law, but by the requirements of the Environmental Board. If a landowner wants the law to be applied to them, they must challenge the spatial plan in court, whereas the dispute will be with the municipality, which is simply complying with Environmental Board requirements.

Deadline for registering a forest notification

The Chancellor of Justice received a complaint that the Environmental Board did not respect the deadlines for registering forest notifications. Under § 2(3) of the Minister of the Environment Regulation No 28 of 11 August 2017 on the "List of data to be submitted in a forest notification, and the procedure and deadlines for submission, processing and registering a forest notification", the Environmental Board must check within 15 working days whether a forest notification complies with requirements and whether the planned cutting meets the requirements established by legislation. If making a decision on cutting requires approval or forest protection expertise, the Environmental Board has up to 30 working days to check the forest notification (§ 2(4) of the Regulation).

Thus, a forest notification should be registered or refused within 15 to 30 working days. Based on available information, the Environmental Board has started to inform the parties about exceeding the procedural deadline and, for example, in June 2024, announced that the procedural deadline had been extended until December 2024 (with the proviso that, if possible, a decision will be made earlier). Thus, based on information available, the procedural deadline was set at up to six months.

Under § 11(2) of the Environmental Impact Assessment and Environmental Management System Act, the decision-maker will examine an application for an activity licence and make a decision to initiate or refuse to initiate an environmental impact assessment. The decision must be taken no later than on the 90th day after it has received the information listed in § 6(1) of the Act. Thus, if

necessary, the period for registering a forest notification can be extended, but for significantly less than six months.

The Chancellor of Justice asked that in the future the Environmental Board comply with the deadlines laid down in legislation (see the opinion on "The period of processing a forest notification in accordance with laws").

Land inventory

The Chancellor of Justice has received petitions from landowners who are annoyed by lack of information about a national inventory commissioned for their lands. As a result of the inventory, it may be decided to take land under nature conservation or to tighten the current protection regime. Both qualify as restrictions on property rights.

As a general rule, staying on a plot of land owned by another person is allowed only with permission of the owner (§ 32(1) General Part of the Environmental Code Act). This requirement also applies to the state. The law provides for some exceptions for a protected natural object (see § 15 of the Nature Conservation Act), but permission granted by law to a state representative or inventory taker to stay on private land does not mean that notifying the owner about it is unnecessary. If the owner has marked or enclosed their land, then in order to take an inventory outside the protected area, consent of the landowner is required anyway (§ 32(1) and (2) of the General Part of the Environmental Code Act).

Informing the owner about the activities of the inventory taker complies with good administrative practice and is also a sign of elementary courtesy and respect. At the same time, dignified treatment of the owner creates a premise that the owner understands the actions of the state. The court has also considered it important that landowners should be informed when the habitat of a protected species is found on their property and entered in the register (Supreme Court Administrative Law Chamber judgment of 4 December 2023, case No 3-21-552, para. 22.2). This is important so that a person does not feel like an object of administrative proceedings.

The state may not act behind a person's back, but this is exactly how the state's actions may seem to a person if the state sends an inventory taker to record the natural values on the plot, but fails to notify the owner (see the opinion on "Notifying a landowner about a nature inventory to be undertaken on their land").

Protection of rare species

A petition received by the Chancellor of Justice drew attention to an emerging practice of determining habitats of protected species (e.g. the eagle owl) solely on the basis of claims that the sound of a representative of the species was heard there. This means that a species protection site is formed in a place where the voice of a protected bird is said to have been heard a couple of times, but the bird's

nest has not been identified. There is also no evidence (recordings) allowing subsequent verification of occurrence of the bird song (sound) and identification of the place and time of the song (sound).

This situation raises the question whether protection of property is guaranteed in such a procedure and how the lawfulness of the state's conduct can be verified in retrospect. In order to protect a natural value, a restriction on property can be imposed if that natural value is actually located on a person's land. To do this, the state needs relevant, reliable and verifiable evidence of the existence of that natural value. This will help to prevent arbitrary decisions that lead to unnecessary and unlawful restrictions on the right to property.

Arbitrary restriction of the right to property is contrary to §§ 11, 14, 19 and 32 of the Estonian Constitution. Nor do the provisions of the Constitution expressly relating to protection of the environment – §§ 5 and 53 of the Constitution – state that it is appropriate to impose unjustified restrictions on property in order to protect the environment. The Constitution protects different values, all of which are equally important, so that protection of property must take into account the requirements of environmental protection, while protection of the environment must take into account protection of property.

All known habitats of category I species (e.g. the eagle owl) must certainly be protected. The existence of verifiable and reliable evidence gives certainty to both the landowner and the state itself, because the state must also be ready to purchase private land with restrictions from a person (§ 20 Nature Conservation Act). If the protected species is not actually located on the property, then this expense would be unnecessary and unfounded. At the same time, imposition of a restriction on property must be verifiable both in the form of administrative self-control and judicial review. In order for the court to be able to assess the substance of the activities of a state agency and to ascertain its legality, it is first necessary to collect evidence confirming the existence of the protected species, and the evidence must be reproducible and verifiable in retrospect.

The Chancellor of Justice made a recommendation to the Environmental Board, asking that in imposing property restrictions for purposes of nature protection, evidence of the particular natural value be collected and presented in a reproducible and verifiable form. If the property restriction turns out to be unlawful, it will reduce the credibility of the state in people's eyes and may result in the state being obliged to compensate for damage.

The right to hunt

The chancellor of Justice was contacted by a landowner with a complaint that although they had banned hunting on their land, hunting still continued there, including with motor vehicles and without advance notice. The landowner was worried because they did not feel safe on their property.

The landowner asked the Environmental Board to initiate surveillance of the activities of the local hunting society as it had transgressed the landowner's ban. The Environmental Board explained to the landowner that supervision would not be initiated because a landowner may not prohibit hunting if the purpose of hunting is to contain a disease spread by game (§ 25(3) clause 3 Hunting Act). The Board also advised the landowner to address their concerns to the local hunting society.

Hunting must be lawful. This means that in order to contain a disease spread by game, the Environmental Board must first establish a hunting procedure that ensures effective prevention of a disease but also takes into account a landowner's property rights. Restrictions on landowners must be proportionate and hunting must be safe. In addition, in the course of state supervision, the Environmental Board must ascertain whether hunting on lands with a hunting ban is safe for people staying there (see the opinion on "Hunting on land with a hunting ban").

Drinking water quality

The Chancellor of Justice has received several petitions indicating that people do not have access to clean drinking water. At the same time, there is no information that these people have been left without clean drinking water due to their own negligence or inaction.

Under § 88 of the Water Act, rural municipalities and cities must organise access to clean drinking water on their territory. That is, if for some reason residents do not have drinking water, the local authority will have to resolve this problem. Among other things, a city or rural municipality must identify the cause of the problem and eliminate it. Residents must also be informed about other ways of obtaining drinking water if clean drinking water cannot be obtained from a tap or a well. With these amendments to § 88 of the Water Act, which entered into force on 17 February 2023, Estonia transposed the provisions of Article 16 of Directive (EU) 2020/21841 of the European Parliament and of the Council (hereinafter: Drinking Water Directive).

The explanatory memorandum to the Draft Act amending the Water Act states that the aim is to reduce the health and environmental risks related to drinking water, optimise the costs of drinking water treatment and ensure safe drinking water for everyone. It is very important that a local authority implement appropriate measures, if necessary, to ensure that drinking water is also more accessible to people in vulnerable situations. Where necessary, a public drinking water abstraction point must be set up, taking into account local circumstances (e.g. in winter, water may freeze in an outdoor drinking water abstraction unit).

Access to safe drinking water is directly linked to the right to health. One of the objectives of the Drinking Water Directive is also protection of human health (see the opinions on "Access to clean drinking water"; "Access to clean drinking water in Võõpsu small town").

On-site wastewater treatment rules

Compliance with the requirements for on-site wastewater treatment is essential, as failure to comply with these requirements may result in contamination of groundwater, which in turn may jeopardise availability of clean drinking water.

Under § 104 of the Water Act, every city and rural municipality must establish rules for on-site wastewater treatment. These rules must address cases where wastewater from a property is not discharged into the public sewerage system.

Unfortunately, the law does not lay down sufficiently precise guidelines and conditions as to what cities and rural municipalities should address in their regulations. Thus, the Ministry of the Environment once drew up model rules, based on which many local authorities have established their own regulations. However, these model rules partly contravened the law and contained conditions that cannot be lawfully met. For example, they contained a requirement that the provider of a discharge service must be entered in the register of economic activities, even though no such requirement is laid down by any law and it is not possible for businesses to comply with it. It is to be hoped that wastewater collection tanks and dry toilets will still be emptied in these municipalities without endangering the environment.

Requirements established in a city or rural municipality regulation must have a legal basis and the regulation may not contradict the law (§ 154(1) and § 3 of the Constitution). The legal basis of a regulation cannot be replaced by explanations and recommendations given by the Ministry, especially if these are not based on the law.

The Chancellor of Justice has occasionally drawn the attention of several local authorities to the need to bring their regulations into line with the law (see memorandums to Viimsi rural municipality, Rapla rural municipality, Räpina rural municipality).

Power outages

The supply of electricity is inextricably linked to our way of life; the exercise of our fundamental rights depends on its existence, as well as the work of companies, and often also health, and sometimes life. The Electricity Market Act also sets the goal of having an effective electricity supply that meets people's needs.

During the reporting year, the Chancellor of Justice received several petitions regarding large-scale, frequent and prolonged power outages. The main complaints were about the activities of the network operator Elektrilevi OÜ.

The network operator operates on a private basis; its activities are regulated by law and are supervised by several authorities. The Chancellor of Justice can check whether legislation is sufficient and whether laws are complied with, including whether state authorities are making sufficient efforts to achieve the objectives laid down in the law. The Chancellor addressed this issue in a memorandum sent to the Ministry of Climate, the Competition Authority and the Consumer Protection and Technical Regulatory Authority.

Power outages are not caused, and their rapid elimination is not hampered, by poor or inadequate legal space. The legislation contains both requirements and options, careful observance of which can reduce the risk of power outages and eliminate faults faster. The problem is, above all, that compliance with the requirements of legislation requires more money than the network operator receives from the network fee.

Power outages were mostly caused by damage to power lines through storm winds or heavy snowfall, but preparedness to quickly eliminate failures was absent, as the faults occurred in many places at the same time. It can be argued that if the power grid were more weatherproof and if the line corridors of power lines were maintained so that trees growing in or near the line corridor would not threaten the lines, then fewer power outages would occur and the lines could be restored faster. It is necessary to invest in construction and maintenance of a more weather-resistant network and in the ability to repair faults.

Maintenance of the electricity network and development of a network service that meets the needs of consumers are financed from the network fee. The network fee can be increased only with permission of the Competition Authority.

Money and taxes

Among financial topics, several tax-related issues as well as problems related to anti-money laundering measures came to the attention of the Chancellor of Justice during the reporting year. The Chancellor was also asked to assess the constitutionality of § 124 of the Bankruptcy Act and disclosure and preservation of banking secrecy.

Due to the tense situation of the state budget, ways are being sought to increase the revenue of the state as well as rural municipalities and cities, including through property taxes. Taxation of land will also be significantly changed to give cities and rural municipalities more power to decide on exemption of land under a person's home and on the increase in land tax.

The Riigikogu passed the much-disputed Motor Vehicle Tax Act, which in the main part should enter into force on 1 January 2025.

Land tax and land valuation

Land tax is a national tax, but specifying some tax elements is delegated by law to rural municipalities and cities. The city or rural municipal council establishes the land tax rates for the particular local authority within the maximum and minimum rates prescribed by law.

Under § 5(1) of the Land Tax Act, until 1 July in the year preceding the taxation year a municipal council is empowered to establish the tax rates for the following year. Several local authorities were late in deciding changes in land tax rates, i.e. the decisions were made after 1 July. In most cases, late decisions by municipalities were due to a faulty land tax calculator developed by the state, which resulted in tax receipts turning out to be lower than predicted. When the error was found, municipalities began to amend their regulations and increase tax rates, though with some delay.

The Chancellor made a proposal to Alutaguse rural municipality, Anija rural municipality, Kohtla-Järve city, Raasiku rural municipality, Rakvere rural municipality and Setomaa rural municipality to bring their regulations into conformity with the Act and the Constitution. The rural municipalities and the city that received the letter took the Chancellor's proposal into consideration and repealed the relevant regulations. Based on available information, one million euros has been allocated from the Government of the Republic's reserve fund to local authorities to compensate for the decrease in land tax receipts (compared to receipts in 2023).

Methodology for mass valuation of land

In the course of mass valuation of land, the state calculated simultaneously the value of about 760 000 cadastral units. That is, a mass appraisal was carried out. The approximate value of land at market prices was determined using machine-readable data and taking into account the factors that most influence the value of land. Of course, the results of a mass valuation are less accurate than the results of individual valuations, and quite a few aspects that people considered to be important factors affecting the value of land were not taken into account in mass valuation. As a result, the Chancellor of Justice was also asked for clarifications on land valuation.

One question concerned taking into account the proximity of the state border when valuing land. A landowner found that boundary water bodies had been taken into account as a factor increasing the value of land, but no restrictions on use of land due to the state border had been considered.

The Chancellor found no reason to consider this land valuation methodology unconstitutional. Although the proximity of the state border is not taken into account as a valuation factor, this may affect land purchase and sale transactions, and these transactions are taken into account according to the construction land valuation model. Specifically, the proximity of the border may affect estimates by parties to transactions about the value of land. Since land has been valued on the basis of purchase transactions for land in the vicinity of the plot, through this the proximity of the state border and other aspects characteristic of this location and affecting land value are reflected in the value of land. The water body proximity factor reflects the natural background and diversity and is not related to whether or not the property has access to the water body.

