

# Chancellor's Year in Review 2022/2023

## Chancellor's Year in Review

Dear Reader

At the end of each reporting year, or actually at the end of each working day, we at the Chancellor's Office ask ourselves whether and how our work has improved life in Estonia. Whose concerns were we able to alleviate, what went well or did not go awry; what did we do to ensure that the Constitution really applies? We do not just carry out formal proceedings but resolve issues – this is our working principle. We try to avoid conflicts and noise in the workings of the state. To create clarity, balance and a sense of reason. All this in the spirit of the basic agreement for the common life of our nation – the Constitution. Whether and to what extent we achieve these goals is for you to assess. In this report, we have gathered examples of our most important work and trends attracting most attention during the period from 1 September last year to 31 August 2023.

The main objective of the institution of Chancellor of Justice is to restore constitutionality swiftly, competently and free of charge for those in need of assistance. Everyone may share their concerns with us in the way they can – no legal assistance is needed for this. It is the Chancellor's task to reach the core of the matter and then ascertain whether the Constitution, laws and the principles of good administration were violated. We try to act as quickly as possible and with minimum inconvenience to the individuals concerned. Sometimes a phone call to the official responsible is enough so that no extensive correspondence and signed opinions are needed at all.

For example, a family with five children had their problem quickly resolved where the robotic state benefit system had counted the family's fourth child as the first. The mother asked the Chancellor to look into the matter and it was found that the benefit application for the first, second and third child had been signed by the children's mother while the application for the fourth child had been signed by the father. The database was rectified and the unpaid benefit was paid retroactively. More widespread publicity was generated by a case where a kindergarten did not want to admit a child with diabetes because no one wanted to assume responsibility for the child. The problem was resolved through awareness-raising.

Consequently, the message also spread that a child with diabetes must be welcome at a kindergarten just like any other child.

There were numerous cases where ministries, rural municipalities and city governments failed to respond to someone's application in time. Often a person received a reply after we intervened but the authority that had erred nevertheless received an official recommendation from the Chancellor to improve its working arrangements.

Sometimes it seems that the level of administrative proceedings in Estonia is deteriorating. After all, the law requires that an individual's problem must be resolved without delay, substantively and correctly, by avoiding excessive bureaucracy, without burdening the individual concerned and without causing confusion. Unfortunately, we had to deal with cases where an official had given contradictory and ambiguous information and failed to explain a person's rights and duties to them. Sometimes no necessary administrative act had been drawn up at all where it was definitely required. A clearly worded and logically reasoned administrative act enables an individual to understand their rights and duties and, if necessary, have recourse to the administrative court. This prudent requirement has been laid down by law for a reason.

Similarly, it is necessary to carefully observe the procedure for establishing spatial plans as well as restrictions related to the environment, heritage protection and national defence. The public and every real estate owner concerned must be treated fairly and all the prescribed rules followed closely. No matter whether the issue concerns expansion of Nursipalu military training area, a nesting site of the flying squirrel, or a coppice belonging to pensioners, the message conveyed by the authorities must be clear and lawful. The Constitution protects property, in particular a person's home. This is what the Constitutional Assembly had in mind and what was also set in writing; this is the Constitution adopted by referendum.

For sure, justifications can be found for these violations. It seems that sometimes cutting the number of frontline officials and poor working conditions have led to a situation where they no longer cope with their work as required. A blatant example of this during the reporting year was the Data Protection Inspectorate, which was unable to respond to people's applications on time due to shortage of staff and posted a note to that effect on its website. The law does not lay down such a possibility. If no response is given to a person's application then the person's rights are violated. Necessary supervision over protection of personal data was also delayed.

In the event of shortage of resources at a point where an individual meets the state – in order to obtain a necessary document, a benefit, authorisation, or assistance against the unlawful activity of others – ministerial substitute activity will unfortunately continue to thrive unrestrained.

There are instances where the only useful advice to a person in need is that their predicament can best be resolved by having recourse to the court. Only the court can issue a mandatory precept or annul an administrative act. For example, we have provided comprehensive replies – which a person can use when having recourse to the court – to parents whose child has been left without a kindergarten place even though the law requires the grant of a place in a kindergarten. Hopefully, these court judgments can also be useful in the future. I would like to thank all the officials and decision-makers who have resolved people's concerns.

