

CHANCELLOR'S YEAR IN REVIEW 2020/2021

Inspection visits

The Chancellor must monitor that people held in places of detention are treated with dignity and their fundamental rights are protected. In a place of detention, it may be difficult for a person themselves to stand up for their rights, for example because they suffer from a mental disorder or cannot express themselves with sufficient clarity. Therefore, it is important that an independent monitor – the Chancellor of Justice – should make sure their rights are respected.

To protect people's rights, the Chancellor's advisers carry out mostly unannounced visits to places of detention. The duty of regular inspection of places of detention is laid down by of the [Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment](#).

A [place of detention](#) means all places where a person may be deprived of their liberty and which they cannot leave at will. These include prisons, police detention facilities, psychiatric hospitals providing involuntary treatment, closed childcare institutions, care homes providing 24-hour special care services, etc.

For a second year already the spread of the coronavirus SARS-CoV-2 has affected life in Estonia as well as the Chancellor's inspection visits. During the last year, the Chancellor paid much attention to protection from the coronavirus of people in the places of detention inspected. Participants in inspection visits wore personal protective equipment, took corona tests and planned visits so that the risk of spreading the coronavirus would be minimal. This enabled inspection visits to continue even at a time when the spread of the virus was extremely wide.

Psychiatric hospitals

During the reporting period, the Chancellor inspected two psychiatric hospitals: the coercive treatment department at the psychiatric clinic of the Viljandi Hospital Foundation and the psychiatric department in Tartu Prison. A psychiatrist was involved as an expert in the

inspection visits.

The [coercive treatment department at the psychiatric clinic of Viljandi Hospital](#) currently employs more activity supervisors and carers than during the Chancellor's previous visit in 2015. The department has well-organised documentation of extraordinary incidents and monitoring the condition of patients under restraint. Another positive change is that in the medical committee the condition of patients is assessed by doctors who are not affiliated with the coercive treatment department.

Unfortunately, the living conditions in the [psychiatric department at Tartu Prison](#) are the same as [in 2016](#) when the Chancellor last inspected the department. The only positive change is that a more spacious walking area has been created for patients where they can also engage in sport. The Chancellor emphasised that if the prison is not capable of providing psychiatric care in line with statutory requirements, a patient should be transferred to a suitable medical institution.

The Chancellor noted that patients in both medical institutions had insufficient opportunities for meaningful leisure activities and therapy options. During both inspection visits, she also pointed out shortcomings in restraining patients. A hospital must ensure that restraint is not visible to other patients. In the future, the coercive treatment department must also enter all cases of restraint in a consolidated register. When assessing the need for continuation of restraint, a doctor in the department must always justify why a patient's continued restraint was considered necessary and how exactly the patient poses a danger. In the psychiatric department of Tartu Prison, the Chancellor asked that conditions be created enabling patients to be restrained safely and medical staff to monitor their condition.

Both in the coercive treatment department of Viljandi Hospital and the psychiatric department of Tartu Prison, extensive video surveillance is used to keep watch over patients. The Chancellor emphasised once again that patients must be ensured privacy in wards and during hygiene procedures. Video surveillance in patients' washrooms and toilets is only allowed in order to prevent a patient-specific risk. If video surveillance of a patient's toilet is nevertheless deemed unavoidably necessary, a technical solution should be found that enables blurring the area of hygiene procedures on the screen.

To ensure security, the staff of the coercive treatment department have established a number of rules for patients (such as restrictions on communication, a list of prohibited items, locking wards for the night) which are not compatible with the law. The Chancellor conceded that in

view of the condition and long period of treatment of patients referred for coercive treatment, such rules are probably necessary but they have to be laid down by law. The Chancellor [asked](#) the Ministry of Social Affairs to analyse the situation and find possible solutions.

Patients undergoing coercive treatment must be able to communicate with their loved ones in privacy. The Chancellor also asked that patients be allowed longer telephone conversations and meetings with their loved ones and that patients' leisure and therapy options be diversified.

Closed childcare institutions

The Chancellor inspected the [Emajõe Study Centre of Maarjamaa Education College](#) (*Maarjamaa Hariduskolleegium*) where the service of a [closed childcare institution](#) is provided to young people.