Mass valuation does not enable an objective appraisal of how price is affected by the view of or access to a water body. Also, mass valuation of land does not attach any significance to whether the nearby water body can be used. For this reason, border area restrictions or inconvenience due to the proximity of the border are not relevant in applying the water body factor.

The Land Board explained that land valuation in 2022 failed to fully analyse how the security situation affects the value of land. As the security situation has changed in recent years, it may have taken some time for the impact in transaction prices to materialise. Therefore, analysis of the impact of the eastern border may be important for the next mass valuation of land, which will take place in 2026.

The Chancellor of Justice was also asked to assess the inclusion of various factors affecting the value of land in the valuation model and whether the valuation factors developed as a result of analysis of transactions and during expert assessment can be laid down in a ministerial regulation. The minister's regulation

covered which areas and how building rights are taken into account in valuation of land.

The Chancellor found that the minister has a wide margin of discretion when choosing a land valuation methodology, though these choices may not be arbitrary. There is no reason to believe that the choice of methodology was arbitrary. As part of the valuation models, the value factors obtained as a result of an analysis may also be used.

Petitioners also wanted to know whether it was constitutional to use an adjustment factor reducing the taxable value for larger parcels. According to explanations by the Land Board, the surface area of a parcel affects the market price of the parcel in different ways: it depends on the location and use of the parcel. For construction land, the rule is that the larger the area of the cadastral unit, the lower the unit price of land. In the case of agricultural land, the relationship is the opposite: the larger the area of the cadastral unit, the higher the unit price.

When developing land valuation methodology, transaction data were analysed and it was found that the size of a unit of construction land up to 1000 m^2 does not significantly affect the value of the cadastral unit, but beginning from an area exceeding 1000 m^2 the unit value of land decreases. This means that mass valuation of land takes into account that value based on the area of land begins to decrease as from 1000 m^2.

The Chancellor found that introduction of an adjustment factor due to parcel size and choice of the area limit (1000 m^2) from which the adjustment factor will be applied had been plausibly justified and no grounds exist to consider use of the adjustment factor unconstitutional.

The Chancellor of Justice was also asked to explain the increase in tax if the land tax increase restriction is applied to joint owners of land.

Amendments to the Land Tax Act

Restrictions on exemption of land under a person's home and the increase in land tax were amended in the Land Tax Act.

The Chancellor of Justice sent an opinion on this to the minister. On the basis of the Chancellor's comments, amendments were also made to the Draft Act and the explanatory memorandum. As rural municipalities and cities will obtain extensive decision-making power in establishing a tax incentive for land under a person's home, it can be assumed that this will raise many questions, to which answers will also be sought from the Chancellor of Justice.

Motor Vehicle Tax Act

On 12 June, the Riigikogu passed the Motor Vehicle Tax Act. The Chancellor of Justice also expressed her views on the Draft Act, expressing concern about how motor vehicle tax might affect the life of people with disabilities. The Motor Vehicle Tax Act provided a tax exemption for vehicles specially adapted or rebuilt for people with disabilities, but not for all vehicles used for transport of disabled people.

The President of the Republic refused to promulgate the Motor Vehicle Tax Act, citing unequal treatment of people with disabilities.

The Riigikogu amended the Act and adopted it on 29 July.

According to the amendments, vehicles rebuilt or adapted for people with disabilities will not be granted the previously planned exemption. However, the same law introduced amendments to the Social Benefits for People with Disabilities Act, increasing some of the monthly benefits for people with disabilities and offering a one-off allowance to mitigate the impact of motor vehicle tax. In addition, amendments were introduced to the Social Welfare Act which will facilitate provision of necessary assistive devices and reduce the own contribution paid for them.

Other tax issues

Restriction on sale of products with old revenue stamps

The Chancellor of Justice was asked to assess the constitutionality of § 28(4^1) of the Alcohol, Tobacco, Fuel and Electricity Excise Duty Act. This provision states as follows. “If a new design of revenue stamps is established simultaneously with a new higher excise duty rate, the excise goods revenue stamped with the previously valid revenue stamps and released for consumption before entry into force of the new excise duty rate may neither be sold nor stored outside an excise warehouse after the expiry of three calendar months as of the date on which revenue stamps with the new design enter into force.”

So, under § 28(4^1) of the Act, products bearing old revenue stamps may still be sold within three months of the increase in tax. According to § 85^{21} of the Act, the restriction does not apply to changes in the excise duty rate on cigars and cigarillos in 2024, or if the excise duty paid on cigars and cigarillos does not increase due to an increase in the minimum tax rate. Under § 85^{21} of the Act, the restriction is not applied to cigars and cigarillos when the rate of excise duty is changed in 2024 and so long as the amount of excise duty paid on cigars and cigarillos does not increase due to an increase in the minimum amount of excise duty.

Cigars and cigarillos with revenue stamps valid before 1 January 2024 can be sold throughout 2024. No such distinction was stipulated for tax increases that will enter into force in 2025 and 2026.

The Chancellor found that companies have been given sufficient time to adapt to the tax increases that will come into force in 2025 and 2026. The provision to prevent products from being stockpiled in advance while the lower rate of excise duty is in force and thus avoiding payment of higher excise duty is constitutional. If tobacco products with revenue stamps corresponding to the previously applicable tax rate could be sold without restrictions even after the 2025 and 2026 tax increases, companies would be able to stock up in advance on larger quantities of products with lower tax rates and essentially postpone the tax increase.

Taxation of compensation for non-pecuniary damage

The Chancellor of Justice has previously drawn the attention of the Minister of Finance to the restriction laid down by § 12(3) of the Income Tax Act. According to the restriction, compensation for non-pecuniary damage is not considered to be income of a natural person if compensation for non-pecuniary damage is paid by the state or a local authority or if it has been awarded by a court.

When interpreting § 12(3) of the Income Tax Act, the tax authority has taken the view that compensation for non-pecuniary damage paid out of court must be taxed. This is also the case if compensation for non-pecuniary damage has been awarded or the corresponding agreement has been approved by an extra-judicial conciliation or procedural body. The Riigikogu is currently processing amendments to the Income Tax Act (434 SE), which lay down that compensation for non-pecuniary damage awarded or approved by a body established for extra-judicial settlement of disputes is also not income.

Since the law does not clearly lay down compensation for non-pecuniary damage as an object of taxation and this payment does not, by its very nature, correspond to the concept of income, it remains debatable whether or not compensation for non-pecuniary damage paid by agreement between the parties is to be regarded as income. The Chancellor drew the attention of the Ministry of Finance to the fact that the definition of compensation for non-pecuniary damage should be based on substantive criteria rather than on which procedural body approves an award.

The nature of the problem is further illustrated by an example of recent conciliation proceedings conducted by the Chancellor of Justice. According to the interpretation of the Tax and Customs Board, compensation for non-pecuniary damage paid on the basis of an agreement approved by the Chancellor of Justice should also be taxed. If the compensation had been awarded by a court, no tax would have to be paid on the compensation. If the Riigikogu adopts the amendments to the law as planned, the recipient of compensation can claim a refund of the amount of tax on the basis of their income tax return.

Assessment of a company's tax behaviour

The Chancellor was asked to assess the lawfulness of the tax behaviour assessment service offered by the Tax and Customs Board. The computer application of the assessment of tax behaviour is regulated by § 34[1] of the Government of the Republic Regulation of 7 March 2019 on "Statutes of the register of taxable persons" (last amended on 21 December 2023). Assessments of a company's tax behaviour are fairly general risk assessments, in which tax behaviour is assessed on a scale of 1 to 3 (1 – significant deficiencies, 2 – some deficiencies, 3 – everything in order) on the basis of twelve indicators.

By using the tax behaviour assessment service, a company can find out what information the state has collected about their tax behaviour and what conclusions it has drawn from it. Since initial assessments of risk behaviour are based on the statistical average of some indicators, there may inevitably be a need to improve the assessment in cooperation with the company. Thus, the final assessment of tax behaviour is often prepared in cooperation with the undertaking, taking into account additional information received from it.

A company can access data collected about it (in this case, a risk assessment) and, if they wish, send this data to other companies. Consequently, it is up to the company to choose whether or not it wishes to disclose the assessment of its tax behaviour.

Consent to disclosure of the assessment can be withdrawn at any time.

Based on the facts set out in the petition, the Chancellor of Justice did not find any violation.

Setting hourly rates for food and veterinary supervision

The Chancellor of Justice was asked to check whether the hourly rate charged for food, feed and veterinary supervision established by a regulation of the Minister of Regional Affairs complied with the Constitution.

The Chancellor found that the hourly rates may be set by the minister, as the conditions for setting the fee are laid down in sufficient detail in Regulation (EU) 2017/625 of the European Parliament and of the Council (hereinafter 'the EU regulation') and in law.

However, it turned out that the hourly rates for food and veterinary supervision laid down in the regulation were established on unclear grounds. The hourly rate must be calculated on the basis of the actual costs of supervision in the calendar year preceding a specific supervisory activity and, under the EU regulation, the costs of that supervision and the cost-based calculation must be made public.

Disclosure of underlying costs and of calculation of supervisory fees is essential to ensure that supervisory fees are set for manufacturers transparently and predictably. If the regulation does not set the rates on the basis of the calculation

procedure laid down in the EU regulation and law, the regulation is incompatible with § 3(1) and § 94(2) of the Constitution. Compliance with the system of supervisory fees established by the EU regulation, as well as disclosure of the costs of supervisory authorities, is important because it ensures, on the one hand, protection of human health through food safety and, on the other hand, fair competition between operators.

The Chancellor of Justice asked for information related to supervisory fees to be organised so that information about supervisory fees is transparent and to ensure that the limits of the powers granted under § 49^3(4) of the Food Act and § 87(5) of the Veterinary Act are taken into account when setting hourly rates for supervision.

The Minister of Regional Affairs promised to disclose information related to supervisory fees on the agencies' websites. This information can be found on the website of the Agriculture and Food Board, which deals with fees and state fees. In addition, the Minister of Regional Affairs is considering drawing up guidelines for calculating the hourly rate, so that it is unequivocally clear on what calculation and figures the established hourly rates are based. In the opinion of the minister, the established fees comply with the provisions of the Food Act, the Veterinary Activities Organisation Act and the EU Regulation.

Availability of basic payment services

Prevention of money laundering and terrorist financing is indisputably an important national objective that can also be achieved by limiting people's fundamental rights, such as restricting access to basic payment services. However, people need a bank account in order to cope on a daily basis, regardless of how their activities are legally evaluated. Thus, the state must find a way to protect the economic environment in Estonia, but also, on the other hand, to guarantee the fundamental rights of people.

Consequences of not having a bank account

The Chancellor has received several petitions revealing that a bank has refused to open a bank account for a person or has closed their account. By doing so, the bank restricts a person's access to basic payment services (internet bank, card payments and ATM).

Most likely, these decisions have been made by banks in accordance with the requirements established by the Money Laundering and Terrorist Financing Prevention Act (MLTFPA), which do not allow credit institutions to provide a service under certain conditions or oblige them to stop providing the service. Banks also do not accept cash payments from people without a bank account, as these transactions are also subject to MLTFPA requirements.

The Chancellor of Justice has previously drawn the attention of both the Ministry of Finance and the Riigikogu Finance Committee to these problems and analysed these issues from the point of view of natural and legal persons.

The Chancellor reached the opinion that, in terms of an abstract assessment, provisions which give banks the right to terminate contracts (and close payment accounts) with legal persons that are reasonably suspected of money laundering or terrorist financing cannot be regarded as disproportionate and unconstitutional.

However, in the case of natural persons, it must be taken into account that the absence of a bank account will hamper a person's daily activities. In that case, the person will also not be able to defend their rights through the court, because, in order to have recourse to the court, they must pay a state fee. Section 9(3) of the State Fees Act allows accepting cash payments only in the amount of up to 10 euros.

An example is a situation where a person's bank accounts were closed because the bank had to comply with the requirements set by the MLTFPA, and at the same time the employer refused to pay the person's wages in cash. As a result, the person could not fulfil their obligations (pay utility bills) or perform everyday activities (§§ 19, 32 of the Constitution).

Depriving a person of access to all basic payment services can lead to their social and economic exclusion, even if it is legally possible to require acceptance of cash payments.

The Chancellor investigated how local authorities have organised payment of kindergarten fees. It was found that some local authorities accept the kindergarten fee in both cash and by bank transfer, but there are also those who accept the fee only by bank transfer. This restricts a child's right to preschool education (§§ 37 and 12 Constitution; Supreme Court Constitutional Review Chamber judgment of 6 February 2023, case No 5-22-10/17, para 48), as well as the right to property (§ 32 Constitution), because interest accrues in the event of a delay in payment.

It should also be taken into account that refusing to open a bank account for a person or closing an account may not necessarily contribute to prevention of money laundering, as the person may then use cash, a front person, or some other means of payment to carry out transactions, which may not reduce the risk of money laundering (cf. Supreme Court Administrative Law Chamber judgment of 12 June 2002, case No 3-4-1-6-02). Only the risk of money laundering and terrorist financing through a bank account is reduced.

Proposal to bring the law into line with the Constitution

Under § 15 of the Constitution of the Republic of Estonia, everyone has the right of recourse to the courts in case of violation of their rights and freedoms. Section

14 states that the guarantee of rights and freedoms is the duty of the legislature, executive and judiciary, and of municipalities.

