Rule Of Law In An Emergency Situation

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

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

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

First, about the positive things.

The emergency situation and the epidemic that caused it have brought to our attention many heroes we were not aware of before: from sales assistants and pharmacists who had to work for days and even weeks without personal protective gear or a glass partition to care home and hospital staff who had, at least seemingly, to set aside concern for themselves and their family members and do their best. Unfortunately, this cost the life of at least one medical staffer. In the ministries, public agencies and inspectorates, local authorities, the Defence Forces and the Defence League, as well as among public transport drivers, teachers,

kindergarten teachers, trainers and representatives of many other professions are people – maybe so far unnoticed even by their colleagues – who during very complicated times distinguished themselves through selfless action demonstrating a completely new quality, for example by revealing their leadership skills. Hopefully, their dedication, brave spirit and capability were noticed and will be taken into account. Worth recognition are entrepreneurs who found creative solutions without facilitating the spread of the infection. Definitely deserving our recognition are also musicians and actors who found surprising avenues of expression in the new circumstances, as well as journalists who worked tirelessly. Worthy of recognition are members of the Riigikogu for swiftly addressing shortcomings in the legal order and for the fact that, once again, we saw that the Riigikogu reveals a necessary sense of criticism which sometimes, rightfully, results in a decision not to adopt a legal provision. In general, the Government and the Government Office have kept an open and rational, mostly science-based, line, being forced to speedily make decisions concerning the whole of Estonia, without letting themselves be misguided by public pressure based on emotions.

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

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

At the beginning of the emergency situation, the Government and the Prime Minister were under constant pressure to strictly close all markets, hairdressers', restaurants, as well as to stop all public transport, prohibit movement and start real-time monitoring of everyone. Unfair criticism was levelled even against reasonable and balanced solutions. If everything was not uniformly closed down or restricted, those who are more daring and inventive would obtain an advantage, it was alleged. However, the Constitution of Estonia guides us to respect

freedoms. This is a central value, followed by justice and only then law. When imposing restrictions for whatever reason, consideration of the degree of freedom and responsibility should never be forgotten, room should always be left for inventiveness, creativity, novel thinking and courage. We can be proud of the Estonian people, we must be sincerely thankful to everyone individually and to all together. We held together, we thought with our heads, we did everything possible.

Less about the positive.

At the same time when people on the frontline became heroes and the whole nation made efforts to prevent the spread of the disease, it also became apparent that the legal provisions necessary to fight the cause of the crisis were ambiguous, outdated, contradictory and not well rehearsed; frontline officials who were already undermotivated and little recognised were often left without the necessary support.

The central and main problem was the ability of the state to solve crises. Crises can happen simultaneously, also consecutively. Therefore, we need a comprehensive picture of how to resolve crises: beginning from a regional power blackout, extinguishing a fire in the countryside, an epidemic or a natural disaster up to a war situation. An epidemic, natural disaster, power blackout or other emergency may begin to endanger our national security and independence, our freedom. The Draft National Defence Act and possible amendments to the Emergency Act provide a suitable platform to create a comprehensive picture. When planning a comprehensive and logical process for resolving crises, it is first necessary to think what needs to be done to resolve the crisis and only then formulate legal rules. Legal rules should be written down simply and briefly, in clear and well-phrased Estonian.

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

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

and if necessary to establish rules and learn to implement them.

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

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

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

Fourth, is the quality and reliability of work done by agencies and inspectorates. Sometimes, the Health Board has received unfair criticism. According to the general understanding, the Health Board had to resolve a crisis the cause of which was "a highly infectious disease which spreads fast and extensively and which is serious or life-threatening". The law was interpreted correctly that infected and infectious people should be quarantined in order to prevent more serious harm, establishments should be closed and events cancelled. Yet Estonian legal space entered the emergency situation in a state where the same virus which essentially stopped social life in Estonia and elsewhere was not an extremely dangerous infectious disease in the eyes of the law, but simply a disease to combat which, to be frank, eventually involved the need to take even stricter measures than to combat an extremely dangerous infectious disease. The emergency situation and extensive harm occurred, inter alia, because the laws had not laid down clear measures respectful of fundamental rights to rapidly stop the spread

of infection. A sweeping conclusion that agencies and inspectorates are actually not allowed to impose restrictive measures is neither fair nor reasonable. On the contrary, officials must do the work that is theirs to do and politicians must do theirs.

