



Õiguskantsler

# **2015-2016 OVERVIEW OF THE CHANCELLOR OF JUSTICE ACTIVITIES**

Tallinn 2016

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Dear reader!

The Chancellor of Justice is a one-person, independent constitutional institution appointed to office by the Riigikogu on the proposal of the President of the Republic for a term of seven years. The Chancellor's task is to make sure that legislation in Estonia is in conformity with the Constitution and that the fundamental rights and liberties of people in Estonia are protected. Besides constitutional review and ombudsman functions, since 2007 the Chancellor also fulfils the role of the national preventive mechanism for ill-treatment and, since 2011, the role of the Ombudsman for Children.

Once a year, the Chancellor presents an annual report of activities to the Riigikogu. On this website, you will find an abridged overview in English of the Chancellor's activities covering the period **from September 2015 to September 2016**. A selection of opinions, proposals and recommendations is available in English on the Chancellor's [homepage](#).

All the questions sent to the Chancellor during the year and accepted for proceedings deserve attention from one angle or another, even when resolving a problem or concern is not within the Chancellor's competence. Whenever possible, in these cases we try to recommend ways to find a solution or explain why the legal order is as it is. A law that is constitutional may also seem unfair. A law is needed, first and foremost, when life no longer functions without a law and the parliament needs to find a compromise between opposing interests. Inevitably the solution will seem unfair to part of society. Election battles take place in the name of fairness and subsequently battles in the Riigikogu when debating norms. Logical argumentation – the main method of jurisprudence – is limited in terms of fairness.

The main task of the Chancellor is to ensure seamless constitutional review. Resolving many of the petitions received requires verification that a statute or regulation conforms with the Constitution. If I together with my advisers find discrepancies in this regard, supervisory proceedings are initiated. Thus, during the 2015 autumn session and the 2016 spring session of the Riigikogu, I made seven proposals to the parliament for bringing a law into conformity with the Constitution. Sometimes it is sufficient to simply draw the attention of the Government or the Riigikogu to a law with a deficient or contradictory provision and the law or a draft will be amended without official proceedings. Naturally, the fifty members of the Chancellor's office are constantly monitoring life in Estonia within their powers and abilities and, if necessary, intervene to protect individuals on their own initiative.

Letters received by the Chancellor often reflect disappointment. For example, disappointment over how completely justified concerns – be they about preserving Estonian cultural space and peace, or about the quality of work, school, health or government – often tend to be overlooked or even belittled. Listening with sincere interest, respectful debate and straightforward explanation hold society together. Preserving Estonia is the first and most important point in the written or unwritten job description of every public servant. So, the Chancellor's office also tries to assist people by using all lawful means. We try to avoid unnecessary formal exchange of letters: if something needs to be put in writing, the communication should be brief, clear and honest; we try to go on the spot and clarify the circumstances, meet with the officials and politicians on whom resolving an issue depends, and increase overall legal awareness. In this work, I seek the assistance and advice of all the members of the Riigikogu, and actually of all the people.

The reporting period is characterised by detachment of society, politicians as well as officials, from a reasonable approach based on respect for facts and logic to handling matters of the state, by a reduced willingness to cooperate and by a more fragile mutual trust. Ingenuity and the courage to decide has also become scarcer, while incitement induced by self-interest can more often be found. All this can be seen from the Chancellor's worktable. Unfortunately, there are also those who in this complicated situation suggest concentration of power, weakening of balancing mechanisms and slogan-like semblance as a solution.

As a result, it often seems that Estonia is on course to becoming a society of commands and prohibitions, rather than expanding and giving meaning to the freedom of each individual. We as citizens must maintain the opportunity to do or not to do things on our own responsibility, without thereby overstepping the border of similar rights of other individuals. In my opinion, this is the essence of freedom. Unfortunately, new planned prohibitions and commands often have no meaningful effect in achieving the declared objective. But as a result of each new prohibition society becomes weaker and there will be more of those who are disappointed or caught up in the cogwheels of the system.

However, joy in restricting someone's liberty and the political gain made from this is temporary. Probably, a better way is to emphasise everyone's responsibility and freedom, to try and achieve goals by means of good, not evil. Under the Constitution of the Republic of Estonia, our state is founded on liberty, justice and the rule of law – precisely in this order.

As I have repeatedly stressed before the Riigikogu: even if one person in Estonia is left in distress or suffering because of an unconstitutional norm, then the norm must be corrected. I would like to thank the Riigikogu for sharing this way of thinking.

Dear readers, please visit our [homepage](#) where you can find more details about our daily activities, and our [Facebook account](#) where I write short summaries of more interesting cases and share writings which I have found to be worth attention. Since September, at midday every Sunday, Kuku radio station broadcasts a debating programme „Õigus ja õiglus“ [Law and Justice] where together with my colleagues and external experts I seek to discuss issues concerning the health and development of the Estonian legal order.

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Ülle Madise  
The Chancellor of Justice

## **I. CHILDREN AND YOUNG PEOPLE**

Estonia ratified the UN Convention on the Rights of the Child on 26 September 1991. Under Article 4 of the Convention, States Parties must undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the Convention. In Estonia the function of the independent ombudsman for children is performed by the Chancellor of Justice. The task of the Ombudsman for Children is to ensure that all the authorities, institutions and persons that pass decisions concerning children respect the rights of children and proceed from the best interests of the child.

During the reporting period, the Chancellor initiated 121 proceedings directly concerning the rights of children. Children and young people themselves contacted the Chancellor for protection of their rights on ten occasions. Advisers at the Children's Rights Department of the Chancellor's Office also provided explanations about the rights of the child by telephone.

### **1. Protection of the rights of children and young people**

#### **1.1. Can children be left alone at home or in a car?**

At a petitioner's request, the Chancellor explained whether and at what age children may be temporarily left at home alone.

Under the Family Law Act, parents have the obligation and right to care for their minor child. A parent's right of custody includes, inter alia, the right to decide matters related to the child. On that basis, all decisions relating to the child are made by a parent and in doing so a parent must proceed from the best interests of the child. Thus, a parent may also decide whether a child may stay at home alone. In the case of each such decision the parent must assess their child's maturity and consider the possible security risks.

Legal norms cannot exhaustively regulate all the situations that may arise in life. It is also not reasonable to lay down a precise legal prescription as to the age when a child may be left at home alone. Inevitably, these issues have to be decided on a case-by-case basis and depending on the maturity of the child and the relevant circumstances.

In general, when a child is able to act independently to a certain extent (a child is responsible for his or her behaviour; knows what may be good or bad for health, and how to behave safely; and can manage to take care of themselves) is related to school maturity.

The question at what age a child may be left at home alone also arose in a situation where police officers left children at the age of seven alone in a car while carrying out misdemeanour proceedings with a parent. Specifically, the petitioner was called to a police vehicle to handle paperwork for speeding while the petitioner's two 7-year-old children remained in the car on their own during that time.

Assessment of the situation also depends on the circumstances. In these kinds of cases, no single solution suitable for every situation exists. Undoubtedly, a police officer must ensure that no children are placed at risk while performing procedural steps with a parent. Depending on the circumstances, police officers should find a solution which is safe for the children – e.g. it is possible to allow a person undergoing proceedings to take children away or to draw up procedural documents at or inside that person's vehicle.

The Chancellor did not initiate proceedings in the instant case because during the proceedings of the misdemeanour case the court had already reviewed the issue of leaving the children in a car and had not found a violation.

## **1.2. Children and the media**

On several occasions, the Chancellor was contacted for protection of the rights of children in communication with the media. For example, a parent was dissatisfied that in a television programme a video clip from more than ten years ago was shown where the petitioner was detained as a suspect in criminal proceedings in which they were subsequently acquitted. The programme was seen by the petitioner's child, who was unaware of the criminal proceedings years ago and for whom it was traumatising. In the petitioner's opinion, showing the video footage violated the child's right to inviolability of family and private life and protection of health.

The Chancellor found that even though seeing a parent in such a context may unfortunately have been traumatising for the child, no circumstances relating to the child were described in the programme nor was the child identified. For that reason, no violation of the rights of the child was found. An approach under which disclosure of information about an adult person should always also take into account the potential effect of that information on their next of kin, whether children or even a person's parents or grandparents in fragile health, would be too far-reaching. It would be disproportionate to another fundamental right arising from the Constitution – freedom of speech.

Even though the Chancellor did not find a direct violation of the rights of the child based on any petitions, during meetings with journalists the Chancellor emphasised the importance of respecting the inviolability of a child's family life and privacy and explained that, in addition to parents, journalists also have a responsibility to ensure the rights of the child.

## **1.3. Restrictions on the use of smart devices at school and children's camp**

The Chancellor was asked to give an opinion on the constitutionality of restrictions imposed by schools on use of smart devices. According to the Chancellor's explanation, a school cannot allow a situation where learning and teaching in a classroom become impossible because a pupil disturbs the class by using a smart device, i.e. is not learning and does not allow others to learn either. Moreover, using a smart device to make a recording of another pupil or teacher and publishing it without consent may breach their constitutional rights. Therefore, under legislation it is allowed to take away a smart device for temporary custody if a pupil uses it contrary to the school's internal rules and voluntarily surrenders the device for custody. Current legislation does not grant school staff the right to remove a pupil's smart device by use of physical force.

The Chancellor was also asked about the lawfulness of rules in children's camps restricting the use of smart devices by children. The Chancellor explained that the internal camp rules may regulate the procedure for use of personal smart devices. Conflicts between parents, children and camp organisers arising from use of smart devices can be avoided by discussing all the essential issues before entering into a contract and paying the camp participation fee. The organiser of a children's camp must inform the parent(s) about all the essential rules prior to concluding the contract.



A minor's smart device belongs to them and if the rules of a children's camp establish the requirement of temporary storage of a smart device or leaving it indoors, then this presumes voluntary compliance with these rules by the child. Use of coercion by the staff of a children's camp to take away a smart device is not allowed.

If staff of a children's camp take temporary custody of a smart device or other property, safe storage of the items must be ensured, so that the items are returned to a child in the same condition as they were upon surrender for custody.

#### **1.4. Organisation of tests**

Several petitions by children and young people themselves concerned organisation of tests at school. It was found that several schools still had problems complying with health protection requirements established under the Minister of Social Affairs regulation.

The main problem is that more tests in a study week or day are organised than allowed under the legislation. Requirements for organising tests have been established for protecting the health of pupils. The school must prepare a daily schedule which takes account of pupils' age and abilities and also allows time for rest and hobbies. The school must also arrange cooperation and information exchange between different subject teachers in connection with planning of tuition.

The Chancellor has explained rules on organising tests and opportunities for defending their rights to children and young people. On one occasion, the Chancellor sent a recommendation asking a school to take into account the rules established for carrying out tests when planning the organisation of studies and daily schedules, and to arrange cooperation and information exchange between different subject teachers in connection with planning of tuition.

#### **1.5. Rules of behaviour and dealing with disorder at school**

The Chancellor's advisers also replied to questions relating to dealing, in conformity with the [Law Enforcement Act](#), with instances of disorder at school. Under the Law Enforcement Act in force since 2014, as a rule, the classroom is not considered a public place during a class. Therefore, violations of rules of behaviour during a class are not considered as violations of public order, i.e. a misdemeanour, so that the police cannot be involved in resolving the situation. The statutory definition of the misdemeanour of violating public order established under the Penal Code was also amended.

This does not mean that the legislator has classified insulting a teacher among acceptable behaviour in society. Insulting a teacher, pupil, or any other person is still inadmissible, as it violates the right of the insulted person to honour and dignity.

Penal law measures cannot and should not be used to respond to each infringement at school. The legislator has chosen a solution whereby pupils who disturb a class and insult teachers are not subject to misdemeanour punishments. In these cases, the school can apply sanctions prescribed in the internal rules of the school and in the [Basic Schools and Upper Secondary Schools Act](#). A conflict between a teacher and pupil should be resolved internally at school by involving parents and necessary support specialists. Instead of subjecting a pupil to a misdemeanour fine, conciliation or other steps aimed at conflict resolution should be applied.

The situation is different when a teacher is threatened with violence, for example with death or damage to health. Commission of such an act by a pupil is punishable under the Penal Code, and the police can also be called to resolve the situation. Penal law intervention is also possible in cases where a pupil physically attacks a teacher and causes them pain or bodily injury.

In the case of juvenile offenders, it is primarily important to look into the future and when responding to each infringement think whether and how the state's reaction would help to prevent fresh acts. Surveys indicate that the educational impact of fines is rather small. It is important that a young person understands the consequences of their actions, takes responsibility for their actions and, if possible, compensates or remedies damage to the victim.

### **1.6. Justifying and contesting marks**

If rules of behaviour applicable at school are violated, the consequence may be a reduction of the mark for conduct. In the reply to a petition, the Chancellor noted that assessment, including assessment of behaviour, falls within the competence of the teacher. By giving a mark, a teacher provides feedback to a pupil. In essence, this does not presume that a pupil or their parents should agree with the mark or that feedback which parents do not agree with is false. However, when deciding to reduce a mark or in proceedings contesting that mark the overall principles of fair procedure should be taken into account similarly to administrative procedure. In fair, open and transparent proceedings, explanations about a case should be taken from all those involved, including a child whose conduct mark was reduced. Discussion of a pupil's behaviour with other pupils without that pupil's own participation is contrary to the principles of fair procedure. The weight of information thus collected in assessing a pupil's behaviour is also questionable. In contestation proceedings it is important that a decision should be sufficiently reasoned. For example, why the information and arguments submitted in the contestation were not taken into account should be justified.

### **1.7. Special educational needs: recognition and intervention**

Similarly to previous years, the Chancellor continued dealing with issues of education of children with special educational needs. Schools are concerned that some parents do not acknowledge their child's special need and do not see the necessity to apply remedial measures. Parents are also not sufficiently interested in cooperation with the school. In response to a petition by a school, the Chancellor explained what rights and opportunities were available to the school for applying sanctions in respect of pupils with behavioural problems and for cooperating with the family. The [Basic Schools and Upper Secondary Schools Act](#) provides several possibilities for the school to apply support measures and sanctions on its own initiative. Recognising a child's special educational needs and taking relevant measures is also the duty of the school. The law does not require a parent's consent as a precondition for the school to apply measures, except in the case of transfer to a special class or group. Nonetheless, involving a parent in resolving issues concerning their child is natural.

Similarly to schools, kindergartens must also recognise and act within the limits of their competence if they suspect that a child might have a special educational need. Therefore, the Chancellor reached the opinion that a kindergarten is obliged to assess a child's well-being and notify the parents if their child might be in need of professional assistance. A kindergarten's recommendation to parents to seek the assistance of a specialist for the child violates neither the rights of the child nor those of the parents.