If a person does not have a bank account, they can also not go to court to protect their rights, since the State Fees Act does not allow payment of a state fee of more than 10 euros in cash. Thus, the Money Laundering and Terrorist Financing Prevention Act, the Credit Institutions Act, the Law of Obligations Act and § 9(3) of the State Fees Act, in combination, restrict the fundamental right of access to the court. At the same time, available measures allow the same objectives to be achieved, but limit the fundamental right of access to court to a lesser extent than the requirements currently in force.

On this basis, the Chancellor of Justice reached the conclusion that the Money Laundering and Terrorist Financing Prevention Act, the Credit Institutions Act, the Law of Obligations Act (i.e. the provisions regulating the basic payment service agreement) and § 9(3) of the State Fees Act, in combination, contravene §§ 14 and 15 of the Constitution, and proposed to the Riigikogu to bring these laws into line with the Constitution.

In her proposal, the Chancellor asked to take into account that, in addition to the fundamental right of access to a court, the exercise of other fundamental rights, which presumably require payment of a state fee through a bank account, is also restricted. A state fee must be paid, for example, for issuing a motor vehicle driving licence (§ 19 Constitution), registering a marriage (§ 27 Constitution), applying for recognition of professional qualifications (§ 31 Constitution), making an entry of ownership in the land register (§ 32 Constitution) and issuing an identity document (§ 35 Constitution).

At the session of 13 May 2024, the Riigikogu supported the Chancellor's proposal and, under § 152 of the Riigikogu Rules of Procedure and Internal Rules Act, the President of the Riigikogu instructed the Finance Committee to initiate a Draft Act to bring the Money Laundering and Terrorist Financing Prevention Act, the Credit Institutions Act, the Law of Obligations Act and the State Fees Act into conformity with the Constitution.

In June 2024, the Ministry of Finance sent a Draft Act amending the Law of Obligations Act and related Acts to the Chancellor of Justice for an opinion. Following the Chancellor's proposal, the Draft Act amended § 9(3) of the State Fees Act, which previously read as follows: "At the request of the payer of a state fee, the body charging the state fee is required to accept a state fee of up to 10 euros in cash". The proposed change was that the words 'at least' were inserted into the provision regarding the amount that has to be accepted.

Unfortunately, we have to admit that the proposed amendment does not offer a legally clear resolution to the problem described by the Chancellor. In an opinion sent to the Minister of Finance, the Chancellor of Justice explained that it follows

from the combination of §§ 15 and 14 of the Constitution that everyone must be able to pay the state fee required for recourse to the court in cash or through a bank account. Based on the amendments proposed in the Draft Act, it remains unclear whether and how the justified need to pay the state fee in cash will be assessed and what a person must do for this. It is therefore doubtful whether the amendment ensures a constitutional solution to the problem described by the Chancellor of Justice.

Financial Intelligence Unit licence proceedings

Companies have contacted the Chancellor of Justice with concerns that the Financial Intelligence Unit (FIU) does not comply with the statutory procedural deadlines, so that proceedings for applications for activity licences become excessively prolonged. In addition, it has remained unclear to undertakings applying for an activity licence, on what basis the FIU assesses the reputation of the persons associated with them in activity licence proceedings. Applicants are dissatisfied because, instead of making a decision on the merits, the FIU asks them to withdraw their application.

In order to verify the lawfulness of the administrative activities of the Financial Intelligence Unit (FIU), in March the Chancellor's advisers examined, on the spot at the FIU, the materials of proceedings which had been completed with regard to licence applications submitted to the FIU from January to June 2023. The advisers analysed the resolution of a total of 38 applications.

In the course of inspection, the advisers analysed the resolution of licence applications on the basis of the Administrative Procedure Act, the General Part of the Economic Activities Code Act and the Money Laundering and Terrorist Financing Prevention Act. Formal compliance of an administrative act (as regards reasoning) with the requirements of the Administrative Procedure Act could not be assessed, since the sample of inspected files did not include any licence proceedings in which an administrative act on refusal had been issued. In addition, operation of the application of the register of economic activities in its test environment was examined.

In a summary of inspection of the FIU licence proceedings, the Chancellor of Justice pointed out what is appropriate in the current administrative proceedings, as well as what needs to be improved. She also made recommendations on how it would be reasonable to improve the situation. It is important that proceedings for an activity licence ensure equal and legitimate treatment of companies and natural persons associated with them, as well as provide an opportunity to defend their rights in the manner prescribed by the Constitution and the laws.

To conclude, it can be said that the letters sent by the FIU concerning remedying the deficiencies (§ 15 Administrative Procedure Act) were very thorough (especially deficiencies related to the rules of procedure; § 72(11) clause 3 Money Laundering and Terrorist Financing Prevention Act). Questionnaires prepared on business reputation were also thorough (§ 19(6) General Part of the Economic Activities Code Act, § 72 subs. (1) clause 11 and subs. (2) Money Laundering and Terrorist Financing Prevention Act).

The FIU had asked several companies to come to the office (§ 17 Administrative Procedure Act). These summonses provided information relevant to administrative proceedings and informed individuals of their rights and duties (§ 36 Administrative Procedure Act). The Chancellor's advisers also partially listened to a recording of a licence applicant's interview with a board member. At the beginning of the interview, the person was properly advised of their rights and duties and they were enabled to communicate through an interpreter (§ 21 Administrative Procedure Act).

The Chancellor cannot accept that the Financial Intelligence Unit does not take into account and does not comply with the deadline laid down by § 71(1) of the Money Laundering and Terrorist Financing Prevention Act. So long as the law has not been amended, the FIU must proceed from the currently applicable law: i.e. take into account and inform the applicant when the application meets all the requirements and when the 60-day deadline or an extended deadline of 120 days for making the final decision begins to run.

Retention of documents relevant to administrative proceedings by the FIU does not currently comply with § 19 of the Administrative Procedure Act, since no single system of files exists that would offer an overview of all the materials collected in a particular case (see the summary of inspection in Chapter II). The Chancellor of Justice recommended that the FIU establish internal procedures governing preparation and keeping of files and a single system of files for storage of documents essential to administrative proceedings. This would ensure that the head of the institution has an appropriate overview of the documents and that the internal control system is better supported.

Carrying out background checks on natural persons and providing an informal opinion to applicants does not comply with requirements. Unrecorded interviews without any minutes having been taken aimed at influencing an applicant to replace a contact person or shareholder are not in line with the principles of good administration and are not lawful. Such actions may lead to a situation where the FIU issues assessments of a natural person associated with an applicant, while the person is unaware of such an assessment and cannot express their opinion on it. As a result, that person is completely deprived of the right to know what steps have been taken in respect of them in administrative proceedings (§ 3(1) and (2), § 11(1) clauses 2 and 3 Administrative Procedure Act; §§ 10, 11 and 15

Constitution). In addition, they are not given the opportunity to be heard (§ 36 Administrative Procedure Act) and to defend their rights in court (§ 15 Constitution; summary of the inspection in Chapter III).

The Chancellor recommended that the FIU draw up a procedure for background checks that would establish what information may be used for background checks, how that information should be stored, or how the information used should be referenced. Data protection requirements must definitely be taken into account in this regard. The Chancellor recommended that the Ministry of Finance assess whether the regulatory provisions on assessing a person's reputation sufficiently ensure protection of the rights of persons whose reputation is assessed by the Financial Intelligence Unit.

At present, no uniform practice exists based on which the FIU decides on the need to remedy deficiencies in an application for an activity licence, refusal to examine an application, and when a decision on the merits is made. This is also why it is not possible for an applicant to predict how long the proceedings of their application may take and what decision may be expected as a result of the proceedings (see the summary of inspection in Chapter IV). The Chancellor of Justice recommended that the Financial Intelligence Unit should better consider its procedural decisions while complying with the law.

Prevention of money laundering and terrorist financing is undoubtedly an important national objective. This is supported by transparent licence proceedings that respect fundamental rights, which in turn contributes to fair competition. The Chancellor's recommendations also proceed from a balanced interaction between these objectives.

We would like to thank FIU officials for cooperation.

Disclosure and safeguarding of banking secrecy

The Chancellor of Justice checked whether § 124 of the Bankruptcy Act complies with the Constitution. A person contacting the Chancellor noted that, under this provision, the trustee in bankruptcy is granted the right to use the debtor's current account, meaning that the trustee in bankruptcy has access to banking secrecy as well as data concerning the person's private life covering a period of 30 years.

The Chancellor found that § 124(1) of the Bankruptcy Act does not contravene the Constitution. The Bankruptcy Act does not allow a trustee in bankruptcy unlimited access to the banking secrecy of a natural person when managing the bankruptcy estate or when using the debtor's current account. A credit institution can disclose a banking secret to a trustee in bankruptcy and grant the right to use the debtor's current account only for performing the duties laid down by the Bankruptcy Act. A

credit institution and a trustee in bankruptcy are obliged to maintain banking secrecy. If they fail to comply with this obligation, they are liable for it.

Social protection

During the reporting year, the Chancellor of Justice had to resolve a number of petitions concerning the care home service. People complained, for example, that they now have to pay more for a place in a care home than prescribed by law. They complained that care homes have increased the place fee at too short notice and have threatened to cancel the contract if a person does not agree with the amended terms of contract (for example, the new price). Some people were dissatisfied with having to live in a care home and not being able to live in their own home.

Several people complained that social benefits granted to them had been reduced or discontinued. It was also not uncommon for the organisation of a social service or its volume to have been changed without a clear justification for this having been given to the person.

Concerns about cross-border social security cases have become more frequent. People are increasingly making use of the opportunity to live and work in another Member State of the European Union or in another foreign country, but at the same time fail to consider in sufficient detail the social guarantees involved in such living arrangements. So a person may suddenly find themselves in a situation where they have been deprived of the right to support or benefit paid by the Estonian state.

As a general rule, a person is not entitled to receive benefits for the same purpose from several Member States of the European Union at the same time, nor is a person entitled to choose from which country they want to receive benefits. In EU Member States, benefits are granted on the basis of Regulation No 883/2004 of the European Parliament and of the Council. If Estonia has entered into a corresponding agreement with some other country, benefits will be paid in accordance with that agreement.

It can sometimes be difficult to navigate through different rules; if necessary, advice is offered by Estonian social security institutions: the Social Insurance Board, the Health Insurance Fund, the Estonian Unemployment Insurance Fund.

General explanatory information can also be found on the websites of these institutions. Sometimes things are made more burdensome by the fact that countries need to exchange data with each other in order to determine benefits or pensions, but this takes time.

Organisation of social services

Welfare reform

In mid-2023, legislative amendments (welfare reform) entered into force, according to which cities and rural municipalities must cover the salary costs of care workers and assistant care workers in institutions providing the 24-hour care service (care homes), the cost of working clothes and personal protective equipment, the cost of health checks and vaccinations, the cost of training and supervision (so-called care costs). Care home residents or their relatives must bear the costs of accommodation and meals and other expenses related to provision of the service (so-called own contribution). If necessary, a person receives support in meeting these costs.

The Chancellor compared the limits set by rural municipalities and cities for covering the costs of care with the fee that care homes charge for caring for a person. It was found that the limit set by several rural municipalities and cities did not enable covering the cost of a person's care included in the price of the service offered by any care home. Considering the limit set by some rural municipalities or cities, a person cannot, if they so wish, get a place in a care home in their home municipality or city, or in a care home at a reasonable distance from their residence.

The Chancellor sent a memorandum to cities and rural municipalities, asking them to fund the 24-hour general care service provided outside the home in the manner prescribed by the Social Welfare Act. To the people who had contacted her, the Chancellor also explained the procedure for paying for a place in a care home and the family's maintenance obligation. The Chancellor noted that if a care home raises a place fee, a person has the right to ask for assistance from their home rural municipality or city. In addition, the Consumer Protection and Technical Regulatory Authority may be notified if standard terms that unreasonably harm the consumer have been included in the contract concluded with a care home.

The Chancellor also analysed possible errors in charging for a care home place. The Chancellor found that the city government, when deciding on the funding of social services and a person's own contribution, must assess the financial situation of the person in need and take into account that the person should also have money left for personal expenses. Since, in this particular case, the city had failed to comprehensively assess the financial situation of the person in need, the Chancellor asked for a reassessment and assurance that the person was left with enough money for use at their own discretion after payment of their own contribution.

According to the Constitutional Review Court Procedure Act, the Chancellor of Justice participated as a party to proceedings in a landmark discussion where the Supreme Court analysed the constitutionality of the distribution of financial

obligations related to the welfare reform. Specifically, Räpina Rural Municipal Council and Põlva Rural Municipal Council and Tartu City Council applied to the Supreme Court and requested a check as to the constitutionality of failure to issue legislative acts to finance the 24-hour general care service provided outside the home.

In her opinion submitted to the Supreme Court, the Chancellor concluded that even though the Riigikogu restricted the possibilities for cities and rural municipalities to decide how to make a care home place available to people, it did so for a compelling purpose and constitutionally.

Since the city and rural municipal councils that approached the Supreme Court had not proved that they were unable to fulfil the obligations laid down by § 22^1(2) and (5) of the Social Welfare Act, the Chancellor of Justice could not take a position on whether these cities and rural municipalities had enough money to comply with the law. The Supreme Court held that the contested parts of the welfare reform were constitutional.

Organisation of the general day-care service

In response to one of the petitions, the question arose as to whether rural municipalities and cities should also organise the general care service provided outside the home as a day-care service.