If a concern arises from an unconstitutional legal norm, the Chancellor can initiate constitutional review and, if necessary, eventually bring the dispute to the Supreme Court. I would like to thank members of the Riigikogu and the Government for supporting proposals to bring legal norms into conformity with the Constitution. Cooperation with the XV composition of the Riigikogu has also continued with a view to finding quick solutions. For example, under the leadership of the Riigikogu Social Affairs Committee, poorer treatment of upper secondary school pupils in a situation of unemployment was ended by introducing the necessary amendments to the Labour Market Measures Act.

Sometimes a solution is found quickly, while sometimes it takes years for a systemic change to take root. In 2019, on an application by the Chancellor of Justice, the Supreme Court declared unconstitutional regulations organising social welfare in Narva. If things have been amiss for a long time, they cannot always be rectified immediately but it is positive if progress is at least steady. Justified complaints are sent about shortcomings in the organisation of social welfare in almost all cities and rural municipalities. Money is scarce while the number of those in need is high and additionally there is a shortage of people with the resilience or skills to work as a carer or child protection official.

Fortunately, society is beginning to understand that everyone's human dignity must be respected. A person withering away in a care home or ill-treatment of a prisoner is no longer considered to be someone else's issue. The situation is the same with the rights of people with disabilities: step by step we are overcoming the arrogant attitude that there is no need

to lower a door threshold merely for a single wheelchair or a walking frame user. Embarrassing confusion still occasionally occurs but access by the visually impaired or hard-of-hearing to essential national and cultural events is becoming customary.

One issue has reappeared like a refrain in Chancellor's every annual report for years: some laws have been formulated so obscurely and generally that an official in charge of their implementation actually cannot make an indisputably lawful decision. Instead of a clear norm, a maze of conflicting norms has been enacted in the context of which interested parties are left with the impression that the new arrangement favours precisely them. This is true, for instance, about the Hunting Act, the Aliens Act, and about the disconnection of so-called phantom subscribers from the electricity network.

Another systemic legislative error is transfer of the grounds for restricting fundamental rights to the Government or a minister. It is often impossible to understand from the delegating norm itself what the Riigikogu deems permissible in terms of the purpose and kinds of restrictions. For example, the Government has been given the right to determine fishing opportunities for professional fishermen on Lake Peipsi but the law leaves unclear the objectives and conditions on which the Government must base its decisions. Under the Constitution, a regulation of the Government of the Republic or of a minister is intended to further detail the Riigikogu's resolution of principle or primarily to elaborate on its technical issues. The law may not be like an empty frame in which any picture can be inserted. The principle of legality enshrined in the Constitution deserves protection in any event, including in the interests of avoiding corruption and ensuring equal treatment.

The Constitution must be complied with; it is also beneficial for everyone in both short-term and long-term perspectives. Despite its simplicity and clarity, the Constitution can nevertheless be interpreted: it develops together with society and the state. Interpretation has its own rules of logic, the main one being that the Constitution may not be drained of substance as a result of interpretation. Sometimes it may indeed seem that the times and circumstances require disregard for what is written in the Constitution. However, the central idea and necessity of the Constitution lies in something else: it actually allows initial emotion, mindless eagerness and resulting harmful decisions to fade away. In the long term, the Constitution supports wise solutions. At the moment, it may seem like a millstone around one's neck but, looking back, there has been no reason to complain about anything. Quite the other way round.

For example, errors of activity-based budgeting become clearer year by year. If all the most

important expenditure and revenue were written in the annual budget as required by the Constitution, the Riigikogu could redistribute expenses where necessary. What the money is spent on in Estonia is largely determined by laws anyway – the rest, just like the results of implementing laws, can be described in an explanatory memorandum. The activity-based budget is undoubtedly convenient for the executive because money can be used quite freely without informing the Riigikogu or the public, and the possibilities of the National Audit Office to do its work are also limited.

For years, the public has with increasing equanimity accepted excessive restriction of fundamental rights, sometimes even clear violation of those rights. Previously, this was driven by the terrorist threat, then economic collapse, followed by the pandemic. Now security and safety seem to be appropriate to justify any restriction. Supposedly, it is not bad at all if everyone can be subject to full round-the-clock surveillance because, after all, for an honest person there is nothing to fear, is there?! Currently it seems that the next major threat to human rights and constitutionality will indeed arise from the public's consent to violating the Constitution in the interests of security and safety. Fear and anger are extremely strong emotions and, unfortunately, always put the rule of law at risk.