## **1.8. Funding of private schools**

Almost throughout the year the topic of funding private schools came under increased public attention. The Government submitted to the Riigikogu a draft to amend the [Private Schools Act](#) to replace the state's current obligation to participate in covering the operating expenses of private schools with a local authority's voluntary participation in covering operating expenses. The Riigikogu passed the amendment on 7 June 2016.

In the course of proceedings concerning the draft and after the amendment was passed, the Chancellor was asked for an opinion on the constitutionality of the amendment. The Chancellor reached the opinion that since neither the state nor the local authority had any obligation under either the Constitution or international treaties to participate in covering the operating expenses of private schools, the changes in covering the operating expenses of private schools are admissible. Whether and how the state or local authority participates in covering the operating expenses of private schools is a subject of political, not legal, debate. From the legal point of view, the issue of stopping payment of obligatory operating support comes down to whether, after the legislative amendment, private schools have sufficient time to adapt to the new situation. In the Chancellor's opinion, the adopted amendment, which replaces the obligatory payment of operating expenses gradually with voluntary participation, leaves sufficient time for schools as well as local authorities to adapt to the changes.

## **1.9. Accessibility of upper secondary school education**

Upper secondary school education in Estonia today cannot be seen as an "automatic" continuation of education after completion of basic schooling, but is only one of the choices alongside vocational education. Restrictions on access to upper secondary school education arising from this approach have raised questions about the constitutionality of restrictions. The Chancellor received a petition seeking an opinion whether Tartu city was required to ensure a place at upper secondary school for all children within its territory, including children with special educational needs. In the Chancellor's opinion Tartu city made a lawful decision when ensuring student places at an upper secondary school for only 85 per cent of basic school leavers in Tartu. The Constitution does not give rise to an obligation of the public authority to enable everyone to study at upper secondary school. Schools may select pupils based on their knowledge and skills.

## **1.10. Right to tuition in the official language**

Receiving tuition in Estonian is one of the fundamental rights. If previously the Chancellor had been contacted with problems concerning the Estonian language tuition of children with non-Estonian mother tongue, this year a petitioner drew the Chancellor's attention to the fact that a kindergarten in Narva did not sufficiently ensure the right of children with Estonian mother tongue to tuition in Estonian. In her opinion the Chancellor found, in the light of the legislation and the explanations given by Narva City Administration, that in the instant case the city and the kindergarten could not be reproached for violating the language requirements. However, the Chancellor considered it important to note that in Narva and Ida-Viru region in general the opportunities for using and learning Estonian should be expanded. For this, the state needs systematic and long-term action.

### **1.11. The right of child protection workers to involve the police for professional assistance**

During the reporting period, the Chancellor was repeatedly petitioned for verification of the activities of local child protection officials. On several occasions, the Chancellor had to answer the question whether a child protection official may involve the police in performing their duties.

Organising unannounced home visits to verify the well-being of children, and involving the police in this according to need, is in principle admissible under the [Child Protection Act](#) and the [Law Enforcement Act](#). Among other measures, a child protection official may enter private property for the purpose of ascertaining a danger. Thus, a child protection official does not necessarily need the professional assistance of the police for entering premises. However, a child protection official must involve the police if it is necessary to apply direct coercion. The need to use direct coercion may arise, for example, in a situation of contact with persons under alcohol or drug intoxication. A situation where an animal attack may need to be blocked may also occur.

The Chancellor recommended to local authorities that in performing their tasks under the Child Protection Act they should consider carefully, on a case-by-case basis, what would be the least intrusive manner of performing supervision in terms of the rights of children, their parents and other individuals, and to involve the police only if a substantive need for this exists. General and special law enforcement measures may only be used if a problem cannot be resolved by other means.

### **1.12. The right of representation of separated parents and the duty to share with each other information concerning the child**

The Chancellor resolved a petition seeking an answer to the question whether a parent living separately from their child has the right to participate in the process of psychological counselling of the child and to receive information about this. In the instant case, despite opposition by the separated parent, the parent living together with the child had taken the child to a psychologist, who continued providing counselling even after discovering opposition by the other parent who also had the right of custody.

Under the [Family Law Act](#), a parent who has the right of custody is the legal representative of a child, while parents with joint custody have a joint right of representation. The Family Law Act also states that if a parent represents a child independently, third parties (such as the kindergarten, school, or hospital) may presume the existence of consent of the other parent. This means that if a parent contacts a third party with issues concerning the child, the third party is not required to verify whether the will of the other parent coincides with the will of the parent who contacted the third party. The third party is also not required to inform the other parent on its own initiative about its actions. The Family Law Act rests on the premise that parents exercise their joint custody in good faith and by consensus and in the best interests of the child. Based on that presumption, separated parents who jointly share the right of custody of their child should share information concerning their child with each other.

However, the situation is different when a psychologist or other person working with the child learns about opposition or lack of consent of the other parent. In that case, provision of the service should be suspended until the parents reach agreement. However, in the instant case

provision of the service was not suspended, so that the Chancellor recommended to the service provider to observe the provisions of the Family Law Act with respect to the parents' right of custody of children.

If disagreement between the parents would deprive a child of the necessary assistance, each person who is aware of the child's need for assistance has the right and duty to notify it. For this, a child protection official of the child's place of residence should be contacted. First, a child protection official can guide the parents towards agreement. If no agreement is reached, the final instance for resolving the dispute is the court.

## **2. The shelter service**

A shelter is a temporary refuge intended for children in distress who have been, for example, separated from their family or who have left home ("runaways"). In 2016, provisions regulating the shelter service in the [Social Welfare Act](#) entered into force. This is an improvement as previously essentially no regulation of the service existed. Health protection requirements for the shelter service have also been established; however, more detailed standards of the service still exist only as recommendations. Under § 33 (4) of the Social Welfare Act, more specific requirements in terms of the aim, substance and activities of the shelter service may be laid down by regulation. No such regulation existed by the end of the Chancellor's current reporting period.

The main problems of organising a shelter service include the length of children's stay at a shelter, non-conformity of the conditions to the needs of children, overcrowding and unjustified restrictions on communicating with the next of kin.

In 2016, the Chancellor's advisers inspected two places providing a shelter service: the Lilleküla and Männi centres of Tallinn Children's Shelter.

The Chancellor recommended that Tallinn Children's Shelter should comply with the health protection requirements established for premises used for providing a shelter service, and regularly check that persons working with children in the establishment do not have a criminal record for offences listed in § 20 of the [Child Protection Act](#). In addition, both in Männi and Lilleküla shelters, staff dealing with children should be offered training so as to ensure the necessary crisis assistance plus care and development support for children in both shelters. The Chancellor also proposed not to provide the shelter service in the same rooms for children in a crisis situation and children in need of assistance due to failure to comply with the duty of school attendance.

## **3. Inspection visit to school for children requiring special educational measures due to behavioural problems**

In addition to shelters, Emajõe Learning Centre of Maarjamaa Education College (the former Kaagvere Special School) for pupils with emotional and conduct disorders was among children's institutions inspected by the Chancellor's advisers in 2016.

The education centre operates in new buildings opened in December 2015. By moving to new premises the living and study conditions of pupils as well as staff working conditions have improved considerably. Individual planning of rehabilitation services introduced by the centre based on the needs of each specific child deserves recognition.

Even though the living and study environment at the school has significantly improved in comparison to previous times, the Chancellor's advisers found some shortcomings in the school's activities. The inspection revealed that the seclusion room of the centre does not offer sufficient privacy for pupils staying there. Allowing pupils to leave the seclusion room has sometimes been delayed. Placing children in the seclusion room is not always in line with the requirements of the law. Pupils could have more opportunities to communicate with their next of kin. Pupils could also be more involved in deciding matters of direct concern for them. Security checks of children in the education centre still take place without a legal basis.

As a result of the inspection, the Chancellor made [recommendations](#) to Emajõe Learning Centre of Maarjamaa Education College and sent a summary of the inspection visit to the Ministry of Education and Research, the Ministry of Social Affairs and the child protection unit of the Social Insurance Board.

#### **4. Prevention in the field of rights of children and young people**

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

In order to encourage and support children's active participation in analysing and interpreting their rights and duties, an advisory body to the Ombudsman for Children has been established at the Chancellor's Office, comprising representatives of children's and youth organisations. In 2016, the advisory body to the Ombudsman for Children convened once to discuss planned changes in the legislation regulating working of young people. The Chancellor's advisers gave an overview of the current rules regulating work, the changes intended under planned draft legislation and the Chancellor's observations concerning planned draft legislation. A joint debate was held on young people's previous work experience, expectations and justification of the planned changes. In her assessments, the Chancellor takes account of the opinions expressed by children's and youth organisations.

During the reporting period, the Chancellor's advisers carried out several training events on the rights of the child, delivered lectures and presentations to specialists working with children, e.g. to school psychologists and child psychiatrists about the developing abilities of a child and the right of decision, as well as training days for child protection and social welfare officials. As in recent years many complaints have arisen from parents not satisfied with the activities of child protection officials in resolving disputes concerning rights of custody and visiting rights in respect of children, the Chancellor's advisers decided to offer training on this topic to child protection officials. At the training seminars the Chancellor's advisers provide an overview of the key principles of the Convention on the Rights of the Child and, on the basis of practical examples, explain how to resolve disputes concerning rights of custody and visiting rights proceeding from the best interests of the child. So far, training sessions have been offered to child protection and social welfare officials in Tallinn and Põlva County. These training sessions will continue.



To raise awareness of the rights of the child, in cooperation with the University of Tartu law faculty journal *Juridica* and the Office of the Chancellor of Justice a [Juridica special issue on the rights of children](#) was published. This is accessible without subscription for all interested readers. Several articles have been written in the light of the [Child Protection Act](#) that entered into force in 2016. Among other topics, the articles deal with intervention in family life and maintaining order at school.

#### **4.1. Special programme at the PÖFF film festival**

Sometimes the language of film is needed to talk honestly and openly about issues important for children. For the fifth time, the children's and youth film festival 'Just Film' held as part of the PÖFF Film Festival included a special programme on the rights of the child, prepared in cooperation between Just Film, the Chancellor of Justice, the Ministry of Justice and the Estonian Union for Child Welfare.

Through documentaries as well as feature films, hundreds of interested viewers could sympathise with the worries and joys that children all over the world experience in their lives. Screening of the selected films was followed by debates with invited experts and recognised personalities analysing the films together with viewers. The films and debates focused on topics such as ill-treatment, sexual offences, stereotypes, gender roles, exclusion due to special needs, sexual self-discovery, loneliness, poverty, and humiliation. Alongside complicated issues, films also demonstrated admirably warm and trusting relationships between children and parents and the brighter side of life.

The Ombudsman for Children can further contribute to making society more child-friendly by recognising good people who have done something remarkable either together with children or for children. At the merit awards event „Lastega ja lastele“ (With and For Children) called into life by organisations championing the interests of children and held for the third time this year on the International Day for the Protection of Children, recognition was given to those who by their new initiatives or long-term activities have significantly contributed to the well-being of children.

#### **4.2. The Chancellor's report to the UN Committee on the Rights of the Child**

Article 44 of the UN Convention on the Rights of the Child obliges States Parties to report every five years to the UN Committee on the Rights of the Child on implementing the requirements under the Convention. The Committee on the Rights of the Child is a body established under the Convention and overseeing the implementation of the Convention. Alongside the report submitted by the government of a State Party, an independent institution performing the functions of an ombudsman for children and non-profit associations active in the field of the rights of the child may also submit an alternative report to the Committee. The Committee examines the government report and the alternative reports and arranges an oral hearing. The reporting procedure completes with issuing of recommendations to the government.

The Estonian Government submitted to the Committee as a single document the [third and fourth periodic report on the implementation of the Convention on the Rights of the Child](#) in June 2014. The Chancellor of Justice submitted to the Committee her own [report on the implementation of the Convention on the Rights of the Child](#) in November 2015.

The Estonian Government submitted its first report to the Committee in 2001 and the Committee issued its [recommendations](#) to Estonia in 2003. The recommendations concerned non-discrimination, involvement of children and taking account of their views, improving dealing with cases of ill-treatment and abuse of children, improving the situation of children raised in substitute homes and children with disabilities, adapting school curricula for pupils with different needs, dealing with the causes of dropping out and absence from school, and so on.



## II. DIGNITY AT THE END OF LIFE

Decent living conditions must be ensured for all people. Particular attention should be paid to those who cannot fend for themselves and are therefore at risk of becoming victims of ill-treatment.

The need for help normally increases towards the end of an individual's lifespan. Advanced age does not mean that someone loses the right to decide issues concerning them or that they can be treated like an object. Care for the elderly should not lead to degrading their human dignity. On that basis, dignity at the end of life falls under the Chancellor's special attention. Psychiatric patients and clients of care homes also need special protection. The Chancellor scrutinises treatment of the elderly in general care homes but also how psychiatric hospitals and special care homes ensure establishment and prevention of unnatural deaths occurring in those institutions.

During the reporting period, the Chancellor inspected eight general care homes (so-called old people's homes): [Aarike Care Centre](#), [Paunküla Care Centre](#), the general care department of [Jõgeva Hospital](#), [Tartu Care Home](#), [Sõmerpalu Care Home](#), [Saverna Care Home](#), [Iru Care Home](#) and [Oru Care Home](#).

Residents of general care homes are adults who need support in their daily lives and are unable to cope independently at home. Young or middle-aged people may also find themselves in this situation as a result of illness or trauma, but the majority of the residents in general care homes are the elderly in need of daily support. According to data from the Ministry of Social Affairs, 10 803 clients received the general care service in 2015.

As a rule, the Chancellor carries out inspection visits to general care homes without advance notice. A health care expert was involved in an inspection visit on seven occasions and a representative of the Medicines Agency on six occasions. The inspections involved examining the rooms and documentation plus interviews with selected staff and residents.

The inspections focused on whether the freedom of movement of individuals had been restricted (e.g. locking them in their rooms, restraint), whether clients were treated with dignity (e.g. unjustified interference in privacy, unsanitary living conditions), and whether any risks to their life and health existed (e.g. number and presence of staff, nursing and care, meals, issues related to medication, access to healthcare).

The clients of several general care homes praised the dedication and consideration of the staff, delicious food, as well as a nice environment in natural surroundings. A very good impression was left by Tartu Care Home.

However, shortcomings found during inspections prove that the Chancellor's special attention to general care homes is justified. Problems include ensuring decent living conditions, unlawful restriction of freedom of movement of clients, incorrect handling and administration of medication to clients. Insufficient numbers of care staff, in particular at night, also causes concern as it directly affects the quality of service provided.