The Chancellor explained that cities and rural municipalities must offer the general care service provided outside the home as both a daytime and a round-the-clock service (see § 20(2) and (3), § 22(2) of the Social Welfare Act, as well as page 20 of the explanatory memorandum drawn up by the initiator of the Draft Social Welfare Act (98 SE): "Day-care, i.e. the daytime general care service, may be needed by persons who, at night, are able to cope independently in their own home or have guaranteed care at night and supervision through informal care."). Since the law does not link provision of the general day-care service to the type or severity of disability or other health condition, cities and rural municipalities must organise this service for all those in need. The daytime service would also be in line with the principles of social welfare, according to which a person is offered, first of all, assistance and support that enables them to live at home or receive a service offering a home-like environment and living arrangements (§ 3(1) clause 2^1 Social Welfare Act).

Granting of social services

A parent of a child with disability asked the Chancellor to check whether the local authority could require them to submit an application every time they need a babysitter for their disabled child. Previously, the parent could use the help of a babysitter for 70 hours a month, which was paid for by the local authority. Then the volume of the service was reduced without explaining the reasons for the change.

The Chancellor found that such conduct could not be considered adequate. Decisions must be justified to the person. Justification is necessary, inter alia, in order to enable a person in need to defend their rights in extra-judicial administrative challenge proceedings or administrative court proceedings. The Chancellor recommended that the local authority reassess the parent's burden of care and, on that basis, make a clearly reasoned decision. If the volume of the service is reduced, then justification should also be given as to why the parent is no longer entitled to use the babysitter to the same extent as before.

Social protection is based on the principle of human dignity. It is incompatible with this principle if a person has to constantly justify their elementary needs to the public authorities and satisfaction of those needs depends on whether they receive the approval of the public authorities.

Grant of subsistence benefit

Payment of subsistence benefit to a conscript

A conscript asked the Chancellor of Justice whether the city of Narva had the right to reduce the subsistence benefit granted to them.

The Chancellor found that discretionary decisions of the Narva City Social Assistance Board to reduce the benefit were in themselves within the limits of the law, since according to the current law applications for subsistence benefit for conscripts can be resolved in several ways.

However, in the Chancellor's opinion, the specific decisions of the Social Assistance Board could not be considered lawful because after paying housing costs the conscript did not have money left for personal expenses. This is not in line with the principle of human dignity. In the Chancellor's opinion, the decisions were also not lawful because it remained unclear why the benefit was reduced. The reasoning of the decision, including the calculation procedure, was incompatible with the cited legal norm. Therefore, the Chancellor asked the Social Assistance Board to reconsider the decisions.

The Chancellor of Justice specified that the Social Assistance Board may assess whether a conscript could rent out their apartment and whether it is reasonable to require them to do so. To this end, the Board must ascertain all the important circumstances: for example, the possibilities of renting out an apartment, the costs associated with this, and whether the conscript needs to use their apartment while on leave from the military. If, as a result of consideration, the Board decides that the city will pay subsistence benefit to the conscript only if they rent out the apartment, this must clearly be set as a secondary precondition for granting subsistence benefit.

Reduction and termination of subsistence benefit

The Chancellor was contacted by a person whose subsistence benefit was first reduced and then stopped. The recipient of the subsistence benefit did not agree with this decision and asked the municipality to revoke it.

In its replies, the rural municipality government explained the principles for granting and paying subsistence benefit and complained that the petitioner was not cooperative. The municipality government did not treat the petitioner's letters as an administrative challenge and did not give them a deadline for remedying deficiencies in the challenge.

The Chancellor found that an application must also be regarded as a challenge even if it does not expressly request that the administrative act be amended or annulled, but it is clear from the content of the application that this is what the person actually wants. In such a case, a decision on challenge conforming to statutory requirements must be issued regarding objections to the administrative act. Justification is necessary, inter alia, in order for a person to be able to defend their rights effectively in extra-judicial challenge proceedings or administrative court proceedings.

Cross-border social security

Entitlement to family benefits when each parent lives in a different country

The Chancellor's help was sought by a parent who lives and works in Estonia while the child's other parent lives and works in Latvia. The Social Insurance Board had suspended paying child benefits to the family because, according to the Board, the child's main place of residence was unclear.

The Chancellor found that the Social Insurance Board had not violated the law. As a general rule, a person is not entitled to receive benefits for the same purpose from several Member States of the European Union at the same time. Nor is a person entitled to choose from which country they want to receive benefits. Regulation No 883/2004 of the European Union lays down rules under which family benefits are paid primarily by the country where the parent works and pays taxes. If each parent works in a different country, benefit is paid by the country where the child resides. Separate rules apply if the child lives in several countries, in which case the child's main place of residence is determined.

This situation may also affect the right to benefits paid by cities and rural municipalities.

In this particular case, the issue concerned entitlement to childcare service support, which requires that, according to the population register, both the child

and their parent must reside continuously in the same rural municipality or city for a certain period.

Childcare service support is paid voluntarily by cities and rural municipalities; the law does not stipulate payment of this support. The Supreme Court has said that cities and rural municipalities may voluntarily pay support only to people who are residents of that city or rural municipality according to the population register.

Payment of family benefits if one of the parents does not work and is residing in Estonia with the child

The Chancellor was contacted by a parent who lived in Estonia and was not working at the time of submitting the petition. The child's second parent, the petitioner's former spouse, worked in Finland. As the petitioner had stopped working, the Social Insurance Board suspended payment of child benefit to them.

Under European Union regulation No 883/2004, as a general rule, family benefits are to be paid by the country where the person works. If both parents are employed, family benefits are paid by the country where the child lives. The regulation does not exclude the possibility that, if the family benefits are higher in one country, that state will pay supplementary benefits to a family residing in the other country.

As long as the petitioner worked in Estonia, the Estonian state was responsible for paying family benefits. Therefore, during the petitioner's employment, they were paid child benefit by the Social Insurance Board. As Finnish child benefit is higher than Estonian child benefit, the Finnish state could pay a supplementary benefit to the child's parent working in Finland.

When the petitioner stopped working, the responsibility for paying child benefits transferred to Finland. As a result, the Social Insurance Board suspended paying child support to the petitioner. Child benefits continued to be paid to the family by the Finnish state, which paid the benefit to the child's parent working in Finland, but the petitioner did not know this.

The European Union regulation also provides that if a parent who receives family benefits does not use this benefit to support their child, the authority responsible for family benefits will pay the benefit to the person who is actually raising the child.

It was explained to the petitioner that they may request the other parent to voluntarily pass on the child maintenance benefits to the petitioner. In such a case, the parent may also turn to the Finnish social security authority KELA for help.

The amount of work ability allowance if a person resides in another European Union Member State

At the initiative of the Office of the Chancellor of Justice, one of the distinct features in calculating the amount of work ability allowance was discussed with the Ministry

of Social Affairs, the Ministry of Economic Affairs and Communications and the Estonian Unemployment Insurance Fund. At issue was a situation where a person was found to have no or partial ability for work in Estonia, but they lived in another Member State of the European Union, their ability for work had been reassessed due to expiry of the previously set term, and a new decision was made on payment of work ability allowance.

According to previous practice, the Estonian state reduced the allowance paid to a person in such a case, as the period of the person's residence abroad was extended. Thus, each time the person's ability for work was re-assessed, the person was paid a lower allowance than before, even if living in another Member State did not lead to an increase in benefit in that country.

The ministries and the Estonian Unemployment Insurance Fund, through the Office of the Chancellor of Justice, reached an agreement that if a person's work ability allowance, incapacity for work pension or other benefit paid for the same purpose is not increased in another EU Member State, the Estonian state will no longer reduce the work ability allowance paid to a person with partial or no work ability.

As a result of discussions, the Ministry of Social Affairs made a proposal to the Administrative Commission on Social Security for Migrant Workers attached to the EU Commission to supplement Annex IX to Regulation No 883/2004 of the European Union with an entry on the Estonian work ability allowance. The Commission approved Estonia's proposal. The amendment to Annex IX to the Regulation will enter into force after it has been approved by the European Parliament.

In addition, on the proposal of the Ministry of Economic Affairs and Communications, the Riigikogu clarified the wording of § 13(5) of the Work Ability Allowance Act. The amendment entered into force on 15 May 2024.

International protection and social rights

The right to family benefits of a beneficiary of temporary protection residing in Estonia

The Chancellor was contacted by a person to whose partner, who is a Ukrainian citizen, payment of child benefit and benefit for a family with many children was suspended.

According to the Social Insurance Board, many families who have come to Estonia from Ukraine have received benefits from both Estonia and Ukraine simultaneously. Under the Family Benefits Act, residents of Estonia receiving a benefit of the same kind from another country are not entitled to family benefit. Under the social security agreement between the Republic of Estonia and Ukraine,

family benefits are paid by the country where the family lives. If entitlement to family benefit arises under the legislation of both Contracting Parties, the benefit is paid by the state in which the child resides (Article 10 of the Agreement).

In such a situation, the Social Insurance Board may suspend paying family benefits and ask the competent Ukrainian authority or the beneficiary themselves for information concerning payment of family benefits. This situation may be burdensome for the person, but it is still necessary to find out whether they are entitled to support from the Estonian state.

Provision of healthcare services to applicants for international protection

A petition submitted to the Chancellor of Justice revealed that the Social Insurance Board does not allow applicants for international protection living outside the accommodation centre to receive healthcare services in the manner prescribed by law.

When the facts were clarified, it was found that the complaint was true. The Social Insurance Board has taken the view that applicants for international protection residing outside the accommodation centre are guaranteed access to medical care on the same basis and in the same manner as all other people without health insurance. This means that, in the opinion of the Social Insurance Board, applicants for international protection should receive only emergency medical care and paid services.

Such a position runs counter to § 32(1) clause 3 and § 36(2) of the Act on Granting International Protection to Aliens. Under these provisions, applicants for international protection who voluntarily reside outside the accommodation centre are also entitled to healthcare services through the accommodation centre. A similar procedure is established by a regulation of the Minister of Social Affairs.

On this basis, the Chancellor found that the Social Insurance Board had violated the law. The Social Insurance Board cannot refuse to organise services assigned to it by law on the grounds that, in the opinion of the Board, legislation should be changed.

The Chancellor noted that applicants for international protection must be given appropriate explanations on how they can have access to a doctor if necessary. This information should also be published, for example, on the information sheet for an applicant for international protection and on the websites of the Social Insurance Board and the accommodation centre.

Cities and rural municipalities

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

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

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

Transfer of assets

Sillamäe City Government asked the Chancellor of Justice to check whether § 33(1^1) of the State Assets Act is compatible with the Constitution. According to this provision, within a reasonable time before transferring, or encumbering with a superficies interest, an item of immovable property that was acquired under § 33 subsection (1) clauses 1 or 3^1 or under the Land Reform Act, the rural municipality or city must ascertain the necessity of the particular immovable for the state. In the case of public interest, the state is entitled to acquire property in order to perform its functions, or to assign the land to the land reserve. The state must reimburse any beneficial expense incurred concerning the property, provided the particular expense has materially improved the property.

The Chancellor found that, in terms of an abstract assessment, no grounds exist to conclude that this provision violates the principle of legitimate expectations

(§ 10 Constitution), the right of local government self-organisation or the financial guarantee (§ 154(1) Constitution).

On the basis of the previously applicable Land Reform Act, local authorities could not have developed a legitimate expectation that the state would maintain previously established public restrictions and would no longer interfere at all in land transactions. Although the current legal provisions limit the local government right of self-organisation and affect the income that cities and rural municipalities receive from transfer of municipal property, the objective of § 33(1^1) of the State Assets Act is legitimate (protection of the public interest) and the restrictions are clearly not disproportionate to that objective. The state has also sought to counterbalance the adverse effects of the restriction by introducing this provision.

The Chancellor explained that if Sillamäe City Council believes that § 33(1^1) of the State Assets Act violates the local government constitutional guarantee, the council can have recourse to the Supreme Court and apply for invalidation of this provision (§ 7 Constitutional Review Court Procedure Act.

The role of local authorities in financing care homes

Põlva Rural Municipal Council, Räpina Rural Municipal Council and Tartu City Council applied to the Supreme Court with requests for constitutional review, requesting that the court declare unconstitutional the failure to issue legislative acts laying down full financing from the state budget of the obligations imposed on cities and rural municipalities by § 22^1 of the Social Welfare Act.

Section 22^1(2) and (5) of the Social Welfare Act lays down exceptions to charging a fee for social services. Section 22^1(2), which refers to subsection (1) of the same section, requires a rural municipality or city to cover staff-related costs (carers' salaries, the cost of working clothes and personal protective equipment, and the cost of health checks and vaccination, as well as the cost of training and supervision). Subsection (5) of the same section states. "If the income of the service recipient is lower than the average old-age pension for the second quarter of the year preceding the budgetary year published by Statistics Estonia, the local authority covers the difference between the costs paid by the service recipient and the income of the service recipient, but not more than the difference between the average old-age pension for the second quarter of the previous year and the income of the service recipient. Income is deemed to include the recipient's state pension, funded pension within the meaning of the Funded Pensions Act, work ability allowance within the meaning of the Work Ability Allowance Act and income subject to social tax within the meaning of the Social Tax Act."

In her opinion to the Supreme Court, the Chancellor also analysed how the conditions for financing the 24-hour general care service provided outside the

home regulated by § 22[1](2) and (5) of the Social Welfare Act should be interpreted and how classification of public functions is related to financing this task.

Section 28(3) of the Constitution requires the state to promote municipal welfare services. Under § 28(4) of the Constitution, families with many children and people with disabilities are under the special care of the state and local government. In short, social welfare is the task of both the state as well as rural municipalities and cities (see also Supreme Court *en banc* judgment of 16 March 2010, No 3-4-1-8-09, para. 67). In the case of shared competence, the task should be performed by the level of governmental power that can best handle it in the specific situation (Supreme Court Constitutional Review Chamber judgment of 6 December 2002, No 5-22-5/16, para. 40).

