

Equal Treatment

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

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

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

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

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

Several petitions concerned different treatment based on age. In one of the petitions the Chancellor was asked if it was discrimination based on age if a newspaper advertisement indicated that only people under 64 years of age were invited to participate in a training course. In the Chancellor's opinion, applying such an age limit was in fact unjustified. The

organiser of the training course explained that the course had in fact been open to everyone who was active on the labour market or wished to return to the labour market irrespective of being older than 64 years of age. The training course had not been intended for economically non-active old age pensioners. So it would have been appropriate if the advertisement had specified the target group of the course without mentioning the age limit. The organiser of the course removed the age limit from the notice of the training course published on their webpage.

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

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

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

The Chancellor was asked why there was a difference in the rules that apply to payment of superannuated pensions to police officers and persons on active service of the Defence Forces. On 1 May 2019, an amendment to the [Police and Border Guard Act](#) entered into force under which police officers are paid a full superannuated pension even when an officer continues work in the police service. Military servicemen were not afforded the same

opportunity. The Chancellor noted that this decision had been a deliberate and considered choice of the Riigikogu, not an error. Everyone may have recourse to the court for protection of their rights.

Protection of the rights of people with disabilities

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

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

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

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

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

4. Reducing the burden of family carers.

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

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

Exhibition

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

One of the objectives was to raise awareness of the issues surrounding disability. The curators brought together the work of artists, graphic designers, writers and activists provoking thought about whether and how disability can have an impact on language and

communication as well as reminding everyone of their own responsibility in enabling social inclusion of people with special needs.

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

Reporting on implementation of the Convention

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

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

About accessibility in general

Under Article 9 of the Convention on the Rights of Persons with Disabilities, States Parties must take appropriate measures to ensure access by persons with disabilities to all aspects of life on an equal basis with others. Accessibility is viewed as a prerequisite for people with disabilities to benefit from public goods and services on an equal basis with others and to be able to access the labour market.

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

The Task Force is responsible for mapping the state of play and problems in all major

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

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

Public transport

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

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

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

For instance, on the island of Saaremaa, a new bus company started to operate [on the basis of a contract](#) which stipulated that only some buses had to be accessible. For people with

reduced mobility this means, first, that it would take them longer to plan a journey in advance and, among other things, it will make them worry about how to get back home if, for some reason, they miss an accessible bus. Non-accessible public transport will also increase demand for social transport. The Transport Adviser to the Saaremaa Rural Municipality confirmed that most people with reduced mobility resort to social transport in their municipality.

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

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

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

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

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

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

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

Sign language and audio description

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

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

At the time of the corona lockdown it became clear that important press conferences and speeches at the Riigikogu had to be interpreted into sign language. The availability of remote Estonian sign interpretation (sign language interpretation via Skype) improved. Previously,

sign language interpretation had been available during normal working days and working hours only but during the emergency situation the daily working hours were extended. Additionally, the sign language interpretation service was made available at weekends as well. A proposal to extend the working hours of the remote interpretation service was made by a member of the Advisory Council of People with Disabilities convened by the Chancellor. This improved access by deaf people with a command of Estonian sign language to information, healthcare as well as, for instance, to the state helpline 1247 (on the coronavirus). In addition, some information was also made available in Estonian sign language on the kriis.ee website.

The state one-stop shops project

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

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

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

Participation in law-making

The principle of including persons with disabilities in the decision-making process about their well-being is fundamental to protection of the rights of persons with disabilities. Following the work of the Riigikogu, an impression may be conveyed that sometimes people with disabilities learn about a legislative amendment affecting them before the draft is adopted, but this is not always so. Thus, they do not always get an opportunity to express their opinion about draft legislation. Sometimes they hear about a proposed legislative amendment

incidentally, from a familiar member of the Riigikogu, for instance. An alternative would be to constantly follow the Draft Legislation Information System of the Government and the Riigikogu – which is clearly labour-intensive and time-consuming and can be difficult for people with certain types of disability.

The process of [amending the Railways Act \(SE 47\)](#) offered a bad example of disregarding people with disabilities. The Government submitted a Draft Act amending the Maritime Safety Act to the Riigikogu. In the course of the legislative proceedings, an amendment to the Railways Act on the rights of passengers with disabilities was inserted. Although the Chamber of Disabled People managed to form their opinion about the amendment and send it to the Parliament, the time had run out to take the substance of their opinion into account.

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

Access to local authority premises

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

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

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

It is understandable that renovating the buildings may prove to be expensive, technically complicated and time-consuming, but reconstruction of the buildings is not the only way how to ensure access to municipal council and government working premises. The municipal

council and government are also entitled to change their working arrangements and relocate to premises accessible to people with special mobility needs.

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

Availability and quality of services to the hard of hearing

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

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

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

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

Children and young people with special needs

Support for children with special needs in kindergarten and school

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

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

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

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

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

Parents should not need to fight for their child to be able to enjoy the opportunities guaranteed by law. An example of such a fight is a [petition](#) by a parent complaining that their kindergarten-age child did not receive the necessary assistance. Several agencies discussed how to organise provision of a support person service if money from the European Social

Fund is no longer available for this, or if the rules do not enable using money from the Fund to provide the service. The duty of local authorities to provide assistance is laid down by law and this does not depend on availability of money from the European Social Fund (see also Supreme Court judgment No [5-18-7](#)). Consensus was also sought as to the most suitable kindergarten group for a child, and whether support to a child in kindergarten should be offered by a support person, teacher or other kindergarten staff member. Essentially, the dispute was also over whether it is the social or the education system that is required to provide the assistance. While disputes were ongoing, a child in need of assistance was left without assistance.

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

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

The opportunity for children with special educational needs to obtain the necessary support was also endangered during the emergency situation. Under clause 1 of [Government Order No 77 of 13 March](#)

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

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

Establishing a child's disability

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

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

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

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

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

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

Policymakers should first understand the purpose of establishing a disability. It is certainly not a stamp confirming the disability, but rather the assistance, services and sometimes financial support that the child needs. Often, a child's diagnosis shows what assistance the

child might need. The amendment driven by concern for children with phenylketonuria moved in the right direction because there is no need to subject a child to the process of establishing a disability if assistance can be provided on the basis of information (diagnosis) available about the child.

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

University student with special needs

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

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

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

Working parent of a disabled child

The Chancellor was asked whether it was constitutional that a local authority did not pay a carer's allowance to a carer who was working. The petitioner pointed out that if parents of

disabled children go to work, operate as sole proprietors or on the basis of a contract under the law of obligations, they would lose their health insurance.

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

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

Access to e-Estonia

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

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

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

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

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

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

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

The Estonian Association of the Blind complained to the Chancellor that the blind could not use the National eBooking System (to book, change or cancel a doctor's appointment). The Association wanted to know whether the contracting authority had actually placed an order for a system which could be used with the help of screen readers, whether somebody had verified if such requirement had been fulfilled and when the National eBooking System would become accessible to the blind. The adviser to the Chancellor contacted the representative of

the Health and Welfare Information Systems Centre who promised to resolve the problem by ordering further developments to ensure accessibility and add the necessary requirements to the procurement specifications.

Organisation of social services

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

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

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

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

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

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

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