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

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

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

General legal space

The Emergency Act

An emergency situation in Estonia was established on 12 March. Since no precise and well-considered legal rules existed to regulate restriction of fundamental rights, most restrictions in Estonia were imposed under § 31 subsections (1) and (3) of the Emergency Act by

establishing a prohibition on stay and restriction of people's freedom of movement. For example, theatres, cinemas, shopping centres, schools, sports halls, saunas and other places where people gather together were closed; movement to the islands was restricted; hobby activities were stopped; visits to and departure from care homes were prohibited, and many other restrictions. On the same basis, movement of residents at the Tartu University dormitory at 22 Raatuse Street was significantly restricted.

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

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

General order

A general order derives from the Austrian and German legal systems. In Estonia, the distinction between a general order and a regulation is not yet completely clear. Figuratively, it may be said that a general order is a swarm of uniform individual orders which are not individually delivered to each addressee and are not individually weighed in terms of protection of the rights of each specific addressee. On the other hand, a regulation, similarly to a law, is a legislative act of general application whose possible conflict with the laws and the Constitution is scrutinised by the Chancellor of Justice.

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

The standard of the Supreme Court on legal standing in administrative court procedure says the following: "11. Under § 44(1) of the Code of Administrative Court Procedure, individuals may have recourse to an administrative court only for the protection of their rights. Rights and freedoms to be protected in the case of review of an action for annulment of an administrative act should be understood as subjective public rights of a person – fundamental rights and freedoms, the rights arising from other legislative acts, administrative acts and administrative contracts (see Supreme Court Special Panel order in case No 3-3-1-8-01, para. 22). Thus, the precondition for having legal standing is interference with subjective

rights enjoyed by a person, while the interference does not have to be serious for legal standing to arise (see Supreme Court Administrative Law Chamber order in case No 3-3-1-87-16, para. 8)."

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

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

A separate answer is needed to the question whether the administrative court should declare an unlawful general order invalid in its entirety or only in respect of the applicant. If the court finds that grounds for nullity of an administrative act are present (i.e. establishes its nullity), the administrative act has lost its validity in respect of everyone; if only grounds are present that enable declaring an administrative act invalid (i.e. declares it invalid) the administrative act loses effect only in respect of the applicant. In the case of legal acts concerning an emergency situation, establishment of grounds for nullity is unlikely.

A void administrative act is invalid from its inception. An administrative act is null and void if

1. it does not specify the administrative authority which issued the administrative act;

2. it does not specify the addressee of the administrative act;

3. it has not been issued by a competent administrative authority;

4. it requires commission of an offence;

5. the rights and obligations are not specified therein, the obligations are contradictory or the administrative act cannot be complied with for other objective reasons.

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

The concept of quarantine

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

Force majeure

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

The Chancellor reached the opinion that no general interpretation of *force majeure* can be given. In Estonian case-law, *force majeure* has been interpreted as an extraordinary irresistible event in the context of specific circumstances which is beyond a person's sphere of influence

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

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

Restrictions on movement

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

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

During the emergency situation, extensive restrictions on movement were imposed on the Estonian islands. Thus, under § 31(3) of the Emergency Act, the head of the emergency situation imposed restrictions on movement on the islands (Saaremaa, Hiiumaa, Vormsi, Ruhnu, Kihnu and Muhu rural municipalities and Manija island) by Order issued on 14 March

and 16 March. The aim of the Order was to prevent the spread of the virus both from the islands to the mainland and vice versa. Entry to as well as exit from the islands was banned for individuals (clause 1 of the Order). A derogation was made (clause 2 of the Order) for those helping to resolve the situation related to the virus outbreak. Public transport was ensured, as well as transport of goods and raw materials. The inhabitants of those areas were also allowed access to their homes. Supervision over the restrictions was carried out by the Police and Border Guard Board which was also granted the right to make exceptions for entry to and exit from the islands for people without any signs of the disease.