Group homes in the centre are cosy. Each young person has their own bedroom which they can decorate to their liking. The centre has very good sports and handicraft facilities. Pupils can meet their family in private in the family house. Young people are also guaranteed privacy during telephone conversations.

The Chancellor emphasised to the management of the school that reducing the minimum time for using the telephone and restricting home visits should not be used as a sanction. Many restrictions and punitive measures imposed on pupils in the group homes – such as collective punishments – are not lawful.

The Chancellor asked the school to consider different possible ways to deal with cases of bullying. A victim of bullying should not necessarily feel pressure to formally reconcile with the bully; for the victim it is sufficient to receive affirmation that their concern was noticed and bullying will be prevented. The staff of the centre must have profound knowledge about the group dynamics of young people and special needs arising from mental disorders of young people. In the event of a conflict, staff who have received comprehensive training as well as in-service training should be able to use measures that help to resolve a conflict instead of escalating it.

The Chancellor recommended that incidents where a pupil has stayed in a seclusion room with an unlocked door should also be documented by the school and entered in the general

register on use of the seclusion room. The form on use of the seclusion room should include a description of attempts to resolve the situation before the young person was taken to the seclusion room. Placing a young person in a seclusion room can be used as a solution only when no alternatives are left.

The expert participating in the inspection visit noted that young people arriving in the centre should immediately be offered individual therapy supporting their rehabilitation. Young people should also be given more information about their illness, so that those with a mental disorder would be able to cope better in everyday life.

The Chancellor asked that the centre should ensure that in the case of escorting girls the escort team should include at least one female employee.

Prisons

During the reporting year, the Chancellor focused attention on the situation of people in solitary confinement and examined the occurrence of deaths in prisons. Once again, it was necessary to deal with the issue of how to organise communication by children with a parent in prison.

During the reporting year, the Chancellor's advisers carried out an inspection visit to [Tartu Prison](#). Worth following is the example of how the prison organised a video meeting with next of kin for a prisoner who due to their special need and restrictions imposed on visits had no other option to communicate with their next of kin. It is also good that Tartu Prison has changed its earlier [practice](#) and allows convicted and remand prisoners to observe dietary habits characteristic of their religion and worldview as long as this does not require considerable effort or expense from the prison.

Unfortunately, not everything in Tartu Prison complied with the laws and international requirements. Resolving many problems requires changes in legislation. On that account, the Chancellor sent recommendations both to the prison and the Ministry of Justice.

To date, no solution has been found to the very long-standing issue of expanding remand prisoners' opportunities for movement and communication. The Chancellor found that the health of persons in solitary confinement needs to be monitored constantly and they should be provided opportunities for meaningful communication with other people. Prisoners should not serve a disciplinary confinement punishment for a long uninterrupted period.

Documents should clearly demonstrate why a person is placed in a separate locked cell. Medication prescribed for a prisoner should only be given by healthcare professionals.

Living conditions in Tartu Prison need improvement and the disciplinary confinement regime needs to be revised. Problems exist with applying and documenting immediate coercion. Unfortunately, the situation in the psychiatric department of Tartu Prison has remained the same for years and several of the Chancellor's previous recommendations have not been complied with.

The Chancellor has consistently emphasised that the living arrangements and conditions in prison must contribute to a person being able to lead a law-abiding life after release. For this, a prisoner must have learning opportunities, they should be able to maintain family ties, and keep up to date with what is happening in society. Thus, the prison has a major role in making society safer, reducing recidivism, and at the same time reducing the [cost of imprisonment](#).

Convicted and remand prisoners should also be able to communicate with their families and children via a video call, so as to maintain their family ties. The automatic ban on visits associated with placement in a disciplinary cell must be abolished and restrictions not facilitating meetings of convicted and remand prisoners with their next of kin should be removed. Books should again be made more readily accessible to prisoners.

The Chancellor [investigated](#) deaths in prisons. During the period under examination – from 1 September 2019 to 1 September 2020 – 17 people died in prisons in Estonia. Of these, 13 deaths were caused by health problems. Four people committed suicide. No killings have occurred in prisons since 2011.