Political fads once again favour unwillingness to compromise, considering those with different views as enemies and not merely competitors, and in principle denial of independence, impartiality and balance. While in the 1930s Estonian politicians, too, went to Germany to learn how to attract people and shape their mood, now the trend of political technology is driven by American polarisation. If debates about the future of the Estonian nation die away in indignant antagonism where the deeds of members of one's "own tribe", as well as the members themselves, are always right – even when they have lied or clearly done harm – then nothing good can be expected.

We have reached the stage where the Riigikogu, whose constitutional right and duty is to steer the country, is choking on the steps undertaken to disrupt the constitutional order. The current ruling coalition missed the opportunity to be emphatically correct and statesmanlike, to clearly distinguish itself from previous manifestations of shallowness of political culture. The current opposition justifiably reacted by causing obstruction but, alas, eventually went too far with it. Thus, the President of the Republic also lost the opportunity to effectively oppose the fast-track procedure for passing draft legislation significantly changing society, and linking adoption of that draft legislation to a vote of confidence in the government – because, indeed, a situation had developed where the work of the Riigikogu was completely

stalled.

It has been suggested that perhaps democracy has exhausted itself, that forms of government alternate, that this is human nature and not much can be done about it. It is certainly true that everything changes and develops and the carefree terminus of history remains a philosophical dream. It is not wise to carelessly or casually surrender the democratic rule of law as the best guarantee of Estonia's survival and of everyone's personal freedom and responsibility.

The virtue of a system protecting human rights becomes clear when the system no longer exists. The need to protect the individual can be understood, for example, in cases where one falls victim to attacks depriving oneself of honour and dignity, without the presumption of innocence, without trial and without evidence. No one is guilty until a judgment of conviction has entered into force – this principle, too, often becomes clear only when an unjust 'public execution' has already taken place. This is not about political responsibility.

Only a democratic state governed by the rule of law can offer effective protection of human rights. The Constitution helps to bring out the best in each individual, as well as in a state created to serve the people. That way, our people, language, culture, internal and external peace would last unequivocally, so that Estonia would be the best place to live. In the Office of the Chancellor of Justice we will do our best to achieve this.

Gratefully,

Ülle Madise

Chancellor of Justice

## **Chancellor of Justice as the National Human Rights Institution**

As of 1 January 2019, the institution of the Chancellor of Justice is simultaneously the National Human Rights Institution (NHRI). The main task of this independent institution is to monitor, promote and protect human rights in its own country. The guidelines for the operation of the institution are set out in the so-called [Paris Principles](#) adopted by a resolution of the UN General Assembly.

Every national human rights institution may seek official international accreditation status,

which gives the institution additional rights within the UN human rights protection system and links it more strongly to other human rights institutions and international organisations. In charge of the accreditation process is the [Sub-Committee on Accreditation](#) (SCA) of the [Global Alliance of National Human Rights Institutions](#) (GANHRI). Since December 2020, the Chancellor has held A-status, i.e. the highest level of NHRI accreditation. Human rights institutions are accredited every five years.

### **Work of the Advisory Committee on Human Rights**

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

In autumn 2022, the mandate of the first composition of the Chancellor's Advisory Committee on Human Rights ended and the second composition of the Advisory Committee started its work.

The last meeting of the Advisory Committee's first composition was held on 30 November. The discussion focused on problems concerning the reception of Ukrainian war refugees as well as other human rights related issues. A summary of the Advisory Committee's work was also presented at the meeting. During the four years of its operation, the Chancellor in cooperation with the members of the Advisory Committee initiated several projects related to children's rights, law enforcement and environmental protection. The Chancellor thanked members of the Advisory Committee for the work done.

On 9 March 2023, the Chancellor announced a [public competition](#) to form the second composition of the Advisory Committee on Human Rights. [Fifty people](#) from different walks of life were selected to sit on the Advisory Committee. Members of the Advisory Committee include experts with considerable experience from the fields of equal treatment, the rights of people with disabilities, children's rights, violence prevention, healthcare, gene technology, medical ethics, and many other fields. The new Advisory Committee convened for the first time on 23 May.