Special permits for movement between the mainland and islands

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

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

The Chancellor was asked based on what a local authority grants these permits and whether it may amount to discrimination. For example, Vormsi rural municipality decided that a special permit is given only for movement from the island to the mainland and back, but not for movement from the mainland to the island and back. Such an interpretation by the municipality was not relevant since, according to the explanatory memorandum to the Order, the aim of granting special permits was to alleviate the situation where “people living on the

islands often work elsewhere and restrictions have set serious impediments for working or seeing one's family".

Since travel brings about a bigger risk of contact with other virus carriers, it may be considered justified to restrict a person's freedom of movement after arrival in the country. This makes it possible to avoid contact with other people and thereby reduce the possible risk of spreading the infection. The head of the emergency situation imposed a 14-day restriction on movement (under § 31(3) of the Emergency Act) for people who are allowed to enter Estonia (see the Order of 16 March of the head of the emergency situation). The task of enforcing the restriction on movement was given to the Police and Border Guard Board (clause 4 of the Order) which had to decide, based on legislation, how precisely to enforce compliance with the restriction.

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

People's freedom of movement was not always restricted lawfully. For example, Haljala Rural Municipal Government set up a traffic sign prohibiting entry on roads leading to Käsmu village, allowing entry only for local people and service transport. The concern of local people for their health and safety must be understood but a restriction can only be imposed by a person or institution entitled to do so. The head of the emergency situation imposed restrictions on movement in public places by Order No 45 of 24 March. According to the restrictions, it was prohibited for more than two people (except families) to be together in a

public place, and they had to keep at least two metres' distance (the 2 + 2 rule). The head of the emergency situation also obliged the Police and Border Guard Board and cities, towns and rural municipalities to ensure compliance with restrictions on movement (clause 3 of Order No 45). The Chancellor explained that local authorities had to ensure compliance with the restrictions by lawful measures.

Protection of personal data

Section 26 of the Constitution protects everyone's right to the inviolability of private and family life, an inseparable part of which is the right to protection of personal data. Even in an emergency situation the state may process personal data only in cases laid down in legislation and processing must be strictly limited to what is unavoidably necessary. The Chancellor was repeatedly asked about the processing of health data of Covid-19 infected persons and personal data of others subject to restrictions on movement.

Positioning of mobile phones

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

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

Processing of personal data to check compliance with restriction on movement

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

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

Checking compliance with the 2 + 2 rule

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

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

Quick legislative changes

Due to the emergency situation, the need arose to amend several laws, so as to be able to

respond more swiftly to crisis situations. For obvious reasons, the Riigikogu processed these amendments quicker than normally.

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

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

Disclosure of the data of infected people

The Chancellor was contacted in connection with publication of health data in the media. Unless an individual agrees to disclosure of their data, disclosure of their health data in the media is normally prohibited. An exception is laid down in § 4 of the Personal Data Protection Act. Under that provision, someone's personal data may be disclosed in the media without their consent if certain criteria are fulfilled. The media channel must be convinced that three main criteria are fulfilled simultaneously: public interest exists for disclosure of the data of the particular person; principles of journalism ethics are observed in disclosure; and disclosure of personal data does not cause excessive damage to the rights of the data subject.

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

The Chancellor of Justice was persistently against the disclosure of data of infected persons.