Prisons and the Ministry of Justice effectively investigated deaths of prisoners and assessed the work of officers fulfilling their official duties at the time a death occurred. Deaths could be prevented even better if the health of people in solitary confinement were monitored daily, if the risk of self-injury and suicide of persons arriving in prison were assessed, and if the prison had enough officers using the principles of dynamic security in their everyday work. Changing cell furnishings that may hamper effective supervision would also help.

The Chancellor had to deal with a complaint from a prisoner asserting that the prison failed to resolve their applications by deadline. The Chancellor [ascertained](#) that it took Viru Prison more than a year to reply to applications by the prisoner. The Chancellor recommended that the prison, in cooperation with the Ministry of Justice, should analyse the situation and

quickly and effectively resolve the problem: for example, create new job positions in the prison, offer the prison temporary assistance from officials of the ministry, intensify hiring new staff, and the like.

Similarly to previous years, this year too the Chancellor received several complaints concerning communication between a child and their parent in prison. For example, Tartu Prison erroneously [interpreted](#) § 31(3) of [internal prison rules](#), finding that it prohibits a minor from coming for a visit alone. The Chancellor explained that § 31(3) of the internal rules, in combination with § 40, regulates the number of people coming for a long-term visit but does not prohibit a minor from meeting with a prisoner alone. The Ministry of Justice reached the same opinion in its [reply](#) to the Chancellor.

Viru Prison allowed a prisoner to have a long-term visit with their child only on the basis of written consent of the other parent or guardian. The prison also required the consent of the other parent or guardian to be able to carry out a strip search of a child.

The Chancellor [emphasised](#) that the prison must also comply with the rules laid down by the Family Law Act, for instance that a child may maintain personal contact with their parent and a parent has the duty and the right to maintain personal contact with their child. The prison must ascertain essential facts to allow and organise a visit between a parent in prison and their child. For this, the prison may ask the parent with the right of custody raising the child, or the child's guardian, to submit an opinion about personal contact between the child and the parent in prison. When organising a visit between a child and their parent in prison, the parent or guardian taking care of the child and the prison must communicate and cooperate with each other. Asking merely for written consent may not necessarily provide sufficient information to the prison, for example about how best to arrange the visit and how to support the child before, during, and after the visit. If it is found that the parents or the guardian are of a different opinion regarding contact between the child and their parent in prison, the prison may refuse to allow a visit until the parties concerned reach agreement (§ 25(1¹) clause 4 of the [Imprisonment Act](#)). If a parent seeking a visit is unable to exercise their rights of access, they may apply to the court to determine the conditions of access (§ 143(2¹) and (3) of the [Family Law Act](#)).

The Chancellor emphasised that it is extremely important that parents or the guardian are provided with information about the visit, including any search. If a child comes for a visit together with the other parent and if the child consents, it is considered good practice that

the parent is present during procedures carried out with the child. If a child comes for a visit alone, prison officers and staff have a decisive role in guaranteeing the child's physical and mental well-being. The prison must make every effort to avoid searches where a child is forced to strip. Such a search is not allowed; alternative search methods must be used. Erroneous practice of searches is not rendered lawful even by the presence of a parent with the right of custody or the guardian, nor by written consent to this procedure.

Police and Border Guard Board detention facilities

Among the Police and Border Guard Board detention facilities, during the reporting year the Chancellor inspected [premises used for short-term detention in Viljandi police station](#).

Immediately prior to the inspection visit, a police detention centre had operated in the same premises. Thus, persons in detention cells were ensured the opportunity to spend time outdoors and regular meals, which is commendable. The living conditions of detention cells are in need of improvement. Problems also occurred with handling medicines.

General care homes

In Estonia, increasing numbers of people are no longer able to cope on their own at home, due either to poor health or an unsuitable living environment. In general care homes, competent care and assistance is offered to them. Most residents in general care homes are elderly people, but there are also younger people who cannot cope on their own at home as a result of illness or injury.

According to [data](#) from the Ministry of Social Affairs, 13 247 people used the general care service in 2020. Estonia has more than 190 general care homes with approximately 10 000 places. At the end of 2020, 9025 people were living in general care homes. Protecting the rights of these people has been extremely important for the Chancellor.