Clients in need of assistance may find themselves in difficulty if they cannot signal their need to a carer. Indirectly, insufficiency of staff also causes other problems, such as restraining clients inadmissibly in a situation where staff are unable to handle a person otherwise. Even

though the law does not lay down the required client-staff ratio for general care homes, the number of staff must nonetheless be sufficient. What might be considered sufficient depends on the clients, characteristics of buildings, and other factors. Insufficient staff numbers, just like conditions not adapted to the needs of clients, cannot justify restricting the freedom of clients or degrading their dignity. As a result of inspection visits to Sõmerpalu Care Home, Saverna Care Home and Iru Care Home, the Chancellor drew attention to the need to increase the staff presence. Additionally, the health care expert participating in inspection visits to Aarike Care Centre and Oru Care Home found that, in view of the profile of the clients and their considerable need for external assistance, increasing the number of carers should be considered.

Decent living conditions are inconsistent with the smell of urine or smoke, lavatories which are difficult to access and not adapted for those with special needs, absence of hot water, stale air, overcrowding, unsuitable food (e.g. solid food which an elderly person cannot chew, menu not taking into account needs arising from diabetes or heart disease), or lack of privacy during hygiene procedures. Problems with ensuring privacy existed in Saverna Care Home, Aarike Care Centre, as well as Iru Care Home and Oru Care Home.

Social welfare institutions also often breached the requirements for handling and administering medication. There were instances where carers had access to prescription medications (e.g. strong sedatives or sleeping pills) which were administered to clients in case of need without a doctor's prescription (Aarike Care Centre, department of general care services of Jõgeva Hospital, Paunküla Care Centre, Sõmerpalu Care Home, Oru Care Home). In such a situation the risk arises that medication is used for an inadmissible purpose (e.g. to restrain a client or handle them more easily). Medication which has expired or has not been stored in the required conditions, which could also be found in the care homes inspected, may pose a serious risk to life or health. The Chancellor drew attention to the need to comply with the requirements for handling medications in Aarike Care Centre, Paunküla Care Centre and Oru Care Home.

Staying in a general care home is voluntary. It is inadmissible to restrain persons either physically (locking or tying up) or by using medication. Yet in several of the general care homes inspected the Chancellor's advisers found the practice of locking doors of departments as well as rooms, thus impeding residents from freely moving around. In the case of Paunküla Care Centre and Saverna Care Home, the Chancellor recommended them to immediately stop locking persons in their rooms. As regards the locked front door of the department at Iru Care Home for clients with a dementia diagnosis, the Chancellor asked for a solution to be found which would help ensure the safety of the clients without restricting their liberty.

Freedom of movement was restricted mostly for clients with dementia and serious memory problems whose behaviour could be problematic and unpredictable and who are difficult to handle. There is insufficient staff as well as lack of knowledge for this. Living conditions in general care homes mostly do not correspond to the needs of those with dementia. According to the Ministry of Social Affairs, at the end of 2015 there were 640 clients with dementia receiving a general care home service. There is no suitable service for persons with dementia in Estonia, as is also admitted in the [Welfare Development Plan](#).

The solution cannot be an even more extensive application of involuntary treatment or special welfare services provided under a court order, or unlawful restriction of the freedom of movement of persons in general care homes. In the case of clients with dementia whose behaviour is unpredictable, a regular routine of activities and a structured day containing sufficient activities within the abilities of clients can be of help. It might also be helpful to

change the sleep regime of such clients. Creating a suitable environment also facilitates handling clients with dementia, a positive example of which is the circular house suitable for persons with dementia, which has been created in the [nursing and care centre at Viljandi Hospital](#).

It should be admitted that it is complicated for smaller general care homes to create a separate department for a couple of clients with dementia. Therefore, it might be feasible to consider establishing a separate service for persons with the most problematic dementia-related behaviour. This would offer suitable living conditions for handling these individuals and also a sufficient number of staff with appropriate training.

Ensuring decent living conditions in social welfare and health care institutions also calls for attention to dealing with cases of unnatural death in these institutions.

## **1. Deaths in psychiatric hospitals and special care homes**

In recent years, the Chancellor has collected information on unnatural deaths in psychiatric hospitals and special care homes. A death is considered unnatural if it occurs due to an accident, medical treatment error, or other external cause (including a client's own behaviour). Mostly such incidents can and should be prevented. Here are some examples. In 2013, a resident with schizophrenia committed suicide at a special care home. Even though the service provider was aware that the client was suicidal, insufficient supervision was provided. In summer 2015, a patient restrained to the bed and left without proper supervision died in the seclusion room of a psychiatric hospital. The death was caused by another patient staying in the same room.

Special care homes are part of the national social welfare system, which should help people with special needs to better cope with their lives. A psychiatric hospital is also not a place where a person is sent to die. This role in our system is performed by some nursing hospitals adapted to the needs of the dying. Establishing deaths and the factors causing death should be based on uniform rules in hospitals. No case should be overlooked (for example because the death occurred in a nursing hospital). Each unnatural death should immediately be notified to the supervisory authority.

Insufficient investigation of deaths in hospitals and social welfare institutions negatively affects the environment in which people stay and endangers their life. Police investigation alone is not sufficient. Apart from finding the culprits, it is at least equally important to create conditions so as to avoid similar incidents in the future. To this end, it is necessary to improve the organisation for establishing deaths and intensify supervision by the state.

In a letter to the Minister of Health and Labour, the Chancellor described the shortcomings which impeded guaranteeing the right of patients to life at a level required by the Constitution. Specifically, the [Establishment of the Cause of Death Act](#) did not set sufficient prerequisites for establishing and investigating unnatural deaths and thereby preventing them in the future (including in psychiatric clinics and nursing hospitals). The need for an autopsy is decided solely by a deceased person's last doctor, which raises the issue of a risk of conflict of interests. At the same time, hospitals are not obliged on their own initiative to notify the Health Board, which has the duty of supervision in these cases. This situation gives reason to doubt whether sufficient attention is paid to causes of death and whether the statistics compiled, indicating only occasional unnatural deaths over the years, actually hold true. The Ministry of Social

Affairs agreed with the Chancellor's conclusions and has started working on a Draft Act to amend the Establishment of the Cause of Death Act.

Supervision over health care providers is performed by the Health Board. The Chancellor made a proposal to the Health Board to check for compliance with the requirements for provision of involuntary psychiatric care, paying particular attention to establishing the causes of unnatural deaths, and ensuring disclosure of generalised information on the cases. The Health Board agreed with the proposal and conducted inspection visits at five psychiatric hospitals providing involuntary care. The inspections revealed several shortcomings. A precept was issued to a hospital where a violation had resulted in a person's death.

With regard to special care homes, the Chancellor made a similar proposal to the National Social Insurance Board as the agency responsible for ensuring fundamental rights and freedoms in this field. The investigation revealed that even though the Social Insurance Board had received information on the deaths, unfortunately the Board often failed to investigate cases and implement appropriate preventive measures. In its reply, the Social Insurance Board agreed that an analysis of cases would enable prevention of unnatural deaths at least to a certain extent.

Information and explanations to the wider public about problems concerning deaths in social welfare and health care institutions was provided by the Chancellor's advisers in an [article](#) published in the daily *Postimees*, and in the [radio programme](#) *Reporteritund* on the *Vikerraadio* public station.

The Chancellor also [debated](#) issues of dignity at the end of life at the Opinion Festival (*Arvamusfestival*) in 2016.

### III. PREVENTION OF ILL-TREATMENT

The Chancellor's activities include protecting the fundamental rights of individuals in closed institutions. This takes place through resolving complaints received from institutions and carrying out inspection visits to institutions. A closed institution is a place where persons have been deprived of their liberty either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence. Institutions of this kind are numerous and diverse – prisons, police detention facilities, detention facilities for aliens, health care institutions providing involuntary treatment, and the like.

#### 2. Police detention facilities

During the reporting year, in addition to the detention centre of the migration bureau of the information management and procedural department of the Police and Border Guard Board (PBGB) the Chancellor inspected seven police detention facilities: the [Pärnu](#), [Kärdla](#) and [Haapsalu](#) cellblocks of the police stations of the West Prefecture of the PBGB, the [Tartu](#), [Valga](#) and [Võru](#) cellblocks of the police stations of the South Prefecture of the PBGB, and the cellblock of [Rakvere](#) police station of the East Prefecture of the PBGB. A medical expert was involved in the inspection visits to Rakvere and Pärnu cellblocks and the detention centre of the migration bureau; specialists from the Rescue Board and the Medicines Agency were involved in the inspection visit to the Tartu cellblock; and a Rescue Service specialist was involved in the inspection of the Haapsalu cellblock.

The majority of the places of detention inspected had problems with enabling detained persons to spend at least one hour daily in the open air as required by law. Police facilities in Pärnu and Haapsalu lacked any possibility to be in the open air. Valga and Võru police facilities had arranged for spending time in the open air by means of a so-called walking cell, which the Chancellor has not found to be a sufficient solution. The exercise yards in Rakvere and Tartu police stations had no benches. It is particularly regrettable that no exercise yards have been built at several newly constructed police facilities (including Võru).

The cellblocks of several of the police stations inspected are located in older police buildings with inadequate living conditions. Examples of this are police buildings in Haapsalu and Pärnu but also in Valga. The ventilation in Pärnu cellblock cannot be considered sufficient; there is also no room for short-term visits. Several cells in Haapsalu had no window and the cells lacked necessary fittings. In a relatively newer police building in Tartu the hygiene corner in the cell was not secluded from the rest of the cell by a wall or a privacy screen, the furniture was rickety or damaged; the walls and ceiling were dirty. Some cells had no window.

Drawing up documents concerning detainees in cellblocks has improved over time. However, the health condition of detainees upon their admission to the cell had often not been documented in sufficient detail. In the Chancellor's opinion, this is the kind of data the proper recording and maintenance of which is most important in terms of preventing and ascertaining ill-treatment. Therefore, it cannot be considered right that in the initial health check report some fields are filled out by detainees themselves, in particular if the person is intoxicated when filling out the report, or if fields concerning injuries in the report have been left blank. The expert participating in the inspection of the Pärnu cellblock also drew attention to shortcomings in the recording of health data.

The Valga, Rakvere and Kärđla cellblocks had expired medicines which the Chancellor asked to be properly destroyed. At Rakvere, prescription medicines were stored in unlocked drawers. The cellblocks at Rakvere and Tartu police stations had not provided detainees with the opportunity to read national daily papers, as required under current legislation.

### **3. Units of the Defence Forces**

Three inspection visits to units of the Defence Forces were carried out during the reporting period. During the visit to the [Guard Battalion](#) the Chancellor did not find any noteworthy shortcomings.

In the [Headquarters and Signal Battalion](#), the Chancellor found that squad leaders who were conscripts impeded access to the doctor if in their opinion a conscript was visiting a doctor too frequently. It was also found that both in the Headquarters and Signal Battalion and Kuperjanov Infantry Battalion superiors were sometimes taking custody of the conscripts' mobile phones. The current law does not enable taking custody of conscripts' mobile phones.

### **4. Psychiatric hospitals**

During the reporting period, the Chancellor inspected four hospitals providing in-patient psychiatric care: [Wismari Hospital](#), [Ahtme Hospital](#), the [psychiatric clinic of the South-Estonian Hospital](#) and the [involuntary treatment department of the psychiatric clinic of Viljandi Hospital](#). One of the inspection visits was focused on the [conditions of providing involuntary treatment](#) and one occasion involved [assessing compliance with previous recommendations](#). A doctor specialised in psychiatry and forensic psychiatry participated as an expert in all the inspections.

Hospitals had several problems with observation rooms and their usage. The observation rooms in Wismari Hospital and Ahtme Hospital were unsafe and the privacy of persons under restraint was not guaranteed. The partition wall in the observation room at Wismari Hospital did not separate the room from floor to ceiling, so that a patient in an acute condition could climb over it. Privacy screens in the observation room at Ahtme Hospital did not prevent a patient under restraint from being seen by others. There was no constant supervision over a mechanically restrained patient. The observation room at the involuntary treatment department of Viljandi Hospital was used as a regular ward, which might become an obstacle to using the observation room for its designated purpose in case of sudden necessity.

Wismari Hospital and the psychiatric clinic of the South-Estonian Hospital had shortcomings with documenting the use of means of restraint. Ahtme Hospital failed to notify the Health Board about the application of means of restraint for an ongoing period of more than 24 hours, which was briefly discontinued for feeding or washing the patient. Patients in the acute department of Ahtme Hospital were not allowed to use the toilet during restraint; instead, diapers or a bedpan were used for all patients, which patients perceived as extremely humiliating.

The Chancellor found different problems with ensuring privacy in psychiatric hospitals. The toilet cubicles in the acute department of Ahtme Hospital had no doors and the door of the shower room could not be locked while inmates were taking a shower. In the involuntary treatment department at the psychiatric clinic of Viljandi Hospital, a member of staff was always present during the washing of a patient, while the inside of the bathroom could be seen



from the corridor of the department, and patients had to communicate with their next of kin in the presence of staff.

Patients at the acute department of Ahtme Hospital and the involuntary treatment department of Viljandi Hospital had to wear hospital clothes.

The South-Estonian Hospital had problems with availability of a psychiatrist for making decisions on involuntary treatment, and at least one case of providing in essence involuntary treatment had not been properly recorded.

In the involuntary treatment department of the psychiatric clinic of Viljandi Hospital providing a specific involuntary treatment service, the liberty of patients was restrained without justification – patients were locked in their wards for the night, and at least one patient was locked in their ward during the day. The department was overcrowded and the living conditions did not comply with requirements. Staff numbers at the involuntary treatment department could have been higher and staff could have more training opportunities. In the Chancellor's opinion, decisions of the medical committee on continuation of involuntary treatment examined during the inspection had not been drawn up in sufficient detail. The description of a patient's status was superficial and did not reveal a link of a patient's condition to the level of threat posed by them. Two psychiatrists from the same hospital decided on continuation of treatment. To ensure the objectivity of the decision, an independent and impartial expert should be involved in the medical committee's decision.

## **5. Prisons**

To date in 2016, three prisons still remain in Estonia. Harku and Murru Prison, which operated as a prison for elderly male prisoners and women, was closed on 1 June 2016. Male prisoners were transferred to Tartu, Tallinn and Viru Prisons. Prior to the transfer of female prisoners to Tallinn Prison, the Chancellor asked the prison service to pay particular attention to creating suitable conditions of detention for women (including juvenile female prisoners). The Chancellor made [recommendations](#) concerning issues relating to living conditions and hygiene, separation of male and juvenile prisoners, staff composition, organising visits, and searches.