The Chancellor did not agree with the position of Räpina Rural Municipal Council, Põlva Rural Municipal Council and Tartu City Council that § 22[1] of the Social Welfare Act imposes on cities and rural municipalities a new public task – a state task – which the state must therefore finance in full from the state budget on the basis of the second sentence of § 154(2) of the Constitution. In the Chancellor's opinion, § 22[1] of the Social Welfare Act does not impose a new state task on cities and rural municipalities, but regulates the conditions for financing the existing local government task (organisation of the 24-hour general care service provided outside the home) in a partly different way than before. The conditions for financing performance of a public task do not constitute a new public task.

The 24-hour general care service provided outside the home is a social service organised by rural municipalities and cities (§ 20(1) Social Welfare Act). Organising provision of this service is their responsibility (§ 6(1) Local Government Organisation Act). The state requires rural municipalities and cities to perform mandatory local government duties on the basis of enhanced public interest (rural municipalities and cities have no discretion as to **whether** or not to perform the task). Special laws (the Social Welfare Act, etc.) regulate in more detail **how** a particular task is to be performed.

The Supreme Court *en banc* denied the request of Põlva Rural Municipal Council, Räpina Rural Municipal Council and Tartu City Council to declare unconstitutional the absence of provisions that would lay down full financing of the obligations imposed on rural municipalities and cities by § 22¹ of the Social Welfare Act from the state budget (see Supreme Court *en banc* judgment of 5 July 2024, No 5-23-38/48).

Municipal council working arrangements

The right of a municipal council member to information and the right of interpellation

The Chancellor of Justice was asked whether a rural municipal council member has the right to submit interpellations to the rural municipal mayor for an oral response about issues within the mayor's competence. The right of interpellation of members of Kambja Rural Municipal Council is laid down in the statutes of Kambja Rural Municipality (§§ 35 and 77).

The Chancellor explained that a municipal council member must be able to exercise the rights arising from their mandate.

By interpellation, council members (mainly those belonging to the opposition) usually ask for an explanation of the policies being carried out or implementation of laws, regulations or municipal council resolutions, and may wish to discuss these issues at a council session. In other words, interpellation is a means of political control and information at the disposal of a council member, which allows them to monitor, for example, the activities of the mayor and members of the municipality government and to hold them to account.

If a council member submits an interpellation on a matter within the competence of the rural municipality government or mayor, refusal to answer cannot be justified on the grounds that the council does not have the power to decide on the matter: this does not make the council member's interpellation unlawful. Otherwise, the right to submit interpellations to the mayor and member(s) of the municipality government would to a large extent lose its substantive meaning. However, a legal norm cannot be interpreted so that it is rendered essentially meaningless (Supreme Court Constitutional Review Chamber judgment of 2 November 1994, No III-4/1-6/94, para. 1).

A municipal council member must retain the right to enquire about legal acts, the obligation to comply with which has been imposed on the rural municipality government by law, regulation or a municipal council resolution. An interpellation is usually submitted when a council member sees a problem, for example when the mayor or municipality government has failed to do something or has not done something properly.

Section 26 of the Local Government Organisation Act regulates the right of a municipal council member to receive information. According to subsection (1) of this section, a council member is entitled to obtain copies of legislation, documents and other information of the municipal council and the government, except for data whose release is prohibited by law. Subsection (2) of the same section lays down that a council member is entitled to receive a response to their written question from the rural municipality or city government or a rural

municipality or city administrative agency within ten working days after submission of the question. Section 5(9) of the Response to Memoranda and Requests for Explanations and Submission of Collective Addresses Act does not extend to this provision of the Local Government Organisation Act.

A council member's access to information is not directly prohibited by any law. Access restrictions arising from the Public Information Act are also applied to provision of public information only to persons outside the public sphere. However, a municipal council member is not 'any person' within the meaning of the Public Information Act and they must have broader possibilities than any other person (Supreme Court Administrative Law Chamber judgment of 22 December 2008, No 3-3-1-74-08, para. 12).

However, the restricted information requested must be necessary for the council member to perform their duties. If necessary, the information holder can ask the council member to specify the purpose for which they ask for the information. Any refusal to supply information must be duly justified.

When requesting and providing information, the fundamental rights of individuals (§§ 14 and 28 Constitution), the needs for protection of confidential information and the general principles of processing personal data must also be taken into account.

The Chancellor has previously clarified a municipal council member's right to receive information (see the Chancellor's opinions of 15 April 2021, 9 December 2019, 12 March 2018, 5 February 2016) and recommended that the Riigikogu grant a municipal council member the right of appeal to the administrative court. The right of a municipal council member to receive information has also been dealt with by the Supreme Court (see Supreme Court Administrative Law Chamber judgment of 4 November 2004, No 3-3-1-55-04, paras 13-14; Supreme Court Administrative Law Chamber order of 22 December 2008, No 3-3-1-74-08, paras 9 and 12).

The second sentence of § 44(4) of the Local Government Organisation Act allows the council to declare the debate of an issue at a session to take place *in camera*.

Rural municipal council rules of procedure

Under § 156 of the Constitution, the local government representative body is the municipal council. This gives rise to the municipal council's right of self-organisation, meaning that a municipal council is entitled to establish its working arrangements and procedural rules.

The Chancellor was asked to check whether the provisions in the rules of procedure of Hiiumaa Rural Municipal Council, which regulate preparation of draft municipal council legislation, are in compliance with the law. In the Chancellor's opinion, no conflict with the law can be found in this respect. The Chancellor of

Justice cannot require a municipal council to supplement its rules of procedure with provisions obliging the office of the rural municipality government to assist council members, members of rural municipality district assemblies and individuals in drafting legislation. Nor is the municipal council required to form a separate council office, although it may do so.

However, officials must, if necessary, assist presenters of a local public initiative in preparing draft legislation so that it meets requirements (about the duty to give explanations, see § 36 of the Administrative Procedure Act). This is stipulated by the principle of good administration (§ 14 Constitution). It does not follow from this that it would be unlawful if no such duty is imposed on the office of the rural municipality or city government in the municipal council rules of procedure.

Declaring debate of an issue at a municipal council session to take place in camera

The Chancellor of Justice was contacted by a rural municipality resident who was not allowed to follow online the session of Rapla Rural Municipal Council held on the same day. The public webcast was cancelled because the council chair had declared the session closed. No vote was held on closure of the council session (one item was on the agenda).

The Chancellor found that the law and the rules of procedure of Rapla Rural Municipal Council were not observed when declaring the session of the rural municipal council closed, and asked the rural municipal council to do so in the future.

Under § 44(4) of the Local Government Organisation Act, municipal council sessions are public. A municipal council may declare a session to be closed for the duration of debate 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 disclosure of data pertaining to the issue under discussion is prohibited or restricted by law. The same is also laid down by the rules of procedure of Rapla Rural Municipal Council (§ 3(1) (first sentence) and (2)).

Under § 45(1) of the Local Government Organisation Act, issues which are within the exclusive competence of a municipal council are decided by vote. Other issues are voted on if at least one municipal council member so requests.

Declaring the debate of a matter closed at a municipal council meeting is an issue falling within the council's exclusive competence and on which the council must vote. The position of the chair of the council cannot replace a council resolution passed by the required majority.

Making municipal council session materials available in a timely manner

When resolving a petition submitted to the Chancellor of Justice, it was found that Saaremaa Rural Municipal Council had failed to comply with the deadline set by

the Local Government Organisation Act as to when the materials of a municipal council session must be communicated to the council members. The Chancellor asked the rural municipal council and its committees to organise their work in the future so that municipal council members receive all materials for the session in time.

Under § 43(3) of the Local Government Organisation Act, when convening a municipal council, issues to be discussed must be announced in the notice of the session. The invitation must be made known to councillors at least four days before the council meeting. Notice of the session must be communicated to municipal council members at least four days prior to the municipal council session. Together with the notice, session materials will be made available to municipal council members.

The Supreme Court has said that the requirement to comply with the statutory four-day deadline is not just a formality. This provision is in place to ensure that municipal council members are aware of the timing of the session well in advance. In this way they can, if necessary, rearrange their plans in order to gather at the council meeting and prepare for debate of the issues on the agenda (Supreme Court Constitutional Review Chamber judgment of 2 July 2004, No 3-41-16-04, para. 16).

Even if, in its rules of procedure, the municipal council has granted a council committee the right to exceed the deadline for submission of amendments (second sentence of § 16(3) of the rules of procedure of Saaremaa Rural Municipal Council), all session materials must be made available to council members by the time set by law. If the materials are sent to municipal council members only a day before the council session, this requirement has been violated.

Internal relations between the audit committee and municipal administrative agencies

Saaremaa Rural Municipal Council amended the provision regulating the activities of the audit committee in the statutes of the municipality. The wording of the amendment gives the impression that the requirements of the Public Information Act and the Response to Memoranda and Requests for Explanations and Submission of Collective Addresses Act apply to the response to the audit committee's request for information or documents.

Concerning the committee's right to receive information and documents necessary for its work, the Chancellor of Justice pointed out that relations of the municipal council's audit committee with municipal administrative agencies and agencies under the administration of municipal administrative agencies are internal relations between the municipal council and the municipal administrative

agencies and are not covered by the provisions of the Public Information Act or the Response to Memoranda and Requests for Explanations and Submission of Collective Addresses Act. Thus, the wording of this provision in the statutes of Saaremaa municipality is misleading. The Riigikogu may amend laws and, in doing so, does not have to take into account how this affects the response to a rural municipality council audit committee. However, this may lead to unintended consequences for the audit committee. The procedure for responding to the audit committee should therefore be set out in the statutes of the municipality.

The chair of the rural municipality council informed the Chancellor of Justice that since a draft common statute for municipality districts is being prepared, it is expected that the statutes of the municipality will also have to be amended, and the Chancellor's recommendations can be taken into account when amending it. Based on information available to the Chancellor of Justice, it is planned to discuss amendments to the statutes of the municipality in the municipal council in autumn 2024.

Public consultation on the municipality draft development plan

The Chancellor of Justice was asked to annul the regulation of Viljandi Rural Municipal Council amending the Viljandi rural municipality development plan for 2022–2030. The petitioner asserted that, during the proceedings of the draft regulation, the chair of the municipal council had violated the rules of procedure of Viljandi Rural Municipal Council by failing to put to a vote, at the second reading, the proposals submitted during the public consultation on the amendments to the development plan.

According to the Chancellor's assessment, the chair of the municipal council did not violate the law. During public consultation on amendments to the rural municipality development plan, all interested parties may submit proposals (see § 37^2(5) Local Government Organisation Act). These proposals are not considered to be amendments within the meaning of the municipal council rules of procedure (cf. § 12(2) of the municipal council rules of procedure). (see § 3 for more details). In Viljandi rural municipality, preparation and processing of the development plan is regulated in more detail by the procedure for preparing the development plan and budget strategy of Viljandi rural municipality (see specifically § 3).

The Chancellor of Justice is not competent to annul or amend legislation. If the Chancellor finds that an act containing legal norms of a city or rural municipality contravenes the Constitution or the law, she proposes to the body that adopted the act to bring it into conformity with the Constitution or the law. If the contested provision has not been brought into conformity with the Constitution or the law,

the Chancellor of Justice proposes to the Supreme Court that this provision be declared invalid (§ 142 Constitution; § 17 and § 18(1) Chancellor of Justice Act).

The Chancellor of Justice's opinions on other issues

Requirements and procedure for organising commerce on land in public use

"The procedure for the seasonal extension of a point of sale and installation of a temporary point of sale, and response to enquiries"

Construction

"Procedure of the city of Tallinn for entering into a contract for building publicly used construction works"

"Revision of the Building Register data"

"Declining to examine a building notice due to a building permit"

"Involvement of an apartment association in proceedings of a building notice"

"Rules on the no-build zone under the Nature Conservation Act"

"Proposal to bring the provisions on the no-build zone under the Nature Conservation Act into line with the Constitution"

"The constitutionality of § 31(6) of the Building Code"

"Involvement of affected persons in building right proceedings"

"Tallinn Urban Planning Department guidelines for planning a good apartment building"

"Opinion in constitutional review case 5-24-7"

Good administrative practice

"Observance of good administrative practice and prevention of administrative bullying"

Secrecy of voting in elections of a city and rural municipality mayor

"Secrecy of voting"

Organisation of access to drinking water, on-site wastewater treatment and transport

"Access to clean drinking water in Võõpsu small town"

"The requirements for on-site wastewater treatment in Rapla rural municipality"

"The rules for on-site wastewater treatment and transport in Viimsi rural municipality"

"The rules for on-site wastewater treatment in Räpina rural municipality"

“Access to clean drinking water“

Preschool childcare institutions

“Assistance of a speech therapist in kindergarten“

“Covering the operating costs of a kindergarten“

“Organisation of assistance of a speech therapist“

“Reductions of a kindergarten place fee“

“Regulations governing admission of a child to kindergarten“

“Changing kindergarten opening hours“

“Supporting a child with special needs in kindergarten“

Organisation of school transport

“School transport“

“Organisation of school transport in Harku rural municipality“

“Organisation of school transport“

Establishment of land tax rates

“Land tax rates in Setomaa rural municipality“

“Land tax rates in Anija rural municipality“

“Land tax rates in Kohtla-Järve city“

“Land tax rates in Rakvere rural municipality“

“Land tax rates in Alutaguse rural municipality“

“Land tax rates in Raasiku rural municipality“

Response to memorandums and requests for clarification

“Response to requests for clarification and memorandums“

Spatial planning

“Choice of correct procedure for amending a detailed spatial plan“

Financial benefits and social services

“Use of a dwelling“

“Opinion in constitutional review case No 5-23-38“

“Charging a fee for a place in a care home“

“Fee for a place in a care home“

„ [..] supported daily living“

“Accessibility of a dwelling“

“Provision of the social transport service in Tallinn“

“Supporting a child with special needs in school“

“Covering the costs of care in organising provision of the general care service provided outside the home“

“Assigning a support person to a child“

“Response to a court request in constitutional review case No 5-23-38“

“The right of a parent with a child with disability to the assistance of a babysitter“

“Family benefits and [...] childcare service support“

“Termination of payment of support for a private kindergarten“

“Social service fee and money for personal expenses“

“Covering the cost of a place in a care home“

Extra-judicial administrative challenge proceedings

“Interpretation of objections as a challenge and drawing up a decision on challenge“

Inspection visits

One of the duties of the Chancellor of Justice is regularly inspecting places of detention in order to check whether people there are treated with dignity. This means, among other things, that a person must get clean clothes, a place to sleep and enough food in a place of detention. It is important for them to maintain contact with their next of kin and friends.