During the reporting year the Chancellor's advisers inspected the activities of five care homes providing a general care service: [the Karksi Home of the South-Estonian Care Centre](#), [the care home of the Paju Pansionaadid](#) non-profit association, [the Nõlvaku care home of the Tartu Mental Health Care Centre](#), [the Phoenix Boarding House of OÜ Zunt](#) and [Pandivere Boarding House](#). A general practitioner was involved as an expert in all inspection visits.

When inspecting a general care home, the Chancellor's advisers scrutinise whether people

are treated with dignity, what the living conditions in a care home are, and whether people are not locked in their rooms. The advisers also monitor that the care home does not pose a risk to people's life and health. Items checked include whether the care home has enough staff, whether people are cared for and fed properly, whether their health is monitored, and whether they receive medical treatment if necessary. Inspection visits also focused on compliance with precautionary measures for combating the spread of infectious disease.

Since last year, the Chancellor has been concerned whether healthcare services are sufficiently accessible to care home residents. It was found that only one of the care homes inspected did not have a medical nurse. The situation has thus significantly improved in a year. Due to the spread of the coronavirus, it is important to monitor the health of social welfare institution residents even more carefully than usual.

For a number of years, the main concern for general care homes has been shortage of staff, in particular staff with the necessary training. This results in staff not having time to carry out the necessary care procedures (e.g. washing and turning those lying in bed) with sufficient frequency, offer residents meaningful leisure opportunities, or help people to go for a walk outdoors. [The law](#) does not state how many carers a general care home must have.

Nevertheless, staff numbers must be sufficient, so that in view of the preparation and workload of the staff it is possible to offer the necessary care and assistance to people. If there are not enough staff, it may be difficult for residents to call for assistance and staff might not notice each and every resident's need for assistance. This is so in particular if residents live in several buildings or on several floors.

Heads of the care homes inspected considered staff training and compliance with education requirements for carers to be important issues. Nonetheless, very many employees have unfortunately not received the required training. It is in the interests of both residents and staff that carers should have the necessary training. Properly qualified staff are able to prevent occurrence of many problems. Due to lack of knowledge, untrained staff might not know how to properly assess situations or how to act in anxious moments by taking account of a person's interests and choosing the right methods for ensuring their well-being and security.

One such wrong method is locking the door of a department or room in a general care home, so that residents are unable to move around freely. The law does not allow this and, moreover, it may pose a danger to the health of the secluded person. The general care home service is voluntary, it is provided at a person's own request and no-one may be held in a

general care home against their will. Those locked into their rooms in care homes mostly included people with problematic and unpredictable behaviour as well as those with a dementia diagnosis, who are difficult to handle. The living environment of elderly people with dementia who are receiving the general care home service should be [adjusted](#) to meet their needs, and [guidance materials](#) prepared by experts should be used to instruct staff.

Problems of compliance with [health protection requirements](#), ensuring privacy, as well as handling and administering medicines could also be found in care homes. Many of those problems were known already in [previous years](#). In some care homes, care plans were not properly filled out.

The coronavirus outbreak has significantly affected life in care homes: residents have been forced to spend more time in their room because many joint activities have been cancelled. Due to the spread of SARS-CoV-2, restrictions on visits were imposed in many care homes and for a long time residents could not meet their loved ones. Although it was possible to send parcels to loved ones, contacts by residents with their families were scarce. Recognition is due to those social welfare institutions which offered people alternative opportunities for communication, such as online meetings. For this, additional equipment was purchased and assistance was provided to people in using it. Unfortunately, not all the elderly are capable of using technical solutions (including for health reasons).

Care home residents consider communication with their loved ones extremely important and restricting visits from the next of kin may be a source of great stress and anxiety. The Chancellor also drew the attention of care homes to international recommendations according to which a complete ban on visits is not a reasonable solution in social welfare institutions. Rather, it is recommended to consider how to arrange safe meetings with next of kin by keeping a distance and using personal protective equipment if necessary.

Special care homes

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

The 24-hour special care service is currently provided to 2277 people in 56 locations. During the reporting year, the Chancellor's advisers carried out an inspection visit to [Valkla Home of AS Hoolekandeteenused](#) and the special care department of the [Welfare Centre of Viljandi Hospital](#)

. Inspection visits were also made to [Karski Home of the South-Estonian Care Centre](#) and the [non-profit association Paju Pansionaadid](#), which also provides a general care service in addition to the 24-hour special care service.