The absolute prohibition of long-term visits for persons remanded in custody, established under § 94 (5) of the [Imprisonment Act](#), which for many years had caused concern for persons in custody and their next of kin, has now reached the Supreme Court. In the opinion of the Chancellor, § 94 (5) of the Imprisonment Act prescribes unconstitutionally, without the right of discretion, a rigid prohibition on long-term visits for all persons remanded in custody. The provision does not give any consideration to the reasons for being remanded in custody, the facts or the progress of a criminal case and the ensuing actual necessity to restrict communication by a person held in custody with their family and next of kin. The automatic restriction without exceptions also fails to take account of the length of custody and the resulting gradually increasing interference with the fundamental right to family life.

As usual, prisoners and persons in custody also complained to the Chancellor about the behaviour of prison officers, prisoners' obligation to work and working conditions, catering, communication with persons outside the prison, seizure of prohibited items, and living conditions.

The following overview describes some of the Chancellor's main opinions.

While investigating a petition by a prisoner, the Chancellor found that the exercise yards of the S building of Tartu Prison did not have a roof to offer protection from inclement weather. Absence of a roof makes a daily one-hour stay in the open air, to which prisoners are entitled, extremely inconvenient, for example, in the event of rain. The Chancellor asked that outdoor exercise yards be covered with a partial roof and that benches be provided in the yards. Tartu Prison included provision of benches and building shelters in its plans.

The Chancellor analysed use of security cameras in the so-called common areas of the prison (e.g. corridors, exercise yards, and the like) and explained to the petitioner that a sufficient legal basis exists for such electronic surveillance, as well as a delegation norm for the Minister of Justice for more precisely regulating the organisational aspects of surveillance. Video surveillance is necessary to enable the prison service to protect the life and health of persons in the prison (including from assault); to intervene in activities which may endanger life and health (combating an offence) and subsequently to catch the offender. However, electronic surveillance, similarly to any other security measure, must be proportionate. Moreover, neither the [European Court of Human Rights](#) nor [international organisations](#) aimed at protection of the rights of detained persons have found use of electronic surveillance in common areas in prisons inadmissible.

During the reporting year, the Chancellor has also repeatedly assessed catering in prisons.

The Chancellor is of the opinion that regular, sufficient daily food meeting the energy needs of detainees forms an important part of treatment of detainees in line with human dignity.

The Chancellor emphasised to Viru Prison and the South Prefecture of the PBGB the need for cooperation in catering for detainees under escort from prison to a police detention facility. The recommendation was motivated by a case where an individual was repeatedly left without lunch when escorted from Viru Prison to the cellblock of Jõgeva police station of the South Prefecture of the PBGB. Prisons and the police have prior information on plans when and where a detainee is to be escorted. If food cannot be served on site in the detention facility in the usual manner due to the fact of escort, it should either be packed for take-away or the situation should be resolved in another suitable manner (e.g. by providing dry-food rations). In the Chancellor's opinion, how information about catering for someone moves from one institution to another should be set out clearly and unequivocally. No obligation of notification can be assumed or expected on the part of a detainee in person. In the instant case, the prison failed to supply the police with information about catering for the petitioner, and the police did not check whether the petitioner had received lunch. The Chancellor asked Viru Prison and the PBGB to improve cooperation to ensure that detainees are provided the necessary meals while under escort. The institutions modified their practice so that catering for all those under escort either with hot meals or dry-food rations is guaranteed.

In connection with the wish of a prisoner of the Muslim faith in Tartu Prison to receive food compatible with their religion, the Chancellor found that the prison cannot be required to incur unreasonably burdensome efforts and expenses in arranging catering compatible with a person's religion. However, catering taking account of the petitioner's religion can be arranged without excessive expense by combining the prison's daily conventional and vegetarian menus. Only meals containing pork should be replaced by vegetarian food. Based on the Chancellor's assessment, all prisons modified their existing catering arrangements for Muslim prisoners.



With regard to communication with the world outside the prison, two cases deserve to be highlighted.

The Chancellor found that in handling a so-called maxi-letter sent to a prisoner from abroad, Harku and Murru Prison erroneously relied on the requirements established for a domestic maxi-letter in the “Standard terms and conditions for universal postal service by Estonian Post Ltd”. Under the standard terms, the maximum size of a domestic maxi-letter is smaller than the maximum size of an international maxi-letter. In the case of a domestic postal item, its size would have exceeded the established requirements and the postal item should indeed have been treated as a parcel, which prisoners are not allowed to receive. In the case of a postal item from abroad, the prison should have proceeded from the dimensions established for an international maxi-letter. The Chancellor asked that the postal item be released to the petitioner and that, in the future, the requirements established in the standard terms of postal service be more carefully observed.

The Chancellor explained to Viru Prison, which had denied a prisoner a contact visit (i.e. in an open area without a separating barrier) with the prisoner’s spouse and son, that the prison has considerable discretion, including in allowing a short-term contact visit and identifying the danger involved. A decision not to allow such a visit may not be arbitrary and must be justified. The Chancellor found that the decision of Viru Prison to deny a short-term contact visit contained significant errors of discretion and was thus not lawful. A mere reference to acts committed by the applicant and the conclusion drawn on that basis concerning a potential security risk is not sufficient to demonstrate that discretion was exercised lawfully. The prison must assess details of the potential danger involved in a short-term contact visit. Assessment would include, for example, aspects such as an applicant’s behaviour during imprisonment, relationships between the applicant and those wishing to visit them, the risk of visitors bringing banned items and substances to the prison.

The Chancellor found that the practice of guards in Viru Prison to always visually observe health examinations of prisoners taking place in cells is incompatible with the principles of privacy and confidentiality. Non-compliance with these principles prejudices the independence of prison medical staff, as well as observance of international recommendations for prevention of ill-treatment. The presence of guards during medical examination of prisoners may be justified in certain cases. The security of the medical staff and of the prison outweigh the rights of a prisoner as a patient to privacy and confidentiality if the prisoner’s behaviour during imprisonment has been defiant, threatening or violent, as well as when the prisoner has possessed prohibited items or has tried to obtain possession of such items. The mere fact that a prisoner has been categorised as highly dangerous based on risk assessment, as well as a prisoner’s anticipated negative attitude to work, as was the case with the petitioner, are not sufficient to justify a prison’s interference in doctor-patient confidentiality. The Chancellor asked the prison in the future to consider, on a case-by-case basis, justification for the presence of guards during medical examinations, as well as possible alternatives to immediate presence, e.g. a guard being within hearing range.

## **6. Detention facilities for aliens**

The extensive migration crisis, the ongoing war in Ukraine, and other developments destabilising the international environment could in the next few years bring to Estonia more war refugees, economic refugees and others who do not fit within current official quotas. The number of persons entering Estonia illegally may also increase. Under international law, the

destination country – in the present context Estonia – must deal with the status and future of these persons and must do so in compliance with generally recognised rules and conventions. In Estonia, the Chancellor of Justice supervises that state authorities treat all persons lawfully, including those who have arrived illegally or under as yet undetermined circumstances.

In response to a petitioner staying at the accommodation centre for asylum seekers, the Chancellor found that the accommodation centre had acted lawfully in ensuring the petitioner's security. After a conflict between the petitioner and the petitioner's room-mates, the staff of the centre talked to the parties to the conflict and informed the Police and Border Guard Board about the incident. The accommodation centre also offered the petitioner, both prior to and after the incident, an opportunity to move to another room, which the petitioner declined as they wished to get a room of their own. The Chancellor explained that a solution to a conflict cannot always be changing a room or room-mates. The centre has a limited number of rooms. When providing accommodation, in addition to differences in people's origin the fact that those arriving in the centre are of different ages should also be taken into account. Residents include women, men, and families. Persons with special needs (e.g. in a wheelchair) may also arrive at the centre. Therefore, it might not be possible to accommodate everybody in single rooms or enable someone to move together only with room-mates pleasing to them. However, the accommodation centre for asylum seekers has a duty to prevent conflicts. Precautionary action includes, for example, ascertaining people's preferences for a room and potential room-mate(s), as well as accommodating persons with similar origin, language, culture and religious background in the same room, as far as possible, recognising frictions between people and offering conciliation, as well as giving consent to change a room or room-mates, if possible.

## **7. Detention centre**

For various reasons, the Chancellor paid increased attention to the [detention centre of the migration bureau of the information management and procedural department of the Police and Border Guard Board](#) (the detention centre). The reasons included the increased workload of the detention centre as well as riots at the centre. A medical expert was also involved in inspecting the centre.

As a result of the inspection, the Chancellor found that, despite the statutory requirement and the Chancellor's previous recommendations, the centre had not been able to organise the opportunity for minors in the age of compulsory school attendance staying at the centre to attend school. According to the available information, as of autumn 2016 minors at the centre should get an opportunity to start receiving education at Tabasalu Upper Secondary School.

The Chancellor asked the PBGB to pay more attention to shaping the living environment of children at the centre, and to create more opportunities for all residents of the centre for meaningful free-time activities. The PBGB has, indeed, contributed much to creating opportunities for spending free time, and progress has been remarkable. Among other things, negotiations are under way to find an opportunity for small children of the families staying in the centre to attend kindergarten.

The Chancellor emphasised the need for catering to take account of the dietary habits of aliens staying at the centre, and asked that using other inmates as interpreters in daily communication, in particular in providing health care services, be avoided.

The Chancellor asked that creating additional opportunities for inmates to communicate with their family and next of kin, e.g. through a specially adjusted computer and by means of relevant communication software (e.g. Skype) be seriously considered. Unfortunately, the PBGB did not consider this to be feasible.

The Chancellor also formed an opinion with regard to events occurring at the detention centre in November 2015, which attracted considerable attention. The Chancellor found that information exchange in the process of putting down a protest by inmates had been insufficient, so that the form of intervention chosen did not correspond to the actual situation. By the time active intervention by police officers occurred, the situation had already calmed down significantly, but the police failed to take this into account. Means of binding were used in respect of all persons in the respective part of the building of the centre, regardless of their role in the preceding events. Essentially, the PBGB agreed with the Chancellor's opinion.

The Chancellor explained to an alien from the centre who had contacted the Chancellor that the centre had ensured them sufficient access to drinking water. The investigation revealed that the concern expressed in the petition had to do with obtaining hot water from water dispensers. For various reasons, residents of the centre could not always get as much hot water from the water dispenser as they wanted, or as quickly as they wanted. Access to water from the ordinary water supply, with drinking water quality, is ensured for residents round the clock in washrooms. Water taps are in working order and provide both hot and cold water and the water is drinkable.

## IV. MIGRATION CRISIS

In 2015, a record number of new immigrants, generally called refugees in different contexts, arrived in Europe. Estonia remained aside from the main migration routes but migrants still arrived here in the process of secondary migration. The aim of asylum seekers was to move from the initial reception countries to Finland, with Estonia serving as a transit country for this. The Police and Border Guard Board detained the asylum seekers.

Due to the migration crisis, various pieces of European Union legislation had to be changed. Laws in Estonia were modified as well. Furthermore, on several other issues a debate in society erupted which to date has not reached an outcome in the form of amended or new legislation. Almost all debates concerned the individual's fundamental rights and liberties and often also the foundations of our legal order. On account of her official duties, the Chancellor of Justice stands in the middle of all these discussions both domestically and internationally.

In autumn 2015, the Riigikogu began proceedings for a Draft Act amending the Grant of International Protection to Aliens Act and related Acts. The Chancellor attended a Constitutional Committee meeting where she drew attention to the need to respect the right of appeal arising under the Constitution.

Under the European Union legal order, Estonia's scope for deciding the issue of individuals having the right of entry to the country is to a large extent limited. Therefore, the fact of Estonia having no right of veto on the right of entry of asylum seekers to the country is not in itself contrary to the Constitution. However, the issue of conformity of reception of asylum seekers with the Constitution may arise when the number of people to be received becomes disproportionately high in view of the size of the Estonian population. As regards the number of individuals to be received based on decisions to date, that number has not yet been reached.

### 1. Legal status of Muslim arbitration tribunals

In Estonian society, the migration crisis is also viewed in the context of a likely increase in the local Muslim community. The potential risks, in particular the threat of terrorism due to radicalisation, were also dealt with in more detail by the Security Police Board in its latest annual report. Various problems caused by clashes between different cultural and religious customs to which no solution can be found based on current experience also deserve attention. Finding a balance between protection of privacy, freedom of belief, expression and religion and ensuring public order is one of the biggest challenges facing the world today. The Chancellor plays a key role in providing answers to these issues in Estonia.

The Chancellor organised several debates on the subject, involving attendance of representatives from the Estonian Council of Churches as well as the department of religious affairs of the Ministry of the Interior.

At a roundtable on 30 March, the focus was on the issue whether the Estonian legal order can be reconciled with implementation of Islamic Sharia law. Usually the issue is treated from the angle of penal law. However, the debate focused rather on the application of foreign law, recognition of marriages, and arbitration tribunals implementing Sharia law. Currently, no such arbitration tribunals exist in Estonia, but the [Code of Civil Procedure](#) does not rule out arbitration proceedings in which rules of Sharia law are taken into account.

The Estonian courts may quash the decisions of these arbitration tribunals if a decision conflicts with Estonian public policy or good morals. Furthermore, Estonian law requires that parties to arbitration proceedings are treated equally. Both parties must be given an opportunity to express their opinion. These restrictions help to avoid problems in Estonia which have arisen in some other countries, e.g. the United Kingdom, where fundamental rights of women have been breached in divorce cases.

As regards recognition of polygamous marriages, Estonia can follow judicial practice in France, which follows the principle that such a marriage is deemed to be valid only if the first spouse is a foreign citizen and the subsequent marriage was concluded before the spouses came to reside in France. This principle helps to avoid situations where multiple marriages infringe the rights of an Estonian citizen. Following French judicial practice also helps to ensure that a husband who is a foreign citizen does not abuse the opportunity provided under Sharia law to terminate the marriage by simplified procedure.

Sharia law as a concept is itself subject to various definitions, so that it is often practicable to talk about the law of a specific foreign country which has been affected by the rules of Islam. In that case, the question arises when the application of that country's law in Estonia can be ruled out on grounds of violation of public policy. Under the General Part of the Code of Civil Procedure Act, foreign law is not applied if the result would be manifestly contrary to fundamental principles of Estonian law (public policy). Thus, it is not the foreign rules that have to be in conflict with fundamental principles of Estonian law but the result that their application would lead to in a specific court case. Accordingly, the Estonian legal order offers several possibilities to ensure that implementation of rules influenced by Islamic law does not violate fundamental rights. However, this is so only if the courts interpret the law in conformity with the Constitution.

## **2. Banning the burka and other issues related to aliens**

The Chancellor of Justice also provided an opinion on the intention expressed in drawing up a Draft Act on amending the Penal Code and the Law Enforcement Act prepared by the Ministry of Justice, in which it was intended, inter alia, to regulate wearing of typical Muslim face veils (the so-called burka ban). For this purpose, the proposal was to supplement the rules of behaviour in public as well as non-public places with rules banning behaviour not characteristic of social space in Estonia. Debates over similar legal and cultural intersections continue in order to find solutions to the most diverse problems in the realm of protecting rights and liberties.