In a place of detention, persons are or may be deprived of their liberty, either by virtue of an order by a public authority or at its instigation or with its consent or acquiescence. Thus, places of detention include not just prisons and police detention facilities but also hospitals providing involuntary psychiatric care, closed childcare institutions and care homes which people cannot leave at will. Several hundred places of detention operate in Estonia.

The aim of inspecting a place of detention is to collect information about how people there are treated. Inspecting rooms, talking with people and examining documents offers the Chancellor a possibility to assess whether people are provided enough and regular food, whether they have clean clothes and a bed, whether their living rooms are warm and clean and whether people are offered meaningful recreational activities. These living conditions are assessed by the Chancellor's advisers on the basis of the requirements established by Estonian legislation as well as international treaties accepted by the Estonian state (see Article 3 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment).

Based on the inspections carried out during the reporting year and the results of the investigation of deaths that took place in prisons and in places of detention of the Police and Border Guard Board, it became clear that an agitated or intoxicated person must be closely monitored at the place of detention both directly and by means of video surveillance. This makes it possible to prevent deaths better.

Modern video surveillance technology enables monitoring people more effectively, but its arbitrary and unjustified use limits the right to privacy of those monitored. Video surveillance must be used according to the principle 'as much as necessary and as little as possible'. Video surveillance equipment helps experienced staff with supervision, but does not replace a well-trained, skilled and empathetic employee. Finding and retaining dedicated and properly trained staff is not an easy task for places of detention.

Psychiatric hospitals

During the reporting year, the Chancellor inspected two psychiatric hospitals: the sub-acute and acute treatment department of Ahtme Hospital Foundation and the

department for children and young people at the psychiatric clinic of the North Estonia Medical Centre.

Both hospitals have problems with restraint. Restraint means control of a violent patient by physical force, by mechanical means authorised for this (in particular restraining straps) or appropriate medication. Restraint must be carried out with respect for human dignity of the person, as long as is really necessary and without unnecessarily harming the person's health. Restraint must be documented to enable retrospective assessment as so that whether it was carried out correctly.

In her recommendations to both hospitals, the Chancellor noted that restraint may not take place within view of other patients. A healthcare professional must constantly be in the same room as the person under restraint, where they can monitor the person's situation. Of course, restraint must not be carried out using excessive force or equipment inappropriate in a psychiatric hospital, such as handcuffs. Mechanical restraint must last for as short a period as possible.

The Chancellor reminded Ahtme Hospital that, in documenting restraint, it is necessary to record injuries sustained during restraint as well as the reasons why it was necessary to restrain the patient and what were the indications of the threat leading to the patient's restraint. Chemical restraint (i.e. restraint by using medication) must also be documented. After restraint, the doctor must talk to the patient and discuss the events leading to restraint so that the patient understands why this was done to them.

Children and adolescents are often restrained in the acute treatment unit of the psychiatric clinic of the North Estonia Medical Centre. Therefore, the Chancellor asked the hospital to find ways to avoid mechanical restraint of minors. If restraining a minor is unavoidable and still necessary as a measure of last resort, it should instead be arranged in the clinic's department for children and adolescents. The Chancellor also drew attention to this in 2019.

In the recommendations sent to Ahtme Hospital, the Chancellor emphasised once again 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. The Chancellor of Justice asked Ahtme Hospital to fill out all medical documents legibly and, if possible, in the official language.

In the recommendations sent to Ahtme Hospital, the Chancellor emphasised that the staff can also monitor a patient's communication with next of kin from a distance, so that it is not justified to be present during meetings or telephone conversations. The Chancellor also asked for diversification of options for recreational activities and therapy for patients, opportunities being offered for patients to spend time outdoors and for improvement of living conditions in hospital rooms.

Video surveillance is still used in the communal rooms of the acute treatment unit of the psychiatric clinic of the North Estonia Medical Centre, which the staff cannot monitor in real time. The clinic always receives some patients who do not know how to stand up for their rights or give feedback (for example, people with intellectual disability, people with a dementia syndrome). In order to protect the rights of this particularly vulnerable group and ensure their safety, it would be of great help if the clinic staff could monitor the feed from video cameras in real time.

The Chancellor of Justice stressed that hospital staff must also feel safe in order to ensure effective treatment. Therefore, both hospitals could introduce portable alarm buttons so that staff can call a security guard for assistance if necessary. However, the security guard must always act under the careful guidance of a medical professional when in contact with patients.

Prisons

The Chancellor has noted that isolating people in prison from technology and the digital world increases their exclusion from society. It is difficult for a person to return to everyday life upon release from prison if the use of information technology is prohibited in prison. This hinders modern learning and also limits a person's communication with next of kin.

The Chancellor of Justice stressed the need to amend the provisions of the Imprisonment Act regulating use of information and communication technology in prisons so that the legal norms serve the modern purposes of imprisonment and enable prisoners to acquire knowledge and skills necessary to cope in today's society, including supporting prisoners' efforts to begin or continue their education in prison and facilitating their communication with next of kin.

On 6 March 2024, the Riigikogu adopted amendments to the Imprisonment Act, giving prisoners the right to communicate with the prison electronically. In addition, with a secure technical solution in place, prisoners may now be allowed to make video calls with their loved ones and defence counsel. Prisoners in an open prison are allowed, under certain conditions and to a certain extent, to use mobile phones issued by the prison; this enables broader use of the internet for studying and working.

The amendments to the Imprisonment Act also resolved a number of other problems pointed out by the Chancellor previously. The maximum length of the disciplinary confinement punishment was reduced, while the automatic ban on visits during a period of disciplinary confinement and stay in the reception department was abolished. The conditions of detention of remand prisoners were also changed: from 1 October 2024, detention of all remand prisoners under the

conditions similar to solitary confinement will be abandoned. This is a major and very important development.

During the reporting year, the Chancellor of Justice scrutinised detention conditions in Viru Prison. During the inspection, more attention was paid to the situation of people in solitary confinement, elderly prisoners and remand prisoners, those in the reinforced surveillance unit, young prisoners, as well as organisation of visits.

The Chancellor complimented Viru Prison for the significant efforts it has made to improve organisation of visits. The prison's waiting and visiting rooms are now more child-friendly and comfortable. Children who come to the meeting are searched differently from before. Officers are friendly and supportive with children. A pleasant experience gained from visits supports prisoners' return to society and is also important for their families.

Viru Prison has understood the adverse effects that may result from the conditions of solitary confinement and is trying to resolve difficult situations differently than by isolating a person and keeping them under austere conditions. Alternatives to use of direct coercion are also being sought. Work with young people has yielded good results: very few violations and physical conflicts have occurred in recent times.

The Chancellor is still of the opinion that a person in solitary confinement should be offered at least two hours of meaningful interaction a day. A healthcare professional should monitor the condition of a person in solitary confinement on a daily basis. For people with mental disorders or otherwise vulnerable, self-harming or suicidal people, suitable conditions must be created which enable prevention of self-harm and the risk of suicide. Currently, the prison segregates inmates in this condition in a locked cell, which carries the risk that a person's mental health problems deteriorate even further.

The Chancellor noted that Viru Prison should pay more attention to the needs of elderly sentenced and remand prisoners and make their conditions of detention more suitable for older people. This concerns adapting the physical environment of the prison as well as organising activities aimed at the elderly and interacting with them.

It should be regularly checked whether placing persons in the reinforced surveillance unit is always justified; the check should preferably take place every three months. The Chancellor of Justice also believes that efforts should continue to ensure that prisoners in a unit with reinforced supervision have more employment and recreational activities as well as opportunities to move outside the unit.

The e-shop system has been in use for shopping at the prison store for several months now. The Chancellor has received numerous complaints that, regardless

of the purchase price, a delivery fee of 5.08 euros is added to each e-order, which must be paid for the purchase of just one postage stamp costing 1.30 euros or for a television set costing 237.90 euros. As a result, shopping is no longer affordable for many sentenced and remand prisoners.

The Chancellor asked the prison service to assess whether the delivery fee applied to each purchase is proportionate and does not excessively prevent shopping, and to consider how to make shopping at the prison store again more accessible to sentenced and remand prisoners.

The Chancellor reminded Tallinn Prison that a person must be given enough hygiene items to wash themselves and their clothes; even if they have used up the hygiene items distributed by the prison, they themselves cannot buy these items and they are not yet entitled to receive a new hygiene kit.

The Chancellor also resolved a situation where a person was transferred from Tallinn Prison to Viru Prison, but they were not immediately able to receive food corresponding to their religious beliefs in Viru Prison, which had been offered to them in Tallinn Prison. The person's religious beliefs were also known to Viru Prison and preparing the corresponding food did not require any special effort from the prison.

However, without any reasonable justification, Viru Prison delayed offering the person food appropriate to their faith.

The Chancellor had to resolve a number of misunderstandings, due to which people could not enter into marriage in prison, meet their child or call a child from prison. The Chancellor of Justice considered it understandable that children may not be available by phone at the precise time when a prisoner calls from prison. It may therefore be justified to allow a prisoner to make such calls at a different time than usual. When deciding on requests to call children, the prison must take into account the interests of children, among other circumstances. However, a prisoner must take into account that they may not always be able to call at the exact time desired or for as long as they could do at liberty.

The Chancellor assessed how the prison service has investigated the circumstances of eight deaths occurring in prisons during the year (1 September 2022 − 1 September 2023). The prison internal audit service investigated incidents of death effectively and offered pertinent recommendations to prisons for avoiding deaths. The prison service in its guidelines has also offered good recommendations on how to avoid deaths.

Based on the results of investigation of deaths, it can be said that people brought to prison for sobering up need to be monitored more carefully. Materials from the investigation of several deaths revealed that prison guard teams were understaffed. Prisons must set up cells which would be safe and secure for a person who is restless or poses a danger to themselves and/or others. The

Chancellor noted that prisons must procure clothes and bedding made of tear-proof material, which can be given to suicidal people if necessary. Prisons should consider how to ensure that those nearing the end of their lives in prison are provided with conditions, treatment and care that meet their needs.

In one case, filing an application with the court for early release of a dying prisoner was delayed because the hospital had not given the person a definitive diagnosis. In another case, a person died in prison because the court decision by which they were granted early release had not yet entered into force.

Police and Border Guard Board detention facilities

The Chancellor of Justice carried out an unannounced inspection visit to the Tallinn sobering-up facility and Tallinn police detention facility of the North Prefecture of the Police and Border Guard Board (PBGB). The Chancellor also inspected the short-term detention cells of Haapsalu Police Station of the West Prefecture and Rapla and Paide short-term detention cells of the Central Estonian Police Station, where people can be detained for up to 48 hours. The Chancellor's advisers also visited detention cells in the courthouse of Harju District Court, where transport and guarding of detainees is organised by the Police and Border Guard Board.

Round-the-clock video surveillance is used in all cells of the places of detention inspected. The Chancellor of Justice stressed that it was unjustified to use video surveillance in respect of all detainees. Video surveillance is justified only when it is necessary to monitor a person's state of health. In each case, it is necessary to consider whether round-the-clock video surveillance is absolutely necessary in the particular cell. However, round-the-clock video surveillance is necessary to monitor an intoxicated person because, in a state of intoxication, a detainee's health may suddenly deteriorate.

The Chancellor pointed out that in the detention cells of the courthouse of Harju District Court, detainees were not guaranteed privacy in using the sanitary corner. The toilet pot in the cells could be monitored both via a surveillance camera and from the observation hole of the cell door. There were also no curtains that would enable the sanitary corner to be separated from the view of cellmates, the surveillance camera and the door observation hole if several detainees occupy the cell simultaneously.

People with suicidal behaviour are also placed in a cell naked and without a mattress. The Chancellor has stressed that the place of a person with mental health problems who harms themselves is in a hospital psychiatric ward, not in a detention facility. While a person is awaiting hospitalisation, the detention facility must provide them appropriate assistance, ensuring their human dignity. A

person may not be placed in a cell naked and without a mattress, but must be provided with safe clothing and a tear-proof mattress.

It was found that, if necessary, when providing healthcare services to an intoxicated person in Tallinn sobering-up facility, the person's freedom of movement is restricted and they are restrained to the bed with straps. Such restraint is necessary, but as with any restriction on freedom of movement, solid rules laid down by law must exist for this. A clear legal basis must exist for restraint and a specific procedure and precautions must be laid down to help prevent possible abuses. The Ministry of Social Affairs has so far not prepared legal norms regulating restraint, although the Chancellor of Justice has repeatedly explained the need for this.