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

Mobile applications

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

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

Schools, kindergartens, hobby activities

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

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

Children with special educational needs

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

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

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

Teaching a child during an emergency situation

A parent complained that during distance learning the school only gave tasks to children and checked that they were done while it was parents who had to teach all the material to the child. The Chancellor explained that, inevitably, during distance learning a teacher gives less

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

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

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

Expenses related to distance learning

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

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

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

Quite a lot of dissatisfaction was caused by the Draft Act for amendment of various Acts initiated by the Government seeking, inter alia, to change the conditions and procedure for organising uniform final examinations of the basic school and upper secondary school. Although amendments in the Draft Act were motivated by the emergency situation, according to the initial version of the Draft Act they had to remain in force also after the end of the emergency situation. A petitioner contacting the Chancellor found that, with the Draft Act, the Government wished to make use of the emergency situation to push through changes with a long-term effect, significantly reducing the role of the parliament in making educational decisions and consolidating the decision-making power in its own hands for an indefinite period. In the course of debating the Draft Act, several people and organisations addressed the Riigikogu with a similar problem. In the end, amendments which were not urgent and which had to remain in force also after the emergency situation were dropped from the Draft Act.

Questions about the work of kindergartens

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

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

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

Questions were also caused by reorganisation of the work of kindergartens during the summer period. For example, the Chancellor was asked for a legal opinion on the organisation of work of kindergartens in Haapsalu town since after the end of the emergency situation the town did not open all the kindergartens and children from several kindergartens had to attend another kindergarten in summer. In a letter sent to the town, the Chancellor found that temporary closure of kindergartens may be justified since the Preschool Childcare Institutions Act enables a rural municipal, town or city government, on a proposal by the board of trustees, to decide on the opening times of a kindergarten and on its year-round or seasonal operation. Regrettably, closure of kindergartens in this specific case was not lawful since no legal basis existed for temporary closure and offering the service in another kindergarten. On that basis, the Chancellor asked that the town should organise closure of kindergartens lawfully.

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

kindergarten must ensure that rearrangements do not cause excessive inconvenience for children and that all the interests of children are complied with.

Training during the emergency situation

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

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

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

Organisation of family life

Rights of access to the child for a parent living separately

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

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

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

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

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

If necessary, next of kin who are healthy and are not in the coronavirus risk group (e.g. elderly people) should be asked to assist in caring for a child. Information about the opening times of kindergartens and childcare institutions, and the like, should be asked from city, town or rural municipal governments. People should also contact the city, town or rural municipal government when their family needs other assistance or support due to emergency situation.

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

It is positive that recommendations and advice were given to schoolchildren and their parents

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

Places of detention and social welfare institutions

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

Prisons and police detention facilities, accommodation centres for aliens

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

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

To prevent the spread of the virus, when in contact with prisoners, prison staff used personal protective equipment, stocks of which were sufficient and constantly being replenished in prisons. Disinfectants were used. The shift rota of prison officers was changed – officers had longer shifts and did not leave the prison grounds during that time.

Prisoners were locked in their cells, they were prohibited to visit the prison shop, joint

activities and visits were cancelled. In view of the situation, these prohibitions were reasonable and necessary.

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

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

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

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

Social welfare institutions

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

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

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

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

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

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

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

Rights of people with disabilities

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

It is positive that the Order (clause 2.1) clearly laid down the possibility to leave a social welfare institution. Thus, people were not deprived of their liberty under the pretext of the emergency situation. Yet the Order forced a stay on those residents of social welfare institutions who have no next of kin or who are in a financially poorer situation (who cannot lease a temporary dwelling). For those people, the restriction on movement imposed by the

Order essentially amounted to deprivation of liberty (forced stay) as they had no place where to go. Even with the best of will, a local authority would not have been able to quickly find a new residence for those people if they had wished to leave the care home. Thus, the restriction had a particularly seriously effect on those financially less well-off and with no next of kin.