Alongside the above issues, for the time being mostly theoretical, the Chancellor has also been faced with several practical cases concerning the rights of aliens; these are also topical from the point of view of the migration crisis. For example, the Chancellor had to deal with several issues related to the day-to-day arrangements for foreigners placed in a detention centre and living in the accommodation centre for asylum seekers.

The Chancellor received two petitions concerning the activities of the Police and Border Guard Board (PBGB) in connection with applying for different documents. In that respect, the Chancellor did not find a violation of the rights of the petitioners. One petition concerned the procedure for extending a temporary residence permit in a situation where a stateless person who had been holding an Estonian residence permit was living in another European Union member state together with a child who was an Estonian citizen. The PBGB finally issued a residence permit to the petitioner, but in the petitioner's opinion the proceedings had taken too

long, unwarranted procedural steps had been performed and the officials had acted in an overbearing manner. According to the explanations by the PBGB, the petitioner's communications had contained contradictory claims unsupported by documentation. Therefore, it had been necessary to carry out additional procedural steps, adding to the length of proceedings. The substance of oral conversations could not be clearly established in retrospect, but according to assurances from the officials they had been communicating politely with the petitioner.

The Chancellor was also petitioned by a parent in connection with applying for an alien's passport for their child. In the course of application, an issue arose whether the child had acquired the citizenship of a foreign country by birth and whether it was impossible for the child to obtain a foreign document. Whether issuing an alien's passport was possible depended on these circumstances. This meant that it was necessary to ascertain the relevant facts, but the petitioner decided to drop the case.

The Chancellor also received petitions contesting the conduct of criminal proceedings in respect of persons who had illegally crossed the border. In one petition, it was found that § 258 of the Penal Code and the Code of Criminal Procedure failed to take account of the guarantees established under Article 31 of the [Convention Relating to the Status of Refugees](#). Under Article 31 para. 1 of the Convention, the Contracting States do not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence. Article 1 of the Convention establishes the definition of the term "refugee". Section 258 of the Penal Code prescribes criminal liability for illegally crossing the state border or temporary border line of the Republic of Estonia. Under the Penal Code, only unlawful acts are punishable, and unlawfulness may also be precluded by an international convention or international custom. The Chancellor found that the presence of the features established in Article 31 para. 1 of the Convention Relating to the Status of Refugees may constitute a circumstance precluding unlawfulness. If a circumstance precluding unlawfulness appears, criminal proceedings should either not be initiated or, if pending, terminated. No conflict with the Constitution was found.

Concern about Estonia's future is understandable. Therefore, it is important to underline that war refugees reaching Estonia must respect all Estonian legislation. Everything they do in Estonia must comply with our Constitution, statutes and rules of public policy. No grounds for changing those rules exist.

## V. FUNDAMENTAL RIGHTS IN A DIGITAL SOCIETY

The Chancellor of Justice upholds the principle that digital services in Estonia should be organised on fair, reasonable and logical grounds and in line with constitutional rights and values.

Estonia's place among the vanguard of digital countries calls for no explanation. In addition to bits and bytes, the hallmark of quality of a digital society is also reflected in the conformity of the state's digital services with different fundamental rights. The state must constantly seek a balance between privacy and the right to informational self-determination and other fundamental rights or constitutional values, be they freedom of information, internal security, rights and liberties of other persons, or freedom of entrepreneurship.

The reporting period is indeed characterised by numerous petitions in which individuals expressed concern not only about excessive surveillance, disclosure of personal data, granting or obtaining access to personal data, but also about the conditions for using e-services.

### 1. Electronic surveillance v. privacy

#### 1.1. Collection of communications data v. protection of privacy

The questions whether, under what conditions and to what extent collecting, processing and retaining electronic communications data should be allowed are in the focus of public attention in Europe as well as globally. The reason is the ever increasing threat of terrorism, as well as the 2014 judgment of the Court of Justice of the EU, which declared invalid the EU data retention directive.

During the previous reporting period the Chancellor reached the opinion that collection of electronic communications data is not incompatible with the Constitution, but the conditions for retention, access limitations, use and release of data might need to be stricter. Section 111<sup>1</sup> of the [Electronic Communications Act](#) lays down the obligation of a communications undertaking to retain for a period of one year electronic communications (telephone, mobile phone, internet) data (e.g. the time of the communication, location of the user of the communication, technical details of the communication) for all communications sessions and all service users, and make the data available at the request of a competent state authority. Data concerning the content of a communication (content of the message) are not to be retained.

The Chancellor now gave an assessment with regard to the part of processing communications data which includes transmission of data from a communications undertaking to a competent state authority and further processing of data by that public authority. The current regulative scheme governing processing of communications data is inconsistent and incomplete and should be revised in its entirety. It is necessary to consider supplementing the legal guarantees available for a data subject in the processing of communications data. First of all, it is necessary to consider establishing an obligation to obtain authorisation from a court or other independent supervisory body prior to processing communications data and to notify individuals subsequent to processing communications data, as well as establishing, as far as possible, a clear and narrow statutory definition of the grounds for requesting data and the range of data subjects.

The Chancellor asked the executive and the legislator to carry out an assessment of the rules for collecting and processing communications data by state authorities, and to use its conclusions in legislation.

## **1.2. Electronic surveillance in prison and in hospital**

The development of information technology has created a possibility to replace manned supervision with electronic surveillance to a certain extent. The Chancellor reached the opinion that the use of electronic surveillance in common rooms (corridors, walking areas) in prisons has been in line with the Constitution.

In the opinion of one individual petitioning the Chancellor, video surveillance installed in hospital wards was not constitutional. In that person's opinion, neither a sign on the door of a department nor the internal rules of a psychiatric hospital notifying about video surveillance authorise a hospital to monitor what is going on in the wards.

As Pärnu Hospital Foundation is a legal person in private law and provision of treatment also took place within a legal relationship under private law, forming an opinion with regard to this issue is not within the Chancellor's competence. By way of exception, the competence extends to the rights of persons referred for treatment under a court order without the consent of the patient.

## **1.3. Public transport electronic ticketing system**

When Tallinn introduced free public transport in 2013, the media covered the data protection and information security related shortcomings of the information system. Particular focus was on monitoring the movement of passengers and retaining related personalised information. Last year the Chancellor also received a request to review the public transport electronic ticketing system of Tartu city even before its launch. In 2015, Tartu concluded a memorandum of mutual intent with the winner of the 2015 *Ajujaht* brainstorming competition to be the first in Estonia to introduce the Jiffi "hands-free" system. The Chancellor did not ascertain that the system could allow monitoring the movement of persons.

# **2. Digital communication with the state**

## **2.1. Eesti.ee user conditions**

Although internet communication between the state and the citizen is faster, cheaper and more environmentally friendly than exchange of letters on paper, it should not be presumed that everyone can and wants to communicate with the state electronically. Therefore, electronic administrative procedure is allowed only with the consent of the individual or under legislation.

Under the user conditions for the notification service of the state portal [www.eesti.ee](http://www.eesti.ee) as modified in December 2015, by using the service a person also grants consent for electronic service of documents via the e-mail address @eesti.ee.

One may ask whether consent for the electronic administrative procedure may be granted by inaction, i.e. tacitly. Nonetheless, modification of the user conditions was lawful because it is not documents that are sent to the e-mail via the notification service but a link to an electronic environment in which a person can access the document. The document is deemed to be served



on a person only when they enter the environment and open the document in the environment. Thus, under the revised user conditions it is not possible to serve a document on a person electronically without the person actually consenting to it.

## **2.2. Service of a cautionary fine**

A cautionary fine imposed in misdemeanour proceedings is also served on a person electronically. This is done if a person has activated their @eesti.ee e-mail address. For protection of personal data, the fine notice is encrypted. The encrypted document can only be opened by the addressee of the letter with the cryptographic key of their ID card, i.e. PIN-1. If a person fails to react to an electronically sent fine notice, it is sent by registered letter.

The Chancellor replied to a person who had forgotten to pay a cautionary fine and enquired why no repeat electronic notice or a reminder is sent. Although convenience of proceedings is necessary and commendable, the individual still has a duty of diligence as well. Each individual still has to comply with deadlines and fulfil their obligations when communicating with the state electronically.

## **2.3. Signing a fine notice**

Tallinn municipal police follow the practice according to which officials do not sign fine notices themselves. The electronic misdemeanour register information system used by the municipal police ensures a solution where a fine notice can only be drawn up by an official who has entered the system with an ID card. The person ascertaining a violation and the person drawing up the fine notice are not the same. As the time of drawing up and signing the fine notice is recorded and traceable, such a technical solution for signing is not unlawful.

In 2015, approximately 36 000 fine notices were drawn up and issued this way. In the opinion of the Chancellor, the need for a local authority to optimise its working procedures is justified, assuming that all the statutory requirements are thereby complied with.

## **2.4. Time of receipt of documents in an e-File**

Advocates communicate with courts via the e-File information system (AET). A time limit applies for reception of procedural documents sent by the court. Even if one document has not been received within 30 days, access to all previous materials sent to the same e-File is also lost in the AET.

Is such a restriction of an advocate's participation in judicial proceedings via an information system application constitutional? The Chancellor found that the purpose of preventing judicial proceedings from being dragged out, protecting the interests of clients and disciplining the participants in the proceedings is legitimate. The deadlines imposed for this purpose (20 or 30 days) do not unconstitutionally restrict an advocate's rights. However, the analysis revealed a number of human errors and technical glitches in the AET, and in the opinion of the Chancellor it would be worth the effort to eliminate them.

## **2.5. Service of procedural documents**

The [Code of Civil Procedure](#) provides for a possibility of a document served (both by ordinary post and e-mail) to be automatically deemed served within three working days of its being sent.

Such a solution may endanger the right of a person to defend themselves in court and ensure the real equality of the parties in adversary civil proceedings. In the opinion of the Chancellor, the three-day deadline imposed is only one alternative to achieve smooth and speedy adjudication of justice. However, the court should always and in the first place keep in mind the general requirement that the recipient of a document should be able to examine its substance prior to a court hearing.

## **2.6. Identification of a person in online voting**

In digital communication with the state, in certain cases the identity of a person must be ascertained electronically. A petitioner asked the Chancellor's opinion on identifying a person in online voting (i.e. internet-voting or I-voting). The ID card is suitable for identifying a person casting an online vote during elections, because the ID card as a digital personal identity document is connected to its owner through several technical and legal measures. Use of an ID card for identifying an online voter and verifying an online vote is described at <http://www.vvk.ee/valijale/e-haaletamine/>.

## **2.7. Revocation of Mobile-ID certificates**

A Mobile-ID service has appeared alongside the ID card, thus also enabling convenient use of Estonian e-services abroad. According to the [Certification Centre](#), in 2015 the number of Mobile-ID users grew by 40 per cent in Estonia, exceeding the threshold of 75 000 users in January this year. Altogether, over 25 million Mobile-ID transactions were carried out in Estonia last year. The Mobile-ID as a public service relies on a mobile communications service under private law and can only be provided in the case of existence of a contract for provision of a communications service. If the contract for provision of a communications service is terminated, the Mobile-ID service can no longer function either.

A petitioner contacting the Chancellor found that the procedure for revoking a Mobile-ID certificate and applying for a new certificate was inconvenient, and the mobile operator had revoked the certificate without the knowledge of the Mobile-ID user. No infringement of rights was found in the specific case. However, the Chancellor admitted that there may be some room for simplifying and clarifying the procedures for applying for and revoking a Mobile-ID.

## **3. Disclosure of personal data**

### **3.1. Quality of data in lists of members of political parties**

Estonia has chosen an organisation of society with as much transparency as possible. Unlike in many other countries, names of members of political parties here are published on the [internet](#). The overriding aim of disclosing names is to ensure transparency of public authority and prohibition of conflicts of interest. Disclosure also concerns rights relating to informational self-determination of members of political parties, so that correctness of disclosed data is of crucial importance. Data must also be accurate, up-to-date and correct in line with international, EU and national data protection legislation.

Regrettably, the Chancellor found several problems with disclosure of lists of members of political parties. For example, among the data of persons who left a political party years ago, their affiliation is shown with another political party with which the previous party has today merged but of which those persons themselves have never been a member. In the case of several

persons, the register does not reflect that the person had previously been a member of another political party. Showing incorrect data about persons may breach their rights.

### **3.2. Disclosure of personal data in the register of economic activities**

In the interests of reusability of public sector information, several databases are fully downloadable and the data contained in them can be processed electronically. Therefore, upon disclosure of personal data on the internet the state must exercise particular care to ensure its lawfulness. In the register of economic activities, which is downloadable for everyone as an Excel file, the personal data of more than 600 radio amateurs were disclosed: their names, personal identification codes, home addresses, e-mails, and contact phones. Radio amateurs are not economic operators. Amateur radio communications means radio communications by radio amateurs for self-development and communication for personal, non-profitable radio-technical objectives. Additionally, the data of private individuals owning watercraft or aircraft and holding an amateur radio communications licence for these purposes were disclosed.

The register of economic activities is a database intended for keeping records of economic activities of undertakings and exercising supervision over them. The need for the state to have an overview of radio amateurs, locations of use of radio stations and contact data is understandable. However, radio amateurs cannot be considered economic operators and their data made available for the public on the internet.

### **3.3. Protection of personal data of individuals having recourse to the municipal police**

It is also necessary to refrain from disclosing on the internet the data of persons who have addressed the authorities with a request, application or request for assistance. The Chancellor had to deal with a case where a person who had recourse to Tallinn Municipal Police (MuPo) was contacted by a journalist who was aware of the fact of the person having recourse to the MuPo as well as of the substance of the request. The MuPo document register disclosed (due to a temporary technical problem) the first names and surnames of all the persons who had recourse to it. The substance of the request was transmitted to the media by a MuPo official. The Chancellor explained to MuPo the provisions regulating transmission of restricted data and asked MuPo to apologise to the person and arrange awareness-raising for its officials.

### **3.4. The issue of disclosure of personal data in the commercial register**

The correctness of disclosure of personal data was also called into question by a sole proprietor who was irritated by the fact that their contact and residence data had spread to numerous online catalogues covered by the [www.google.com](http://www.google.com) search engine.

Providing the location and address of one's undertaking is obligatory under the Commercial Code and this information is public. This is intended, inter alia, for protection of the interests of the undertaking's clients and partners. If a sole proprietor registers their location at their home address, the residence data would indeed become public through the commercial register, and while it is understandable that this may be irritating, it is not unconstitutional. In Estonia, the land register has also been made public on the internet.