A strip search of detainees at a police detention facility must be an exceptional step and always be based on the degree of danger a detainee poses to themselves and others. The search may not remain in the field of view of a surveillance camera or of third parties and must be based on written instructions determining when a strip search may be carried out.

If a detainee is taken to a temporary detention cell at a police station, one patrol officer remains to monitor the person. The other police officer from the same patrol team will join another patrol team in the meantime. It is unacceptable, and also contrary to the law, that, due to such working arrangements and shortage of staff, a detainee brought into a detention cell sometimes has to be examined by police officers of the opposite sex if no officer of the same sex is nearby.

The Chancellor explained that if a person is transported to a police jail, they must be given the opportunity to contact their next of kin by phone so that they can notify them of their whereabouts. In addition, it should be ensured that detainees whose next of kin cannot purchase a prepaid card necessary for calling and bring it to the police jail can purchase a prepaid card from their own money with the help of officers at the police jail.

Depending on the length of a court hearing, a detainee brought to the detention cell of the courthouse of Harju District Court must sometimes stay in the courthouse for the whole day. However, only those detainees who are brought to the court hearing from prison can eat lunch, because the prison gives them a food parcel to take along.

The detention centre of the PBGB's North Prefecture does not provide take-away food parcels to detainees. The Chancellor of Justice noted that detainees brought from the detention centre of the North Prefecture must also be ensured the possibility of a proper meal at the courthouse.

The Chancellor assessed how the PBGB has investigated the circumstances of 15 deaths occurring in police detention facilities between 2020 and 2023. Of these, five people died in a police vehicle and ten in a PBGB detention facility. In fourteen

cases, the cause of death of the detained person was alcohol or drug intoxication. One person committed suicide.

As a rule, the PBGB investigated all deaths and offered recommendations for their prevention. Working arrangements at a place of detention were also clarified regarding direct monitoring of detainees as well as video surveillance. The PBGB also supplemented the fieldwork procedure, which establishes rules to be complied with when taking a person for sobering-up in order to ensure the safest possible detention.

An analysis of the deaths shows that PBGB places of detention have a shortage of officers and that regular training necessary for work should be organised for staff. The Chancellor considered that monitoring people brought for sobering up must be more effective: video cameras installed in PBGB places of detention (including police vehicles) must work properly and the video monitoring system must enable proper monitoring of what is happening in the room.

According to the Chancellor's assessment, if possible, a healthcare professional should examine all people brought to a police detention facility. It is especially important to examine those detainees who are intoxicated or have signs of intoxication, or who may need special attention due to their state of health.

The Chancellor of Justice found that in analysing deaths the PBGB could provide regular feedback to its employees even if no deficiencies are directly identified in the activities of officers.

Accommodation centre for foreigners

The Chancellor inspected Vao Centre of the AS Hoolekandeteenused Accommodation Centre for Asylum Applicants, which accommodates foreigners applying for international protection. Last reporting year, the Chancellor visited Vägeva unit of Vao Centre of the AS Hoolekandeteenused Accommodation Centre for Asylum Applicants.

The people housed in both the Vägeva unit and the Vao Centre greatly appreciate the support of the staff. People were pleased that the staff was very helpful and quickly finds solutions to problems. It is positive that the children living in the centre can continue to attend kindergarten. The assistance of a psychologist is also available.

The centre's premises should be better adapted to accommodate people with reduced mobility. The Chancellor asked the centre to explain to residents and, if necessary, to remind them how they can safely store their most valuable belongings on the centre's premises.

Closed childcare institutions

The Chancellor of Justice inspected the Nõmme tee facility of the Tallinn Centre for Children at Risk and the Youth Home of the Hiiumaa Social Centre, where young people receive the closed childcare institution service.

In both institutions, the supportive and empathetic attitude of the staff towards young people left a very good impression. While, in addition to social pedagogues, psychologists and medical nurses also work at the Nõmme tee facility, unfortunately no such support was provided in the youth home. The healthcare expert participating in the visits stressed that the staff in both facilities should work more closely with a young person's treatment team.

The Chancellor found that, in fact, for several young people participation in the social programme offered at the Nõmme tee facility was not voluntary. This led the Chancellor to ask to be ensured that only those young people join the social programme who are really ready to receive and participate in this service. A voluntary-based service cannot be imposed or provided under pressure.

The living conditions at the youth home were not suitable for clients with challenging behaviour and did not ensure them safe living. The Nõmme tee facility must ensure that the doors of the toilets and showers can be locked from the inside (for example, with a thumb turn lock), so that staff can quickly open the door from the outside if necessary.

Separation of a young person receiving the closed childcare institution service from others must be carried out in accordance with the requirements laid down by law. A young person may be held in a seclusion room until they calm down, but not longer than three hours, and the stay in a seclusion room must also be documented. A young person and their belongings may be inspected only if a reasonable suspicion exists that they are in possession of prohibited substances or objects.

Some of the children brought into the youth home behave defiantly and aggressively. Unfortunately, the youth home team lacked the necessary training to deal with young people behaving aggressively. The sense of security and willingness to work of some of the employees at the Nõmme tee facility had decreased significantly due to serious incidents. The Chancellor offered solutions on how the staff's sense of security could be restored and increased. Among other things, it is necessary to constantly offer training and mental health support to staff, especially after resolving difficult situations.

The Chancellor asked that the Nõmme tee facility make sure that a young person can always address their concerns to an employee of the same sex as them. Young people who find themselves in difficult situations should also be dealt with by staff of the same sex as them. Some measures taken against young people, such as

collective punishments, are not lawful. Communication based on punishment and restrictions does not support rehabilitation of young people.

Equal treatment

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

Under the Chancellor of Justice Act, the Chancellor carries out checks over conformity of legislation with the Constitution and laws as well as over the activities of representatives of public authority. The Chancellor also carries out conciliation proceedings where persons in private law are in dispute about discrimination.

A total of 38 complaints about possible discrimination were submitted to the Chancellor of Justice during the reporting year. These included petitions concerning age and gender discrimination, but also complaints of exclusion on the basis of disability, ethnicity, language or race. One person found that they had been discriminated against because of fulfilling family responsibilities, a couple of people described discrimination because of belonging to the LGBTI+ community. As a rule, the Chancellor offered explanations in these cases; on one occasion she proposed to the Government of the Republic to amend a regulation in order to stop discrimination. One petition was settled through conciliation proceedings.

Social rights

The amount of daily in-patient fee

The Chancellor of Justice was contacted by a parent who had to pay a fairly high (caregiver's) in-patient fee so that they could stay in the hospital with the child to whom they wanted to offer essential support during treatment. In view of the child's situation, the parent considered that asking for such a fee was unfair to them and the child and failed to take into account the child's needs.

During a child's hospital treatment, part of the child's health service benefit also includes the in-patient fee for accommodation for the child's caregiver (parent or other trusted next of kin). The amount of the fee has been established by the Government of the Republic in its regulation on "The list of health services of the Health Insurance Fund".

The established procedure is based on the assumption that children acquire the necessary skills at the latest at the age specified in the regulation (by the age of 8 during rehabilitation treatment, by the age of 10 during other hospital treatment, and children with severe or profound mobility or multiple disabilities by the age of 16), so that they can independently cope with the disease, hospitalisation and the accompanying stress. Children who do not fit within these age limits can only be

hospitalised with their parent if the parent themselves pays the hospital for accommodation.

In terms of equal treatment, it is important that the needs of each child are taken into account during treatment and not their age, since age may not be an indicator of a child's ability to cope with stress. Nor is age the only criterion in terms of coping with hospital experience. For example, a chronically ill seven-year-old child may be sufficiently accustomed to being in hospital and not need a parent by their side around the clock. At the same time, a child in their early teens may need the support of a loved one due to their first-time experience, trauma-induced shock, and other comorbidities (e.g., a child with autism). Nor can a difference in treatment be justified solely on the basis of the severity or type of disability. For example, a child with visual, auditory, intellectual or other disabilities may need the support of a loved one during hospitalisation in the same way as a child with a severe or profound mobility impairment or multiple disabilities. Children in a similar situation must be treated in a similar way.

Based on these reasons, the Chancellor of Justice proposed to the Government of the Republic that the regulation "List of health services of the Health Insurance Fund" be brought into line with § 12 and § 27(3) and (4) and § 28(1) and (4) of the Constitution insofar as these provisions do not guarantee every child the right to be in hospital with next of kin, if this is the best solution in the interests of the child.

The Prime Minister tasked the Ministry of Social Affairs with resolving the situation. The Ministry of Social Affairs informed the Chancellor that amendments to the regulation will be prepared and will enter into force no later than 1 January 2025.

Discrimination on grounds of family

The Chancellor of Justice received a petition from a person whom a company had not chosen for the position of warehouse worker because they had small children. A few days before starting work, the petitioner had received a letter from the company asking if the petitioner understood that in case of their children's illness they would not be able to take care leave because the employee had to work alone and there was no substitute. A representative of the company explained to the petitioner that hiring them was still under consideration, because unexpectedly another candidate without children had been found for the same position. The person replied that such conditions did not suit them, and they were not hired.

A representative of the company explained to the Chancellor that it is difficult for the company to organise replacement of a warehouse worker. One of the reasons for rejecting the job applicant was also based on the explanations of their previous employer, who had claimed that at the previous job the person had had to miss work due to their children's illness. The company considered the explanations from the job applicant and their previous employer to be contradictory, leading to

the conclusion that the person was dishonest and might take care leave unreasonably.

The law does not allow an employer to treat any job applicant less favourably because they have children and must fulfil family responsibilities.

This constitutes direct discrimination on grounds of sex and is prohibited (Gender Equality Act § 5(1), § 6(1), (2) clause 1). When choosing a new employee, the employer must primarily take into account their education, professional skills and work experience.

After investigating the case, the Chancellor concluded that the petitioner had been refused employment because they had children and they would have to take care leave in the event of the children's illness. This allows the conclusion that the person would have been hired if they had not had parental responsibilities or if they had denied their existence.

A parent is entitled to obtain a certificate of care leave in the event of illness of a child up to 12 years of age, certifying that they are relieved from work or service duties. This is a right provided for an employee by law (§ 19 clause 2 Employment Contracts Act, § 52(1) and (3) Health Insurance Act). The employer must take this into account when planning their work.

The law prohibits requesting data from a job applicant about parenthood and performance of family obligations (§ 6(4) Gender Equality Act). Even if a person themselves informs the employer that they have children, the employer may not make a decision on hiring on the basis of those data or request a more detailed explanation from the job applicant as to how they intend to organise fulfilling their family obligations.

The Chancellor concluded that the company had discriminated against the person on the basis of parenthood and fulfilment of family obligations, and offered the parties a solution in conciliation proceedings, to which both agreed. The Chancellor approved the agreement, complying with which is mandatory for the parties similarly to a court decision.

Employer's discriminatory questions

The Chancellor of Justice was also approached with another similar concern. A private company asked a candidate for the position of janitor for information on their criminal record. The person found that no reason existed to ask for such information from a person applying for the job of a janitor, and considered such questioning to be discriminatory.

The Chancellor explained that an employer must ensure protection of employees from discrimination and observe the principle of equal treatment. The Employment Contracts Act states that an employer may not, during pre-contractual negotiations or when preparing to conclude an employment contract

in any other way (including in a job advertisement or at a job interview), request data from an applicant in which the employer has no legitimate interest. This means that the employer may express interest only in what is directly related to performance of work duties. Justification for asking for data must be assessed on the basis of the specific employment relationship and the duties to be performed.

Guidelines issued by the Data Protection Inspectorate also state that an employer may ask for information only about offences that are relevant in terms of employment in the particular position.

In the situation described, a person may ask the employer for an explanation of why a candidate for the position of janitor is asked for information about their criminal record, and the person may submit their objections or decline to submit the data.

Discrimination against the elderly

One older person expressed dissatisfaction that the elderly were not included in political parties' preference polls, so the results of the surveys do not reflect the opinion of older people.

The Chancellor's adviser asked for clarification from companies conducting political party preference surveys. It turned out that one polling company indeed did not include people over the age of 84 in these surveys. A representative of the company agreed that everyone of voting age has the right to be included in political party surveys. They promised that in 2024, the upper age for respondents would be abandoned. The company kept its word, and now the results of political parties' preferences polls of all polling companies also reflect the opinion of people over the age of 84. Thus, the problem was resolved without a Chancellor's written recommendation.

The Chancellor was asked why people over the age of 74 are not offered computer and smart device training.

It was revealed that older people are instructed in the use of computers and smart devices predominantly in libraries. Project-based courses are organised in a few schools and welfare institutions, and something is also offered by the Estonian Unemployment Insurance Fund. Unfortunately, little information is available about these training courses, so that computer training is not sufficiently accessible to the elderly.

The Chancellor concluded that people should be more widely informed about training courses offered to older people on the use of computers and smart devices and the possibilities of user support. In the case of a large number of applicants, more training courses should be organised and consistent funding ensured for them. When establishing conditions for financing training, the principle of equal treatment should be respected and no unjustified age

restrictions should be set. The Chancellor of Justice made a proposal to the Ministry of Education and Research, the Ministry of Culture, the Ministry of Social Affairs, the Ministry of Economic Affairs and Communications, and rural municipalities and cities.