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

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

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

Thus, reading the Order and the explanatory memorandum, which use different terminology, the question arises whether the restriction also extends to people living in small family-like units, in particular people living in apartments. The Order and the explanatory memorandum contain concepts such as "special care home", "special care institution" and "location of special care service". It cannot be considered right that in an act restricting such important rights, and in the explanatory memorandum to it, different terminology is used which does

not proceed from the wording of the law – this cannot be justified by the special nature of the emergency situation either. The quality of law-making has to be ensured at any time, and when restricting fundamental rights it must meet a particularly high standard. The addressee of a rule must understand that the rule applies to them and that they have to be able to behave on the basis of it.

Since the Order and the explanatory memorandum caused ambiguity, the Chancellor's advisers enquired from the Social Insurance Board how to interpret the Order. Initially, the Social Insurance Board expressed the opinion that the Order also restricted the freedom of movement of all people receiving the community living service (even those living in apartments), and also sent an instruction to that effect to service providers. Later, the Social Insurance Board sent out instructions noting that the Order only applied to those recipients of the community living service who lived in larger units intended for more than three people. The instruction by the Social Insurance Board to service providers was as follows:

"We have received the assessment of the Ministry of Social Affairs on the additional restriction on movement in units of community living service for up to three people. According to the Ministry's assessment, the additional restriction on movement does not include apartments with up to three people receiving the community living service, and it is reasonable to allow people in small apartments, i.e. for up to three people, to move around following the same 2 + 2 principle as other people. The additional restriction on movement remains applicable to all other services (general care service, 24-hour special care services and community living service units including more than three people) mentioned in the Order of the head of the emergency situation."

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

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

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

Treatment of foreigners in the emergency situation

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

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

First, the Government imposed restrictions by Order No 78 of 15 March on "Temporary restriction on crossing the state border due to the spread of the coronavirus causing the COVID-19 disease". The Order was declared invalid after the end of the emergency situation but on 16 May the Government established similar restrictions by a new Order. While imposing extensive restrictions could be deemed justified during the emergency situation, the justifiability of newly established equally restrictive measures after the end of the emergency situation was questionable. Less restrictive measures could have been set for foreigners to whom permission to work in Estonia has been granted on the basis laid down by law and who had no symptoms of the disease. The threat to public health can also be avoided through a self-isolation obligation and testing if the employer ensures the necessary conditions for this (see, in more detail, the Chancellor's opinion). The Government alleviated the restrictions on

entry to the country imposed on workers and foreign students only on 6 July.

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

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

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

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

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

Freedom of assembly and freedom of religion

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

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

The Chancellor noted in her reply concerning restriction of (political) rallies that during the emergency situation declared because of the epidemic everyone's right under § 45 of the Constitution to freely disseminate ideas, opinions, beliefs and other information by word, print, picture or other means was not and could not be restricted. Freedom of expression is a basic principle of a democratic society. However, restriction of freedom of assembly does not necessarily excessively inhibit freedom of opinion and freedom of expression. It is possible to express one's views otherwise than through physical assembly. Not every form of expression of one's views in a public space (for example, distributing leaflets or carrying posters) can be considered a public meeting.

The Chancellor explained that the prohibition on public meetings did impede holding religious services but the state did not restrict freedom of thought and beliefs through this. It was allowed to perform religious rituals alone or privately; churches, prayer houses and places of worship were not closed during the emergency situation.

Social guarantees

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

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

Organisation of social services in extraordinary circumstances

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

Clear interpretation is needed as to the conditions under which, to whom, and to what extent social services should be provided when a compelling need exists to restrict or reorganise those services. For example, the laws have not regulated the right of reorganising and

restricting public services if the situation so requires. The only changes that have been introduced in the field of social services concern special care services and the social rehabilitation service (§ 13[1] SWA), but those amendments also do not deal with the situation where a need exists to restrict provision of a service or even stop it. Also the Draft National Defence Act debated in the Riigikogu does not resolve all these issues since it focuses mainly on restriction of financial benefits during an emergency situation or state of war (§ 51 of the Draft Act) and only regulates restriction of social services provided by local authorities in a situation of defence (§ 57(2)). It is true that § 39 of the Draft Act would give the Government general powers to restrict fundamental rights and freedoms in a state of emergency and state of war. However, the issue is whether the Riigikogu could set criteria based on which the Government may decide that it does not provide all state services but only some of them, such as the 24-hour special care service.