### **3.5. Disclosure of salary information of state and local government staff**

Questions arise not only in connection with active disclosure of data on the internet but also with responding to requests for information in relation to data. The [Civil Service Act](#) passed on 13 June 2012 significantly reduced the number of officials and public servants and provided that staff engaged mostly in ancillary activities are hired as contractual employees. In the case of officials and a very narrow range of employees the duty of disclosing their salary data on the internet was established. A petitioner contacting the Chancellor raised the issue of whether in the case of responding to a request for information the salary information of contractual employees of state and local government bodies had to be released in personalised form. That is the opinion expressed by the Data Protection Inspectorate in its general guidelines for public information.

The Chancellor contacted different institutions to initiate a debate on the issue. The Riigikogu Constitutional Committee found that disclosure of salary information of officials is justified because they exercise public authority and have a relationship of trust with the state. However, personalised disclosure of salaries of other employees may interfere with their right to privacy.

However, with regard to the issue raised by the petitioner *in abstracto* a specific court dispute arose when Tartu Rural Municipality Administration contested a precept issued by the Data Protection Inspectorate to release personalised salary information of employees to the person requesting the information. Therefore, the Chancellor had to terminate the proceedings.

### **3.6. Google.com displays personal data removed from the original source**

Transparent organisation of society is also served by the principle established with the entry into force of the Public Information Act to publish judicial decisions online. Under the Code of Civil Procedure, a person may request removal of their name from a court decision. A petitioner contacting the Chancellor had problems with removal of their name from a court decision because a decision published in 2005 was re-published on several other websites. In addition, the search engine [www.google.com](http://www.google.com) displays the website of the State Gazette (*Riigi Teataja*) even though the petitioner's name has been removed from the relevant website. The Ministry of Justice affirmed the existence of the problem, noting that in the experience of the State Gazette service a person's data can again be found via the Google search engine after a while.

The Chancellor has no competence to exercise supervision over compliance with a person's fundamental rights and liberties by private persons. Considering that the legislator has granted persons the right to request removal of their name, it cannot be claimed on the basis of the Constitution that noting a person's name and its disclosure on the internet in a judicial decision in a civil case would be manifestly excessive and thus inadmissible. The Ministry of Justice admitted the need to enter into negotiations with Google as a third party to find a more permanent solution, and it considered the Data Protection Inspectorate as the most appropriate institution for this.

## **4. The right of the private sector to access to personal data**

### **4.1. The interest of insurers in data in the national health information system**

Health care providers are obliged to forward to the national health information system information concerning all cases of treatment, prescriptions and other health data of all

inhabitants. The purpose of obligatory aggregation of health data is to create better possibilities for treatment. An equally important consideration is use of data for research, promoting public health and developing related innovative solutions. Allowing unjustified and disproportionate access would infringe individual privacy and trust in the information system could disappear. This, in turn, would endanger better use of the opportunities offered by the eHealth system.

On 29 October 2015, the Data Protection Inspectorate contacted the Chancellor with an extraordinary report and asked for assistance in connection with a Draft Act in the Riigikogu. Specifically, in Draft Act No 84 SE concerning modifications to the system of capacity for work the plan was to allow insurers access to the health information system. In the Riigikogu Social Affairs Committee, the Chancellor supported the positions expressed by the Data Protection Inspectorate. On 9 November 2015, the Social Affairs Committee announced that insurers would not, after all, be allowed access to the national health information system.

#### **4.2. The right of private car parks to receive data on vehicle owners or authorised users**

The legal aspects of parking in private car parks have been unclear for years. Whether acceptance of standard terms displayed on an information board amounts to entering into a contract is an issue that has been clarified through court disputes. The dispute over the issue of remedies available to a private car park in the event of failure to pay for a contract is still ongoing. In 2013 the court of appeal judgment entered into force in the *Citypark* case in which the court held that the Estonian Road Administration does not have to release a vehicle owner's data to a private car park. A parking contract is entered into with the person actually driving a vehicle, who is not necessarily its owner or authorised user recorded in the register. Moreover, private car parks can also use alternatives, such as turnpikes.

However, a Supreme Court judgment of 23 March 2016 compels a reassessment of the current practice. A private car park may assume that the owner of a vehicle is the driver of the vehicle and a party to the parking contract if the car park has included such a clause in its standard terms. If necessary, the vehicle owner can refute the assumption and submit to the car park information about the person who actually parked the vehicle.

The private car park contacting the Chancellor asked for an opinion on whether the practice of the Road Administration concerning refusal to release register data was lawful and whether regulation allowing such practice was constitutional. Extensive additional material attached to the petition revealed that, apart from the Road Administration, courts also refused release of data within the pre-trial procedure of taking evidence. The attached court orders even revealed the annoyance of some judges that a private car park repeatedly addressed the court with the same issues, as according to the opinion of the courts the pre-trial taking of evidence procedure was not intended for ascertaining the identity of the defendant. The private car park also gave a specific example where even towing away a vehicle might not be an effective remedy. The specific vehicle was parked on different dates (altogether 28 different instances!) in private car parks without paying the parking fee. The amount of the accumulated contractual penalty was 840 (28x30) euros. At one point the car park towed away the vehicle. The owner failed to appear, even by the time the car park brought the case to court ten months later. According to the private car park, disabliging drivers forcefully pry open the turnpike or slip out of the car park without paying by tailing another vehicle. Wheel-locking devices mounted on vehicles are also broken.

In the opinion of the Chancellor, data on vehicle owners or authorised users should still be released to private car parks under the [Traffic Act](#). Information technology solutions used in Estonia make it possible to guarantee that private car parks cannot start making enquiries based on mere allegations, but release of the data would be linked to fulfilment of a number of conditions.

#### **4.3. Use of population register data for a direct mailing campaign**

The population register is a database containing key personal data of Estonian citizens, EU citizens with a registered residence in Estonia, and aliens with a residence permit or right of residence in Estonia. The [Population Register Act](#) allows release of data in the case of a legitimate interest. The Chancellor was asked to review release of population register data for the purposes of a direct mailing campaign. Some weeks after the birth of a child the petitioner received an advertisement from Juku toy centre with the petitioner's address but no name. The company AS Andmevara which performed the function of the authorised processor of the Population Register until the end of 2015 affirmed that they had forwarded to the Estonian Post 10 000 addresses of families with children in the age range of 0–10 resident in Harju, Tartu, Pärnu, Viljandi, Ida-Viru and Lääne-Viru counties for the provision of a single direct mailing service. The address data were issued in the following format: city, village, small town (official city district, small settlement), traffic area (street), house number or house name, apartment number or name of part of the building, postal code. No other data contained in the population register were released.

In the opinion of the Chancellor, in the instant case the data were released in compliance with fundamental rights and freedoms and in line with the Population Register Act. The data were used in depersonalised form, they were not forwarded to the company whose advertising brochure was sent by direct mail, and additionally they were destroyed after use. This conforms with the principles under the [Personal Data Protection Act](#) to always use personal data to the minimum extent necessary and delete data no longer needed.

The Chancellor drew the petitioner's attention to the right to prohibit use of their data in direct mailing campaigns. The Ministry of Internal Affairs website contains the following explanation for imposing a restriction on access: "To impose a restriction on access, a signed application should be submitted to the Population Register's authorised processor SMIT which is located at Mäealuse 2/1, 12618 Tallinn. The application may be submitted either on-site, by post, or electronically at the e-mail address [abi@rahvastikuregister.ee](mailto:abi@rahvastikuregister.ee). The application may also be submitted to a city or rural municipality administration which, in turn, transmits it to the authorised processor."

## **5. Miscellaneous**

Internet freedom or the right of access to the internet has become an extremely important right in digital society. However, the right is not unlimited and access to websites may be restricted if good reasons for doing so exist. For example, it is justified and proportionate to block illegal remote gambling domains as this is necessary for enforcement of the requirements under the Gambling Act and protection of gambling addicts.

The Chancellor investigated a case where an ill-intentioned employer entered in the employment register a random person who was thereby deprived of early-retirement pension. The entries have legal meaning with an impact on different decisions.

Even though under the law data from the employment register are used as proof of a person's employment when granting an early-retirement pension, the Social Insurance Board also relies on other evidence (e.g. social tax returns) and pays the pension if assessment of different evidence leads to the conclusion that no employment relationship exists in practice. If a fictitious entry in the employment register cannot be rectified despite efforts by the person and the authority (e.g. attempts to contact the employer have failed), the Social Insurance Board contacts the Tax and Customs Board. The latter can ascertain a fictitious entry within tax proceedings and rectify the entry in the employment register based on a notice of tax assessment.

Many state agencies have created social media accounts to provide better information to their target groups. Therefore, it is not surprising that the Chancellor also received some complaints concerning "infringements" committed in the Facebook environment. This time the petitions concerned blocking of individuals from community groups created upon private initiative in respect of which the Chancellor lacks competence. However, it may be assumed that in the future the Chancellor will also have to form opinions regarding activities by a public authority in the social media environment.

## VII. LOCAL AUTHORITY

During the reporting year, the Chancellor dealt with several issues concerning the relationships of local government bodies with state authorities or the local population.

The Chancellor reached the opinion that combining the mandates of a member of the Riigikogu and a member of a municipal council is in itself permissible under the Constitution – it is a political choice with arguments both for and against.

With regard to rural municipality or city development plans, the Chancellor noted that holding a public debate is an essential requirement for involving the local population not only at the time of adopting a development plan but also at all instances of its amendment regardless of the substance of the amendment.

The Chancellor acknowledged local government units which, on their own initiative, have established participatory budgeting procedures for the better involvement of local people. At the same time, the Chancellor advised municipal councils to establish all the essential conditions for a participatory budgeting procedure as clearly as possible, so as to ensure the clarity and integrity of the procedure and prevention of its misuse.

In the field of planning it is increasingly common that issues of spatial planning of a certain area come down to more than communication just between landowners interested in real estate development and the respective local authority. In planning larger sites with a significant impact on the surrounding environment as well as planning the public space around them, an important role is played by the open procedure carried out by the local authority in a transparent and participatory manner in which local people and associations which they have joined can also have a say. Clashes of different interests and wishes in that situation are understandable. An example of such a situation is the planning of the Kalasadam area in Tallinn. Of course, it is not always possible to implement all ideas at the same time to their full extent. In such a situation the local authority has the crucial task of honestly listening to the opinions of all parties and to find a solution which best balances all the different interests. It is necessary to take into account the private interest of landowners to use their property as well as the public interest that planned construction should fit in the environment, and that some public space in the form of parks, squares or other similar facilities is preserved.

Some of the Chancellor's opinions concerned relationships between local government bodies. The Chancellor explained that the municipal council may delegate a rural municipal administration to act as a general meeting of a legal person in private law established by the particular municipality, while taking into account the limitations prescribed by the law (as regards the municipal administration's participation in a legal person in private law, deciding issues placed within the exclusive competence of the municipal council under the law may not be delegated to a rural municipality or city administration). The Chancellor reached the opinion that under certain conditions a municipal council may also impose the duty of responding to interpellations by members of the council on the heads of collegiate bodies of the council in respect of issues falling within their area of activity. During the reporting year, the Chancellor repeatedly pointed out the need to interpret and apply council legislation concerning administration of municipal property in conformity with legal restrictions and requirements.

The Chancellor recognised the initiative of local authorities to publish a local newspaper with the aim of effectively implementing the duty to inform the local population (in particular in



smaller local government units where local news has little likelihood of crossing the news threshold of a national newspaper). However, the Chancellor noted that some newspaper space should be left for representatives of the council opposition. Allowing the opposition to present their opinion in the newspaper is of considerable importance in terms of the transparent exercise of local authority.

The Chancellor reached the opinion that interpretation of the Animal Protection Act and the Infectious Animal Disease Control Act should rely on the overall purposes of these Acts and the right of the local authority to regulate local issues. Deciding the rules for keeping cats and dogs is resolving a local issue. This allows for regional variations, i.e. solutions taking into account the interests and needs of a particular local community. By taking account of animal keeping principles established in a local community, general values and principles of public policy and provision of public services and amenities, the local authority can specify in animal keeping regulations whether and under what conditions cats and hunting dogs moving around on their own may be treated as stray animals.

The Centre Party faction of the Riigikogu asked the Chancellor to verify the constitutionality of the removal from office of the Tallinn mayor and chairman of the city council under a judicial order during pending criminal proceedings. The Chancellor in her reply reached the opinion that the possibility under § 141 of the Code of Criminal Procedure to remove from office a rural municipality or city mayor and a member of a rural municipality or city council who is suspected or accused of a criminal offence with the aim of securing criminal proceedings is constitutional. An official can be removed from office only by the court, having first assessed whether by continuing in office the person could commit further criminal offences or whether their continued stay in office could prejudice criminal proceedings. An independent judicial review must, inter alia, ensure that city and rural municipality leaders are not removed from office for political motives. A judicial decision may be appealed, i.e. in case of necessity it is subject to review by a superior court. The Chancellor issued a similar opinion in constitutional review case No 3-4-1-30-15. In that case the Supreme Court dismissed the Tallinn City Government's request, which was similar in substance to the request by the Riigikogu Centre Party's faction to the Chancellor of Justice.

As new subject-matter the Chancellor received different petitions concerning administrative territorial reform. The Chancellor found that in changing administrative territorial organisation at the initiative of a municipal council the effective law allows setting 16 years of age as the minimum age for participation in ascertaining the opinion of the local inhabitants if simultaneously no alteration of the boundaries of administrative units is taking place within the meaning of § 7 (2) of the Territory of Estonia Administrative Division Act. However, the Chancellor decided not to initiate proceedings based on a petition with regard to one specific merger procedure because problems concerning the merger decisions made by the municipal council raised in the petition could still be raised and resolved through the county governor (and then through the Ministry of Finance and the Government of the Republic) in the framework of ongoing merger proceedings.

In connection with a request from Kõpu Rural Municipal Council to the Supreme Court to declare the Administrative Reform Act entering into force on 1 July 2016 unconstitutional, the Chancellor reached the [opinion](#) that, in general, the conditions for forced merger of local government units were compatible with the Constitution, but the close time interval between elections to municipal councils and a forced merger raises some issues.

An unconstitutional situation may occur in local government units which refuse to merge voluntarily and the possible contestation of the forced merger remains too close to the municipal council elections of October 2017. In the worst case, it will not be clear by that time for which local government unit a municipal council is being elected and what the size of the council is. This is contrary to the principles of democracy and legal certainty. People are entitled to elect a council every four years under clear conditions. The maximum limit for covering the costs of a merger also raises a constitutional problem.

The Chancellor welcomed the situation where an important yet controversial issue in society receives an assessment from the Supreme Court.