The Ministry of Education and Research promised to waive the age limit for participants in basic digital skills training. The Ministry of Culture agreed that the services offered by libraries should be communicated more broadly. The Ministry explained that the draft amendment to the Public Libraries Act includes, among the main tasks of the public library, support for lifelong learning and discovery, as well as counselling and guidance in the field of information and digital competences.

Rights of people with disabilities

Under the Chancellor of Justice Act, as of 1 January 2019, the Chancellor is tasked with promoting, protecting and monitoring implementation of the Convention on the Rights of Persons with Disabilities. The Chancellor helps to ensure that all people with disabilities can exercise fundamental rights and freedoms on an equal basis with others. In addition, the Chancellor of Justice must inform the public about implementation of the principles of equal treatment. In her promotional work during the reporting year, the Chancellor focused primarily on accessibility.

Accessibility of television programmes

Over the past year, Estonian Public Broadcasting (ERR) has significantly improved accessibility of television broadcasts of events of national importance. Starting from September 2023, it will be possible to select automatic subtitles for all ERR own programmes, which are vital for hearing-impaired people.

Telecasts of the events of the 106th anniversary of the Republic of Estonia were supplied with sign language interpretation or audio description. While in previous years it has happened that the Chancellor had to remind the ERR of the need to translate these broadcasts and sometimes partially cover its costs, this year the ERR itself had taken everything into account and ensured access to the broadcasts.

The Chancellor hopes that this practice will continue. This is also in line with the Convention on the Rights of Persons with Disabilities (CRPWD), according to which objectives set in the field of culture must be implemented progressively. This means that, year by year, more and more TV programmes should be made accessible to people with disabilities.

Self-checkouts in supermarkets

The Chancellor of Justice received a complaint that the increasing use of self-checkouts in supermarkets is putting at a disadvantage those elderly and disabled people who find using self-checkouts difficult or do not know how to use them.

Under the Convention on the Rights of Persons with Disabilities, States Parties must take all appropriate measures to eliminate discrimination on the basis of disability (Article 4e). Article 9 of the Convention requires States to ensure that private entities that offer services which are provided to the public take into account all aspects of accessibility. Thus, shops selling basic necessities need to ensure that people with special needs are also able to make their purchases without more effort than usual.

Although some shops still have more regular checkouts than self-checkouts and their working hours are longer, it cannot be assumed that all people will be able to visit such shops. However, self-checkouts cannot be used by many people with special needs. For example, blind people cannot cope with a touchscreen self-checkout that does not give or receive voice commands. A cash register whose screen is located at the level of the eyes of a standing person remains inaccessible to a person sitting in a wheelchair. It is difficult for a person moving with an assistive device (for example, a walking frame or crutches) to scan barcodes for goods with one hand. A person with an intellectual disability can become confused by what is written on the screen, they cannot find the right button or do not understand, for example, how to weigh goods.

The Products and Services Accessibility Act states that self-checkouts operating before 28 June 2025 can be used for up to another 20 years (§ 22(3)). Therefore, changes in this field can take a very long time.

The Chancellor of Justice made a proposal to the major supermarkets to review their working arrangements. She stressed the need to rule out situations where food or other essential goods cannot be purchased because the shop only uses self-checkouts that do not meet accessibility requirements and where the shop's staff are not ready to assist people or are not in the salesroom.

Access to a dwelling

A person with a disability contacted the Chancellor of Justice because the city of Tartu had failed to fulfil its promise and had not guaranteed them access to their apartment. The petitioner has been living in an apartment offered by the city since 2009. Although the apartment has been adapted to suit the wheelchair user, it is very difficult for them to get in and out of the apartment: there are several stairs in the house that the person cannot use on their own due to their need for assistance.

The Chancellor made a proposal to Tartu city government to make the disabled person's home accessible and reassess whether their need for assistance has been met.

The city government did not consider it necessary to make the dwelling accessible and reasoned that the city has other, accessible dwellings that may be suitable for the person. The Chancellor emphasised that it is not compatible with the spirit of General Comment No 5 to the UN Convention on the Rights of Persons with Disabilities for a person with disabilities to be offered residence in only one particular place or building.

According to Article 19 of the CRPWD, persons with disabilities have the right to choose their place of residence. The same article emphasises that people have the right to live in the community. Accessible housing for people with disabilities must be accessible throughout the region. This offers people a choice. Paragraph 54 of that General Comment states that States Parties to the Convention must eradicate all barriers (including inaccessible housing) that prevent people with disabilities from living and coping independently in the community. The Committee stresses that the right to choose a place of residence and to live in the community can only be viewed in conjunction with Article 9 of the Convention, which states that people with disabilities must have the same access to the physical environment, information, etc. as all others. Article 9(1) requires elimination of obstacles and barriers to accessibility of buildings, roads and other indoor and outdoor facilities (including schools, housing, medical facilities and workplaces).

The city of Tartu has commendably built, renovated and made accessible several social dwellings. At the same time, it is not enough to make only a couple of houses owned by the city accessible. In order for a person with disabilities to participate in community life on an equal footing with others (Art. 19 CRPWD), as many buildings as possible must be accessible. Only in this case is it possible that a person with special needs can, for example, visit a friend or exactly the particular event they want to go to.

The accessibility of dwellings built before Estonia regained its independence has also been analysed by the Accessibility Task Force. Summing up its work, the task force recommended improving the accessibility of precisely such houses and coming up with so-called standard solutions. It was considered particularly important that accessibility problems be also resolved during reconstruction works to increase energy efficiency. In the long run, all dwellings should be accessible. Article 4(2) of the CRPWD states that each State Party must take measures enabling people with disabilities to progressively realise their economic, social and cultural rights. This means that although accessibility cannot be ensured overnight in all walks of life, there must be a plan as to how and during which period it will be done. This concerns all cities and rural municipalities.

The right to live at home

The guardian of a working-age woman contacted the Chancellor of Justice with a concern that the Social Insurance Board was no longer willing to finance the special care service necessary for their ward. Specifically, the Social Insurance Board had come to the understanding that this service was not suitable for this person in need.

The guardian had also approached the local authority for assistance and feared that the ward might be offered the round-the-clock general care service provided outside the home. This would have meant that the ward could no longer have lived in her own home. The guardian found that, given the age and disability of their ward, this service may not be suitable for her.

The Chancellor explained to the guardian that the local authority must offer the general care service provided outside the home as both a daytime and round-the-clock service (§ 20(2) and (3), § 22(2) Social Welfare Act). The explanatory memorandum (page 23) drawn up by the initiator of this Act states: "Day-care, i.e. the daytime general care service, may be needed by persons who, at night, are able to cope independently in their own home or have guaranteed care at night and supervision through informal care". The law does not link provision of the general day-care service to the type or severity of disability or other health condition, so that cities and rural municipalities must organise this service for all those in need.

Provision of the general day-care service would also best conform to the principles of social welfare. In line with these principles, a person in need is offered, first of all, the kind of assistance that enables them to live at home or receive a service offering a home-like environment and living arrangements (§ 3(1) clause 2^1 Social Welfare Act). Article 19 of the Convention on the Rights of Persons with Disabilities also requires persons with disabilities to be able to choose their place of residence and where and with whom they live, on an equal basis with others. They are not obliged to live in a particular living arrangement (see the explanations on Article 19 (para. 21) by the Committee on the Rights of Persons with Disabilities, and on the assistance offered the Committee's decision of 24 March 2022 in case S. K. v. Finland, para. 9.2).

A person cannot be obliged to stay overnight in a care home or stay there on every day of the week, because this service is always provided on the basis of a person's free will (§ 12(1) Social Welfare Act).

If a city or rural municipality knows that a person is ready to use only the daytime general care service, provision of the round-the-clock service to them must be thoroughly considered.

Complying with good administrative practice

The guardian of an adult disabled person complained that the guardian must submit monthly bills from the special care institution, fuel cheques and a bank account statement to the municipality in order to receive support for their ward. The guardian considered it humiliating and burdensome.

The Chancellor found that although the rural municipality government pays the support voluntarily, it still has to follow the principles of good administration and provide reasoning for its decisions. The rural municipality government may also not impose superfluous conditions on receiving support. The Chancellor recommended that the municipality should consider whether requiring fuel cheques was justified from the point of view of both the municipality and the guardian.

Additionally, it was revealed that the municipality had assessed the ward's need for assistance three times in the past five years. The assessment of the person's need for assistance had not changed during that period and the decisions to grant assistance based on those assessments were also substantively the same. At the same time, each social service was assigned a different deadline: from half a year to two to three years. Since a different deadline had been set for the provision of each service, every now and then the guardian had to submit a new application for assistance to the rural municipality government in order to ensure consistent assistance to the ward.

The Chancellor asked the municipality to consider whether it was justified to carry out a regular assessment of the need for assistance so frequently. She suggested assessing whether it would be possible to determine, in a single decision and on a uniform basis, what services the municipality organises for a person in need and what support it provides. The Chancellor explained that a municipality must justify why it assigns a service to a person for a specific period and how it meets the person's need for assistance.

Supporting children with special needs in school and kindergarten

The Chancellor of Justice received a letter from parents whose child had been left without a support person according to a decision of the rural municipality government, although the child still needed the help of a support person at school. The child had been receiving the support person service for more than two years and it was clear that the child's need for assistance had not changed during the school year. Nor was the necessary assistance ensured through support provided by the school. Because of this, the child had to be absent from school for some time.

The Chancellor emphasised that the task of the rural municipality government is to arrange the necessary assistance for the child through either the social or educational system, or both. At the same time, the rural municipality government

was both the owner of the school and the organiser of social services for the municipality's residents. The Chancellor recalled that the rural municipality government is responsible for ensuring that assistance offered to a child is not interrupted. Even if the rural municipality government is convinced that the child should receive assistance from the education system, it must continue supporting the child through the social system until the school is ready to adequately support the child.

Thus, the Chancellor asked the rural municipality government to make a new decision to resolve the matter and to provide the child with the necessary assistance. The municipality took the Chancellor's recommendation into account.

One parent was concerned that their children did not receive speech therapy in kindergarten. The parent was dissatisfied that the rural municipality was willing to reimburse them only part of the expenses they had incurred in obtaining the assistance of a speech therapist for their children.

According to the law, a child is entitled to free speech therapy in kindergarten. This opportunity must be created by the owner of the kindergarten, i.e. the local authority. The shortage of speech therapists does not relieve the city or rural municipality of this task. If the owner of the kindergarten fails to fulfil the task, i.e. fails to arrange the assistance of a speech therapist, it must reimburse the parent for the costs of a speech therapist's appointment incurred by the parent.

The municipality government resolved this problem in the course of the Chancellor's proceedings. The Chancellor also recommended that the municipality government reimburse the costs of the speech therapist's appointment incurred by the parent. The municipality government followed the Chancellor's recommendation.

The right of a parent with a child with disability to the inviolability of private life

A parent of a child with a disability asked the Chancellor to check whether the local authority could require them to submit an application every time they need a babysitter for their disabled child. Each time, the local authority wanted to decide, on the basis of the parent's application, whether the use of the babysitter's help in a particular case was justified.

The Chancellor found that such a condition imposed on the petitioner was not in accordance with principle of human dignity laid down by § 4 of the General Part of the Social Code Act or the right to inviolability of private life (§ 26 Constitution).

A person must disclose their private data only to the extent necessary to make a decision concerning assistance to them. When providing the parent of a disabled child with the assistance of a babysitter, it should generally be sufficient to provide

data showing that raising a disabled child entails a higher care burden than usual, which is why the parent needs time off from care.

In order to assess a parent's burden of care, neither the city nor rural municipality needs to know what the person raising a child with a profound disability does in their free time. It does not matter whether a parent with a high care burden applies for a babysitter in order to go for a run in the forest, to a hairdresser or to visit a relative. The same things are done by parents who do not have to care for a child with a profound disability, but who can take their child with them or leave the child at home alone, or ask next of kin to mind the child during this time.

Payment of work ability allowance

Already in the previous annual report we wrote that the Chancellor's assistance was sought by a disabled person with no capacity for work whose work ability allowance in one month was reduced so much that in that particular month they only received 35 euros. The person found themselves in this situation because, in the month of termination of their employment, they had been simultaneously paid the last month's salary along with salary for the month of termination of employment, as well as remuneration for unused vacation days.

Although the Chancellor of Justice informed the Estonian Unemployment Insurance Fund, the Ministry of Economic Affairs and Communications, as well as the Social Affairs Committee of the Riigikogu of the person's concerns, none of them took any action. Therefore, the Chancellor made a proposal to the Riigikogu to bring the Work Ability Allowance Act into line with the Constitution so that such situations could be avoided in the future. The Riigikogu supported the Chancellor's proposal.

Impact of the motor vehicle tax on people with disabilities

On 12 June, the Riigikogu passed the Motor Vehicle Tax Act. The Chancellor of Justice also expressed her views on the Draft Act, expressing concern about how motor vehicle tax might affect the life of people with disabilities. The Motor Vehicle Tax Act provided a tax exemption for vehicles specially adapted or rebuilt for people with disabilities, but not for all vehicles used for transport of disabled people.

The President of the Republic refused to promulgate the Motor Vehicle Tax Act, citing unequal treatment of people with disabilities.

The Riigikogu amended the Act and adopted it on 29 July.

According to the amendments, vehicles rebuilt or adapted for people with disabilities will not be granted the previously planned exemption. However, the same law introduced amendments to the Social Benefits for People with Disabilities Act, increasing some of the monthly benefits for people with disabilities and offering a one-off allowance to mitigate the impact of motor vehicle tax. In

addition, amendments were introduced to the Social Welfare Act which will facilitate provision of necessary aids and reduce the own contribution paid for them.