School lunch

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

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

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

During the emergency situation, people started to ask a lot about equal treatment, because some rural municipalities, towns and cities had begun to restrict provision of school lunch, setting preconditions such as a family's coping difficulties. Since in many places provision of school lunch had previously been free of charge, people asked whether restrictions on

provision of a free school lunch were lawful, i.e. whether they were based on a municipal council regulation and were compatible with the principle of equal treatment. Since many questions were received about the provision of school lunch, the Chancellor sent a circular to local authorities.

Financial support to those who cannot work

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

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

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

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

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

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

Both delegating norms enable the Government to react swiftly and flexibly to unexpected situations that may happen in life and to help those most in need. On the other hand, the norms leave a fairly free hand to the Government in deciding who is most in need. It is clear that the norms were introduced with the best intentions but in haste in view of the circumstances. For example, in the Social Welfare Act the Riigikogu forgot to regulate the procedure for obtaining support so that, in view of the situation, support would as quickly as possible reach people who most need it. Therefore, the Government itself laid down the procedure (see § 5 of the regulation) even though it had no power to do so. Also, in the case of benefits laid down in § 52(1) clause 2^1 of the Health Services Organisation Act, the Riigikogu failed to set the limits on payment of benefits. It is true that more general limits on the Government's activity are imposed by the state budget, but this, in turn, may lead to a

situation where in the event of differences between forecasts and the reality only those would obtain the benefits to whom the allocated funds are sufficient to pay the benefits. In this regard, it should also be noted that, unlike § 52(1) clause 2^1 of the Health Services Organisation Act, § 140^2 of the Social Welfare Act does not limit granting benefits with the sums allocated for this in the state budget and enables using state money rather freely: everyone entitled would receive benefit.

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

Healthcare

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

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

Some solutions took took long. Unfortunately, neither the Riigikogu nor the Government immediately saw their responsible role (i.e. sense of ownership) for tidying up the legal space. For example, the Riigikogu could have taken the initiative and quickly decided on the rights and powers of the Health Board in implementing infectious disease control measures outside the emergency situation. In fact, the Riigikogu was debating the Draft Act on amending the National Defence Act which also covered amendments to the Law Enforcement Act, and the

solutions proposed in the Draft could have been developed further where necessary. Those gaps were already being discussed in February (see the press conference of 27 February 2020). Nor did the establishment of the emergency situation prompt the Riigikogu or the Government to prepare draft laws to ensure a clear role distribution and powers to act both during and after the emergency situation. Only when it was understood that by ending the emergency situation we would be back to 'square one' were steps taken to revise the relevant laws.

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

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

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

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

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

In May, the following provision entered into force as a result of amendment of the Medicinal Products Act

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

These are very broad powers raising the question whether in the event of full implementation of the norm the State Agency of Medicines would begin to regulate the field of medicinal products instead of the Riigikogu. It may be understandable that the norm is intended to be implemented in unforeseeable situations but, considering how the norm originated, it should be carefully considered what situations requiring regulation can be predicted and what could be regulated more precisely. The Riigikogu should elaborate on this norm. Moreover, even though formally this is an administrative act of specific application, its actual substance may in certain cases be that of an act of general application. In addition, there might exist no subject of law with the right to contest an act of the State Agency of Medicines, so that review of its legality may prove to be too complicated.

Organisation of obstetrical care

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

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

test is possible as a paid service for everyone".