## **VIII. LAW ENFORCEMENT AGENCIES**

### **1. Protection of fundamental rights and freedoms in covert processing of personal data**

As a rule, Estonian law enforcement agencies carry out surveillance in conformity with all applicable legislation. The Chancellor found some minor substantive shortcomings with regard to the reasoning and thoroughness of surveillance authorisations issued in 2013–2014. The Chancellor also recommends that law enforcement agencies be more mindful of the duty to notify individuals of covert procedural steps concerning them.

The Chancellor continues to pay particular attention to guaranteeing fundamental rights and freedoms by agencies responsible for covert processing of personal data and supervision of that process. Through independent, regular and effective supervision the Chancellor plays an important, sound and yet specific role in the system of overseeing surveillance measures.

### **2. Specific nature of supervision by the Chancellor of Justice**

Alongside internal administrative (surveillance and security agencies, the prosecutor's office), parliamentary (Security Agencies Surveillance Select Committee of the Riigikogu) and judicial oversight, supervision by the Chancellor differs first and foremost by its comprehensive scope, independence and regularity. The Chancellor's competence includes individual petitions as well as own-initiative supervision. This provides the Chancellor with a unique opportunity to oversee all issues essential in terms of fundamental rights in this field.

Problems relating to compliance with fundamental rights may derive, for example, from insufficient legal regulation or incorrect practice. In both cases the Chancellor can identify the problem and bring it to the attention of all agencies involved in covert processing of personal data. The Chancellor's competence also includes supervision of supervisors, if necessary, influencing and directing them to comply with their duties. An inseparable part of supervision includes making proposals and recommendations to prevent both unintentional risks as well as risks arising from potential abuses leading to unjustified interference with the rights of individuals. Even when the actions of surveillance and security agencies are formally lawful, the Chancellor tries to ensure that fundamental rights of individuals are reckoned with to the maximum possible extent.

The Chancellor proceeds from the premise that, as a rule, the individuals concerned are not aware of possible breaches of rights in this field and cannot have recourse to the court in order to protect their rights. By putting herself in the position of individuals whose rights and freedoms may be interfered with in the course of covert data processing, the Chancellor can also scrutinise issues or problems which the court need not always review or would not even be aware of to review.

### **3. Inspection visits to surveillance agencies**

During the preceding year, the Chancellor carried out inspections in the prefectures of the Police and Border Guard Board, the Central Criminal Police, the Tax and Customs Board, and the department of prisons of the Ministry of Justice. The Chancellor's advisers reviewed protection of fundamental rights and interests of individuals who have become subjects of covert data

collection (surveillance) within criminal proceedings as suspects of a criminal offence or as third persons (including completely by chance). Inspection visits involved a review of 148 surveillance files and conversations with officials of surveillance agencies. The choice of files to be reviewed was made from files opened in 2013–2014 in which active proceedings had been completed by the time of the inspection. Approximately 40% of the files (or more in some agencies) were reviewed.

The Chancellor’s advisers primarily assessed whether surveillance in the course of collecting information about a criminal offence had been lawful, which includes unavoidable and necessary, in each specific case, and how the surveillance agencies complied with requirements to notify individuals of surveillance. Reports of inspection visits were also sent for information to the Chief Justice of the Supreme Court. By agreement with the Supreme Court, the plan is to cover these topics within the training curriculum for judges in the future. All proposals in the reports derived from specific facts found on review of surveillance files.

As the material reviewed mostly contained information classified as state secrets or designated for internal use by the agency concerned, detailed summaries of inspection visits and recommendations are available only to those agencies.

#### **4. Surveillance authorisation**

Any surveillance measure can be deemed lawful and admissible only when the prosecutor’s office or the court has issued formal and reasoned authorisation for it.

The majority of authorisations reviewed during inspections were reasoned. It was clear why evidence to verify suspicion of a criminal offence could not have been collected without a particular surveillance measure and interfering with the fundamental rights of the individuals concerned. The principle of *ultima ratio* in implementing surveillance measures was particularly scrupulously observed by some services of the South Prefecture and the Central Criminal Police where surveillance was carried out for investigating complicated, large-scale criminal offences, including serious criminal offences committed by organised criminal groups.

Unfortunately, some surveillance authorisations lacked reasoning to substantiate the necessity for and unavoidability of carrying out surveillance measures. Occasionally, an authorisation lacked the arguments required by law to confirm the necessity for surveillance in respect of third parties not directly suspected of a criminal offence. Under § 126<sup>2</sup> (4) of the [Code of Criminal Procedure](#), surveillance, including covert surveillance or wire-tapping, may also be conducted in respect of a third party (including a victim) about whom there is good reason to believe that that third party interacts with a suspect in criminal proceedings or with a person about whom there is justified reason to believe that they have committed or are committing a particular criminal offence, communicates information to that suspect, assists them or allows them to use his or her means of communication.

More serious in terms of protection of fundamental rights are those cases where authorisation for surveillance was issued but did not conform to the statutory basis enabling the specific surveillance activity. For example, in a case within the jurisdiction of the East Prefecture, wire-tapping of an individual was carried out under court authorisation within proceedings conducted for the sole purpose of finding a wanted person, although the actual investigation was over. In a case involving the Tax and Customs Board, a surveillance file revealed that by relying on practice arising from erroneous interpretation of the law, postal items were covertly examined

and their contents replaced based on a prosecutor's authorisation even though the law (§ 126<sup>6</sup> (5) Code of Criminal Procedure) unequivocally states that such an authorisation may only be granted by the court.

## **5. Surveillance of an individual not indicated in authorisation by prosecutor's office**

In the majority of cases, all the surveillance agencies inspected conducted surveillance in line with the designated purpose. As a result of the inspections, the Chancellor's advisers did not find any activities carried out without authorisation by a prosecutor or a preliminary investigation judge.

However, review of the surveillance files at the North, East and South Prefectures and the Tax and Customs Board revealed instances where the conditions of covert surveillance (§ 126<sup>5</sup> Code of Criminal Procedure) set out in a surveillance authorisation were not fully observed. Sometimes individual surveillance of those not directly covered by the specific prosecutor's authorisation was also carried out in the course of the activity. For example, surveillance was carried out in respect of individuals who had met with a crime suspect even though the surveillance authorisation only concerned the suspect. The Chancellor drew the attention of the surveillance agencies to the need always to observe the conditions and scope of a specific surveillance authorisation when conducting surveillance. In addition to complying with time limits, the conditions imposed by the issuer of an authorisation with regard to a specific activity must also be strictly observed.

## **6. Notifying individuals of surveillance**

Under § 126<sup>13</sup> (1) of the Code of Criminal Procedure, each individual in respect of whom surveillance was conducted as well as the individual identified in the course of proceedings and whose private or family life was significantly interfered with by surveillance must immediately be notified of the time and type of surveillance concerning them. Individuals to be notified may include a suspect, an accused, a victim, a witness or any other person who need not even know about the conduct of criminal proceedings as, depending on the circumstances, each of them may become a subject of surveillance. Only under specific circumstances prescribed by law may notification be postponed with the permission of a prosecutor or, in certain cases, the court.

Only in the Central Criminal Police were no significant problems found as to compliance with the duty of notification. In all other agencies, instances could be found of failure to timely notify individuals of surveillance concerning them. Some individuals were not notified at all (seven such instances were found) or an inadmissibly long delay with notification occurred without permission from a prosecutor's office. Inspection visits revealed a total of ten instances where notification was delayed without justification by at least a year or even longer.

On a positive note, prosecutors who carefully supervised compliance with the duty of notification and who provided relevant specific guidance to surveillance agencies merit recognition. In addition, most surveillance agencies have functioning regular, multi-tiered internal audit systems ensuring additional assessment of surveillance activities independently of the person conducting the proceedings, which helps to prevent major errors in surveillance and maintaining records of it. For example, in the South and West Prefectures such an internal control system has helped to prevent instances where individuals would otherwise not have been notified of surveillance activities at all.

## **7. Disclosure of surveillance information containing personal data**

The Chancellor also resolved several individual petitions in connection with surveillance. For example, based on a petition by an individual the Chancellor had to verify the lawfulness of the activities of the Security Police Board with respect to disclosure of personal data received in the process of covert collection of information. The specific case concerned transmission to Estonian public television of a recording made in the course of surveillance. In the opinion of the petitioner, the Security Police Board had no legal basis to disclose information collected within criminal proceedings, including handing over to Estonian Television a video recording obtained through surveillance. In the petitioner's opinion, data transmission in this form significantly interfered with their fundamental rights.

However, no breach of the petitioner's rights was found in the instant case. When releasing to the media surveillance information containing personal data, the surveillance agency is competent to decide which of the pertinent rights and interests deserving protection carries most weight in a specific case. In the Chancellor's opinion, in accordance with the provisions of the Personal Data Protection Act and the Code of Criminal Procedure, when releasing to the media the recording of surveillance the Security Police Board had weighed, on the one hand, the existence of (overwhelming) public interest and, on the other hand, the level of significance of interference with fundamental rights (harm to the person's rights and interests) resulting from disclosure of the data.

## IX. EQUALITY AND EQUAL TREATMENT

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

Under the [Chancellor of Justice Act](#), with regard to issues of equality and equal treatment the Chancellor is competent to verify conformity of legislation with the Constitution and existing statutes (i.e. constitutional review competence), to verify the activities of representatives of public authority (i.e. the ombudsman competence) and arrange conciliation proceedings for resolving disputes between persons under private law. Division 4 of Chapter 4 of the Chancellor of Justice Act establishes the activities of the Chancellor in promoting the principle of equality and equal treatment.

In the period from 1 September 2015 to 31 August 2016, the Chancellor received 58 petitions concerning issues of equal treatment. Of these, 40 cases concerned the general fundamental right to equality and 18 concerned discrimination. By breakdown based on grounds of discrimination, the petitions were divided as follows:

- language – 4
- sexual orientation – 3
- age – 3
- ethnicity and ethnic belonging – 2
- sex – 2
- religion or religious belief – 2
- disability – 1
- race – 1

### 1. Conformity of legislation with the Constitution

On 28 occasions, the Chancellor verified conformity of Acts, regulations and other legislation with the principle of equal treatment under the Constitution. On three occasions, the Chancellor found a piece of legislation to be in conflict with the Constitution. The following part contains an overview of the problems identified.

Based on petitions received, the Chancellor analysed the [Aliens Act](#) and reached the opinion that, in comparison with individuals in marriage, the Act provided unjustifiably unequal treatment to same-sex partners living in a *de facto* family relationship. The Act grants the right to apply for a residence permit to settle with a spouse residing in Estonia, but does not enable issuance of a residence permit to settle with a same-sex cohabiting partner. Because same-sex partners cannot get married in Estonia, unlike opposite-sex couples they cannot take steps to conform with the conditions established under the Aliens Act to receive a residence permit for the purpose of settling together. On 9 December 2015, the Chancellor made a proposal to the Riigikogu to bring § 118 of the Act into conformity with the Constitution. The Riigikogu agreed with the Chancellor's proposal. Unfortunately, resolution of the problem has ground to a standstill due to opposing views in the parliament.

In addition, the Chancellor carried out an own-initiative analysis of the [Parental Benefit Act](#) and found that the Act treats recipients of parental benefit unjustifiably unequally depending on

when they earned the income based on which the parental benefit was reduced. The Act also enables payment of parental benefit when a recipient is employed. If monthly work-related income does not exceed the threshold established by the Act (390 euros a month in 2016), the recipient of parental benefit receives both income earned as well as the benefit granted to them. However, it may happen that an employer delays payment of wages earned by an individual while working during receipt of parental benefit. Back wages for several months, paid simultaneously as a lump sum by the employer, that exceed the threshold, will lead to a reduction of parental benefit. The law provides for derogation but only if income earned prior to the start of the parental benefit period is paid late by the employer. This individual is thus treated differently from one whose employer was on time in paying income subject to social tax. On 29 April 2016, the Chancellor made a proposal to the Riigikogu to bring § 3 (7) in combination with § 3 (7<sup>1</sup>) clause 4 of the Act into conformity with the principle of equal treatment under the Constitution. The Riigikogu agreed with the Chancellor's proposal and took it into account when drafting the Family Benefits Act. The [Family Benefits Act](#), which combines under one Act the previous Family Allowances Act, the Parental Benefit Act, and the Maintenance Allowance Act, was adopted on 15 June 2016.

One person contacted the Chancellor with a question concerning the constitutionality of § 96 of the [Police and Border Guard Act](#) under which a police officer may serve in the police service as a specialist until attaining 55 years of age and as an executive officer until attaining 60 years of age. Upon reaching the age limit, a police officer is released from service, except if the period of service is extended for one year at a time until the officer attains pensionable age. The criteria are not listed in the law. This age limit proceeds from the premise that from a certain age onwards a police officer belongs in a risk group. The Chancellor expressed doubt whether a solution which obliges release of a police officer merely because of reaching the age of 55/60 was in line with contemporary circumstances and needs. The Chancellor sent a letter requesting the Minister of the Interior to consider updating the Police and Border Guard Act so as to enable taking into account a person's abilities and their wish to continue in the police service after reaching the age limit.

The Chancellor also received several other petitions to verify the constitutionality of a norm but in these cases the Chancellor did not find a conflict with the principle of equal treatment.

For example, the Chancellor was contacted by parents with questions whether the conditions imposed on receipt of support paid by local authorities on the occasion of the beginning of the school year, a child starting school and the birth of a child were in line with the general fundamental right to equality. In none of the cases did the Chancellor find any conflict with the Constitution, and she explained to the petitioners that in view of these benefits being granted voluntarily by local authorities and the benefits not being intended for the destitute, the local authority has more discretion in establishing the conditions for receipt of these benefits.

The Chancellor was also asked to verify the constitutionality of the provisions of the [Employment Contracts Act](#) which fail to provide the same level of protection in cancellation of employment contracts to parents raising a child under three years old as is afforded to employees' representatives, pregnant women or persons entitled to pregnancy and maternity leave. The Chancellor found that the provisions were not unconstitutional. The Chancellor explained to the petitioner that even though the law does not afford the same protection in cancellation of an employment contract to a parent raising a child under three years old as is afforded to an employees' representative, a pregnant woman or a person entitled to pregnancy and maternity leave, it still prohibits an employer from cancelling an employment contract on



the grounds of an employee performing important family obligations (including raising children).