This year, many residents in special care homes moved to new residential buildings where the conditions are cosier. For example, many residents in the special care department of the Welfare Centre of Viljandi Hospital received a new home and have now moved into new buildings where the conditions are cosier than before, there is more light and also more privacy.

A persistent problem in special care homes [in recent years](#) is shortage of staff. Mostly, a care home has the statutorily required number of activity supervisors but often this is not sufficient. Since staff numbers are small, they have no time to deal with residents individually, and this also complicates supervision and ensuring a safe environment. Particularly worrying is shortage of staff in the evenings and at night. In some care homes, many residents need an individual approach, and in order to create an environment corresponding to their needs, more activity supervisors should be employed than prescribed by law.

Special training requirements have been established in view of the specific nature of care and assistance needed by residents of special care homes. Unfortunately, several activity supervisors in most of the institutions inspected had not completed the training required by law. Untrained staff might not know how to guide and support the development of people in their care or how to cope with agitated people. The Chancellor recommended that the necessary further staff training be quickly arranged. It is worth highlighting that care homes have begun to pay more attention to training than previously, and close cooperation with training institutions exists in organising training.

The Chancellor emphasised that the freedom of movement of a person receiving a 24-hour special care service without a court ruling may only be restricted for a brief period, and, for this, the person must be placed in a seclusion room compatible with requirements. The Chancellor also explained the requirements for documenting seclusion. Inspection visits revealed that agitated people had been taken to calm down in their own room or another room not adjusted for seclusion because the care home did not have a proper seclusion room. This is not safe. Freedom of movement of people with mental disorders undergoing an unstable remission was also restricted without a legal basis. Some care homes failed to document the required data based on which it is possible to check whether a justification existed for placing a person in a seclusion room.

Care homes still have problems with handling and administering medicines. Medicine cupboards contained medicines where it was not clear who they had been prescribed for. The Chancellor explained to care homes that strict rules for handling medicines must be complied with and a person may only be given medication prescribed by a doctor. Medicines left over due to change in the treatment scheme and other unnecessary medicines must be properly destroyed. The Chancellor reminded care homes that people should not be administered medication against their will or under threat. In several care homes, nursing care was not ensured to the extent required by law.

It is good to note that care homes increasingly try to think more about how residents could spend their time meaningfully. People are offered participation in various hobby groups and other activities (such as activities in the garden). Engaging in meaningful and developmental activities also helps to prevent conflicts.

Precautionary measures imposed due to the spread of the coronavirus also complicated the everyday life of special care home residents. For many people with mental disorders, daily routine is extremely important, so that restrictions on joint and hobby activities cause anxiety and discontent. Opportunities to meet next of kin were restricted.

It is good that several special care homes considered it important to offer alternative ways to communicate through technical solutions. New computer stations were set up and tablets were bought to make video calls. The Chancellor also drew the attention of special care homes to international recommendations according to which imposing a complete ban on visits in social welfare institutions is not reasonable. Preference should be given to arranging safe visits with next of kin by keeping a distance and using personal protective equipment if

necessary.

The Chancellor received a letter from a representative of a person in a closed social welfare institution who was concerned whether the opinion of their ward would be taken into account in vaccinating against the coronavirus. The Chancellor's advisers visited that social welfare institution on two days, and talked to residents as well as the staff of the care home, and examined documents. The Chancellor's advisers together with supervisory officials from the Health Board also monitored administering the second vaccine dose to residents of the care home. They were satisfied that no force was used towards residents during vaccination. The ward of the person who had contacted the Chancellor also affirmed that their wish not to receive the second vaccine dose was taken into account.

The Chancellor's advisers explained to care home staff how to vaccinate residents in accordance with the law so that vaccination would be lawful and respect their human dignity. In Estonia, vaccination is [voluntary](#). This means that no one should be forced to consent to vaccination, nor may anyone be swayed to give consent. Residents of a care home should be provided information about vaccines in a manner understandable to them. A healthcare professional vaccinating a person must assess whether that person is able to consider arguments for and against vaccination and give independent consent for vaccination. If a person with restricted active legal capacity is able to consider responsibly the arguments for and against vaccination, their guardian is not entitled to make the decision instead of them.