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

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

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

Deletion of data of persons infected with the virus

Problems with dissemination and receipt of information are also demonstrated by a

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

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

Economic measures

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

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

Several alleviating measures were created to mitigate the difficulties caused by the emergency situation. For example, as of 1 March to the end of the emergency situation, no late interest was charged from tax debtors, and an interest rate reduced by half in comparison to the normal rate applies to the end of 2020. Also, in the event of payment of tax arrears by instalments, the tax authority may reduce the interest rate further by up to 100 per cent. The tax authority did not immediately begin to collect debts incurred during the emergency situation, and no tax debts were disclosed during that time. Advance payments of

the social tax of sole proprietorships for the first quarter were paid by the state. In addition, the state abolished the minimum social tax requirement: if remuneration paid was lower than the monthly social tax rate, in March, April and May employers had to pay social tax from the actual remuneration paid.

The state also took steps to ensure that a sufficient financial buffer exists to cover all the state's obligations as well as to finance planned measures to boost the economy.

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

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

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

Due to the coronacrisis, the European Commission adopted a state aid temporary framework enabling member states to use all possibilities compatible with the state aid rules to support their economies. Under the temporary framework, EU member states can provide direct grants (selective tax advantages and advance payments), state guarantees for loans taken by companies, subsidised public loans to companies, safeguards for banks that channel state aid

to the real economy, and short-term export credit insurance. The temporary framework is in force to the end of 2020.

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

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

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

In providing business loans, confusion has been caused by the broader definition of an undertaking in European Union law. This has led to a belief that non-profit associations are undertakings and should be eligible for grants intended for undertakings. Non-profit associations are undertakings primarily and solely in terms of economic activity; they cannot be deemed undertakings in any other cases. The fact that someone is treated as an undertaking does not automatically enable them to take a business loan, because in Estonia business loans are granted only to companies registered in the commercial register. Non-profit associations are eligible for support through other measures due to the coronacrisis

(e.g. as traders). Thus, in giving support, the state may prefer undertakings based on their form of operation. European Union rules allow provision of certain support measures only for some undertakings and, under the Constitution, payment of such grants is not mandatory. Giving business loans only to companies cannot be considered unconstitutional, but of course it is important to ensure fair competition and transparency of distribution of support measures and the decisions made.

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

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

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

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

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

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

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

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

Organisation of work of municipal councils

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

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

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

The right to adopt legislative acts at an electronic session

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

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

certain issue(s) (see the opinion "On the right of self-organisation and interpretation of law").

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

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

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

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

Organising a debate at an electronic municipal council session

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

Possibility to observe a municipal council session

The Chancellor was contacted by a rural municipality inhabitant who had wanted to observe an electronic session of Räpina Rural Municipal Council but had been unable to do so. That

electronic session took place by way of exchange of e-mails, and the public could not observe its progress in real time, but the council did not declare the meeting closed.

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

Drawing up and communicating orders

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

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

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

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

Worth recognition is the editorial board of the *Riigi Teataja* gazette, who used the right under § 2(6) of the Riigi Teataja Act and also published during the emergency situation those acts whose publication is not mandatory. This was done with the aim of creating a picture of restrictions and changes thereto that would be easy to follow; also useful was publication of translations. However, in the future, it would be worth considering publishing the reasons and explanations of general orders in the general order itself.

Validity of orders of the head of an emergency situation is mostly connected with the act of signing them but not with the fact of arrival of a certain date or publication of the order. The underlying reasoning for a norm that is being established must be written in the explanatory memorandum before the legislative act is issued. Regrettably, on several occasions during the emergency situation and afterwards, it was found that first an order was signed while preparing, elaborating and finally signing an explanatory memorandum was done retroactively.

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

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

Apparently, it should be considered a peculiar feature of political culture and modern communication that information on restrictions imposed was first published on the social media account of the Prime Minister or a member of the Government. This was so even in the situation where the Government or the head of the emergency situation had not yet formally

passed, signed or published the decision. A similarity may be found here with the behaviour of media channels who, for instance, publish a news piece titled “State X imposes ban on entry for foreigners”, leaving an impression that the borders would be closed immediately or at the latest at midnight the following day. Yet, reading the news more carefully (and it is good if the author of the news piece has wished or known to specify this) reveals that the restriction cited in the title would enter into force only, for example, in three days’ time or at the beginning of the new (working) week.

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

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

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