The Chancellor was also contacted with a question as to the constitutionality of the [Social Welfare Act](#) to the extent that it enables housing expenses, including administration costs (including costs related to repairs), and repayment of a loan taken for renovation, to be taken into account in calculating subsistence benefit only if a subsistence benefit applicant lives in an apartment building. The Chancellor explained to the petitioner that the subsistence benefits scheme exceptionally enabled taking into account administration costs, including costs related to repairs, and repayment of a loan taken for renovation, in the case of apartment buildings because no apartment owner alone can influence the costs incurred related to an apartment building. As a rule, a decision to incur costs is taken by the majority of the votes of apartment owners. If an apartment owner or a tenant having difficulties with coping could not include these costs in housing expenses, this would inevitably lead to debts. However, indebtedness may lead to being deprived of housing because an apartment association or community of apartment owners may request forfeiture of a debtor's apartment in the event of mounting debts. Even though the Chancellor did not find a conflict of the provision with the Constitution, she still decided to send a letter asking the Riigikogu Social Affairs Committee and the Minister of Social Protection to consider modifying the overly rigid rules of the subsistence benefits scheme so as to be able also to assist people in need in exceptional circumstances.

Overviews of the Chancellor's activities in previous years have included an overview of the Chancellor's memorandums concerning gaps in, or non-implementation of, legal regulation. In this connection, it should be noted that the necessary implementing legislation for the [Registered Partnerships Act](#) has still not been passed. The Riigikogu adopted the Registered Partnerships Act on 9 October 2014.

Previously, the Chancellor has also drawn attention to the fact that the narrowly defined scope of the [Equal Treatment Act](#) and the different degree of protection with regard to different grounds of discrimination (discrimination on grounds of religion or belief, age, disability or sexual orientation is prohibited only in connection with work and occupational activities) is unconstitutional. In 2015, the Ministry of Social Affairs submitted for approval its intention to draw up a Draft Act amending the Equal Treatment Act. The draft is intended to expand the scope of the Equal Treatment Act so as to make it uniform for all grounds of discrimination. The document notes January 2017 as the presumed date of entry into force of the amendments.

In addition, in 2011 the Chancellor sent to the Minister of Social Affairs a memorandum concerning issues of implementation of the [Gender Equality Act](#). In the memorandum, the Chancellor drew attention to the fact that until then the Government regulation mentioned in § (2) of the Act had not been adopted to lay down the procedure for collecting work-related gender-based statistical data and the list of such data. The Ministry of Social Affairs submitted the draft regulation for approval to other authorities at the beginning of 2015 but to date the regulation has not yet been adopted.

## **2. Verifying the activities of representatives of public authority**

The Chancellor dealt with a few cases verifying whether activities of a representative of public authority had been in line with the principle of equal treatment. The Chancellor found a violation on one occasion.

The Chancellor was contacted by a parent who asked to verify the lawfulness of the practice adopted by a school not enabling a child with special needs to apply to be enrolled as a pupil in form ten, because the child had used special conditions permissible under legislation for passing the basic school final examination. The Chancellor found that the school had breached the principle of equal treatment. Under § 16 (1) of the Minister of Education and Research regulation No 54 of 15 December 2015 entitled “The conditions and procedure for preparation and conducting of diagnostic tests and basic school and upper secondary school final examinations, and preparation, assessment and retention of examination papers, and the conditions and procedure for analysis of the results of diagnostic tests, uniform basic school final examinations and national examinations”, a head teacher may allow a basic school leaver with special educational needs to make use of one or several special conditions mentioned in that provision for sitting an examination paper, e.g. allow a pupil’s answer in writing to be taken down by a support person if the pupil cannot write. The Chancellor explained that the special conditions under the regulation are not applied to grant an unjustified advantage to a pupil in terms of the substance of examination questions, but in order to enable the pupil to be in an equal situation with fellow pupils without special educational needs in terms of organisational aspects of the examination. The Chancellor made a proposal to the school to apologise to the petitioner and the petitioner’s family and stop unlawful unequal treatment of the applicant’s child and other pupils with special educational needs in applying to be enrolled in upper secondary school. In the reply to the Chancellor, the school announced its intention to change current practice.

A parent also enquired about the lawfulness of the activities of a kindergarten where the staff of an Estonian-speaking kindergarten prohibited a child from speaking in Russian with other children during the time when no educational activities were taking place. The Chancellor explained that such an activity was not lawful but did not initiate proceedings in the case because the parent did not wish to give details of the circumstances of the complaint or the name of the kindergarten.

The Chancellor was also contacted with the question whether a school established in public law violates the fundamental right of a child and the child’s family members to freedom of religion if the school’s Christmas concert is organised in a church. The Chancellor found that if no religious ceremony takes place during the concert and no religious proselytizing occurs, organising a Christmas concert in church for a school established in public law does not violate the rights of the child or the child’s family members. The Chancellor explained that organising concerts in church is usual practice nowadays. Organising a concert in church or attending such a concert in today’s Estonia cannot be considered an expression of approval of a certain confession or promoting it merely because of the location.

### **3. Conciliation proceedings to resolve a discrimination dispute**

The Chancellor was contacted by an individual who referred to a job advertisement which imposed an age restriction on applicants. The Chancellor explained to the petitioner the Chancellor’s competence in resolving discrimination disputes but the petitioner did not wish to initiate conciliation proceedings.

The Chancellor has still not approved any agreements reached in conciliation proceedings.

## X. INTERNATIONAL RELATIONS

Since 2001, the Estonian Chancellor of Justice has been a full member of the [International Ombudsman Institute](#) (IOI). The IOI was established in 1978 and includes approximately 170 national and regional ombudsmen from 90 countries worldwide. The IOI is organised in six regions (Africa, Asia, Australasia and Pacific, Europe, the Caribbean and Latin America, and North America), governed through regional Boards.

The Institute's European region includes 80 national and regional ombudsmen from the majority of European countries. Chancellor of Justice Ülle Madise was elected a member of the seven-member Board of the IOI European region on 30 September 2015 and was re-elected on 27 July 2016. The powers of Ülle Madise on the Board end in 2020.

Chancellor of Justice Ülle Madise is also a member of the [Council of Europe Commission against Racism and Intolerance](#) (ECRI), and Deputy Chancellor of Justice Hent Kalmo participates as Estonian representative in the work of the Management Board of the [EU Agency for Fundamental Rights](#) (FRA).

Since 2012, the Chancellor of Justice as Ombudsman for Children has been a member of the [European Network of Ombudspersons for Children](#) (ENOC). The Chancellor is also active in the networks of European Ombudsmen, the Ombudsman Institutions for the Armed Forces, the National Preventive Mechanisms, and the EQUINET European Network of Equality Bodies.

### 1. Foreign guests

3 September	The Chancellor was visited by judges from the Netherlands, Germany, Poland, Romania, Slovakia and Spain within the exchange programme of the European Judicial Training Network.
16–17 September	The Chancellor was visited by delegations of ombudsmen from Latvia, Lithuania and Sweden in the framework of an annual cooperation meeting which this year was hosted by Estonia. The meeting was dedicated to issues of inclusive education and data protection, and visits were made to the NATO Cooperative Cyber Defence Centre of Excellence, Tallinn Lilleküla Upper Secondary School, and Mektory Innovation and Business Centre.
24 September	The Chancellor was visited by prosecutors from the Netherlands, France, Germany, Hungary and Romania within the European Judicial Training Network.
1 October	The Chancellor was visited by a delegation of the Committee on Legal and Constitutional Matters of the Parliament of Lower Saxony.
8 October	The Chancellor was visited by the UN High Commissioner for Refugees' (UNHCR) Regional Liaison Officer Marcel Colun and Legal Officer Andrei Arjupin.
11 January	The Chancellor was visited by the Albanian Minister of Social Affairs with a delegation.
18 May	The Chancellor was visited by judges from Finland, Poland, Slovenia, the Netherlands and Greece within the exchange programme of the European Judicial Training Network.
16–17 June	At the invitation of the Chancellor, children's ombudsmen from Latvia, Lithuania and Poland were on a working visit to Estonia within an annual

cooperation meeting which this year was held in Tallinn. This time the meeting focused on issues concerning protection of health of children and young people, including the right of young people to have a say in deciding provision of psychiatric care to them. At the meeting, a presentation on the right of self-decision of young people concerning provision of psychiatric care was delivered by Dr Brian Jacobs and Dr Mike Shaw, who are recognised child psychiatrists with long experience from Great Britain. Children's ombudsmen also visited the Children's Mental Health Centre.

6 July The Chancellor was visited by advisers to the OSCE High Commissioner on National Minorities, Jennifer Croft and Iryna Ulasiuk.

8 July The Chancellor was visited by representatives of Human Rights Watch, Tanya Cooper and Bede Sheppard.

## **2. Projects**

From 30 November to 1 December, the Chancellor's Office organised a training seminar on the prevention of ill-treatment. The target group of the seminar included functional specialists whom the Chancellor will be able to involve in inspection visits to closed institutions when performing the tasks of the national preventive mechanism. In addition to the Chancellor's advisers, Dr Andres Lehtmets and Dr Marika Väli, Mari Amos and international expert Dr Petur Hauksson (Iceland) also shared their knowledge with participants. In addition, the Chancellor's advisers prepared guidance materials for experts for their participation in an inspection visit to a closed institution.

The training seminar was funded under the structural funding 2014–2020 priority axis "Administrative capacity" measure "Increasing institutional and organisational capacity".

## **3. The Chancellor's report to the UN Committee on the Rights of the Child**

On 31 October 2015, the Chancellor submitted to the UN Committee on the Rights of the Child an [alternative report on the implementation of the UN Convention on the Rights of the Child](#). The report highlights the most important shortcomings in the field of protecting the rights of the child, and relies on surveys and analytical studies conducted by the Chancellor and other institutions on the well-being of children and organisation of child protection.

Article 44 of the UN Convention on the Rights of the Child obliges States Parties to report every five years to the UN Committee on the Rights of the Child on implementing the requirements under the Convention. The Committee on the Rights of the Child is a body established under the Convention and overseeing the implementation of the Convention. The Committee examines the government report and the alternative reports and arranges an oral hearing. The reporting procedure completes with issuing of recommendations to the government.

The Estonian Government submitted its first report to the Committee in 2001 and the Committee issued its recommendations to Estonia in 2003. The recommendations concerned non-discrimination, involvement of children and taking account of their views, improving dealing with cases of ill-treatment and abuse of children, improving the situation of children raised in substitute homes and children with disabilities, adapting school curricula for pupils

with different needs, dealing with the causes of dropping out and absence from school, and so on. Hearing of the second report submitted by the Estonian Government will take place in autumn 2016.

## XI. STATISTICS OF PROCEEDINGS

### **Proceedings**

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Review of an interpellation submitted by a member of the Riigikogu	5
Review of constitutionality and legality of legislation of general application	165
Supervision of compliance with the fundamental rights and freedoms	213
Initiating disciplinary proceedings against judges	20
Opinions on draft legislation and other documents	37
Participation in constitutional review court proceedings	15
Participation in a collegiate body	1
Other activities arising from law	30
Declining to initiate proceedings of petition	1061
<b>Total</b>	<b>1547</b>

### **Status of proceedings**

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Open	135
Closed	1412
<b>Total</b>	<b>1547</b>

### **Language of petitions**

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Estonian	1362
Russian	148
English	27
Other	10
<b>Total</b>	<b>1547</b>

### **Description of proceedings**

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Interpellation by member of the Riigikogu and related correspondence	5
Proceedings relating to activities of judges	20
Verification of constitutionality of Acts based on petitions by individuals	117
Verification of legality of Government regulations based on petitions by individuals	4
Verification of legality of regulations of Ministers based on petitions by individuals	9
Verification of legality of regulations of municipal councils based on petitions by individuals	23
Verification of legality of other legislation based on petitions by individuals	2
Verification of activities of state agencies or bodies based on petitions by individuals	120
Verification of activities of local government agencies or bodies based on petitions by individuals	40

Opinions for government agencies and other organisations on draft legislation and other documents	37
Verification of legality of regulations of municipal councils based on a request by county governor	1
Providing an opinion on a legislative act in constitutional review proceedings	15
Own-initiative verification of legality of a regulations of Ministers	1
Own-initiative verification of constitutionality of Acts	8
Own-initiative verification of activities of public bodies or agencies	37
Own-initiative verification of activities of local government bodies or agencies	16
Participation in other collegiate bodies	1
Other activities arising from law	30
Declining to initiate proceedings of petition due to lack of competence	441
Declining to initiate proceedings of petition due to a petition not conforming to requirements established by law	68
Declining to initiate proceedings of petition due to a petition being manifestly unfounded	107
Declining to initiate proceedings of petition due to the person being able to file a non-judicial administrative challenge or invoke other legal remedies	279
Declining to initiate proceedings of petition due to an existing court judgment, pending court proceedings or compulsory pre-trial proceedings	150
Declining to initiate proceedings of petition due to lack of substantial public interest for review of conformity of legislation with the Constitution or an Act	16
<b>Total</b>	<b>1547</b>

#### **Region of petitioners**

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Harju County, except Tallinn	135
Hiiu County	9
Ida-Viru County, except Narva	110
Jõgeva County	17
Järva County	6
Lääne County	10
Lääne-Viru County	31
Narva	12
Põlva County	10
Pärnu County	26
Rapla County	13
Saare County	13
Tallinn	412
Tartu	207
Tartu County, except Tartu	38

Valga County	17
Viljandi County	30
Võru County	13
Foreign country	38
Unspecified	400
<b>Total</b>	<b>1547</b>

#### **Area of law**

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Public service	24
Building and planning law	38
Energy, public water supply and sewerage law	17
Financial law (incl. tax and customs law, state budget, state property)	47
Administrative court procedure law	20
Administrative law (administrative management, administrative procedure, administrative enforcement, public property law, etc)	55
Education and research law	59
Personal data protection, databases and public information, state secrets law	47
Penal law	12
Language law	3
Environmental law	39
Citizenship and migration law	50
Local government organisation law	36
Pre-trial criminal procedure	39
Law enforcement law	11
Criminal and misdemeanour court procedure	45
Criminal enforcement procedure and imprisonment law	269
Traffic regulation law	20
Animal protection, hunting, and fishing law	6
Economic and trade management and competition law	4
Substantive penal law	3
Non-profit associations and foundations law	7
Non-profit associations and foundations law, apartment association law	9
Heritage law	1
Other public law	55
Other private law	15
Notarial law	2
Ownership reform law	13
Ownership law, including intellectual property and copyright law	15
Bankruptcy law	6
Family law	52
Police and law enforcement law	11
Agricultural law (including food and veterinary law)	11
Law of succession	1



International law	10
State legal aid	22
National defence law	19
Government organisation law	13
Social welfare law	79
Social insurance law	37
Consumer protection law	8
Telecommunications, broadcasting, and postal services law	4
Health law	59
Transport and road law	18
Civil court procedure law	49
Enforcement procedure law	65
Labour law (including collective labour law)	26
Electoral and referendum law, political parties law	9
Law of obligations	29
Misdemeanour procedure	15
Company, bankruptcy and credit institutions law	11
Unspecified	32
<b>Total</b>	<b>1547</b>