## International reports

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

- In February, the Chancellor had an online meeting with representatives of the European Commission to discuss the situation of the rule of law in Estonia. The European Commission published its [report](#) in July. The report deals with significant developments in connection with the principles of the rule of law in all European Union member states. The Chancellor also contributed to preparing a similar report by the European Network of National Human Rights Institutions (ENNHRI) (see [State of the rule of law in the European Union](#)).
- In March, the Chancellor submitted an opinion on the draft general comment prepared by the UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT). The draft deals with the concept of a place of detention mentioned in Article 4 of the [Optional Protocol](#) of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The Subcommittee was impelled to write the general comment by the fact that States Parties to the Protocol put different interpretations on the concept of a place of detention.
- In April, the Chancellor submitted her opinions to the Monitoring Committee of the Congress of Local and Regional Authorities of Europe (CLRAE), which is preparing a report on the situation of Estonian local authorities.
- In August, the Chancellor submitted a [report](#) to the UN Committee on the Rights of the Child on implementation of the Convention on the Rights of the Child. In addition, Estonian children are for the first time sending to the Committee their overview of the situation of children in Estonia. Assistance to children in writing the report was offered by advisers from the Children's and Youth Rights Department of the Chancellor's Office and staff of the Union for Child Welfare. Estonia acceded to the UN Convention on the Rights of the Child in 1991 and assumed the obligation to regularly monitor the situation

of children. Responsible for monitoring implementation of the Convention is the UN Committee on the Rights of the Child to which States Parties must periodically report on the situation of the rights of the child. In May, the Estonian government sent to the Committee its combined fifth to seventh periodic reports on implementation of the Convention on the Rights of the Child. The Committee's session where the reports on Estonia will be discussed will take place in winter 2024.

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

## **Human rights blog**

Under the auspices of the Chancellor's Office, in 2022 the compendium "[Inimõigused](#)" (Human Rights) was published, being the first comprehensive treatment of the field of human rights in Estonian. The book is freely available on the website [www.inimoigusteraamat.ee](http://www.inimoigusteraamat.ee), and on the same page it is also possible to download a pdf version of the book. In addition to the book, the same website includes a [blog on human rights](#) offering regular shorter posts to support the issues covered in the book.

The Chancellor's senior adviser Ksenia Žurakovskaja-Aru dealt in her post with the issue of searches in prison from the standpoint of the rights of the child. The post was impelled by the Chancellor's years-long awareness-raising in prisons and the judgment of the Tallinn Court of Appeal of February 2022 (case [No 3-21-161](#)), which mostly supported the Chancellor's previous opinions.

Legal scholar Lauri Mälksoo in his blog post analysed how the UN Independent International Commission of Inquiry has dealt in its report with violations of human rights and international humanitarian law in Ukraine.

Legal adviser Liina Lumiste from the NATO Cooperative Cyber Defence Centre of Excellence explained in her post the principles of operation of the International Criminal Court and its role in investigating crimes.

Tallinn Administrative Court judge Pihel Sarv in her post dealt with climate change, human rights and the related role of the court.

Political analyst Risto Uuk from the Future of Life Institute analysed the impact of ChatGPT on human rights.

## **Articles and presentations**

Liiri Oja, Head of the NHRI Activities of the Chancellor's Office, and Noemí Pérez Vásquez, a Legal Officer at the Office of the United Nations High Commissioner for Human Rights, published an [article](#) "A Change of Narrative: Protecting Sexual and Reproductive Rights in Post-Conflict Criminal Justice" in the *Columbia Journal of Gender and Law*; the article was impelled by crimes committed in the Ukraine war.

On 8 November the *Postimees* daily published an article by Ülle Madise "[Hirm ja viha on kõlbmatud teejuhid](#)" (Fear and anger are unsuitable guides), discussing the impact that the fear and anger caused in society by crises has on fundamental rights and freedoms.

On 18 November, at a conference of the Estonian Union for Child Welfare the Chancellor of Justice delivered a [presentation](#) on the rights of the child to participate in decision-making concerning their life.

On 11 January in Pärnu and on 7 March in Viljandi, the Chancellor delivered a lecture "Sõltumatus, tarkus ja vaikimise nõiaring" (Independence, wisdom, and the vicious circle of silence) on issues of human rights in the frame of the lifelong learning scheme [väarikate ülikool](#).

On 10 February, the Chancellor moderated a debate with professor of international affairs Nina Khrushcheva and journalist Dmitri Muratov at the annual human rights conference "[War, Dictatorship and Human Rights](#)" organised by the Estonian Human Rights Institute.

On 17 April, the Chancellor of Justice delivered a lecture "Inimõigused – nende seos ja mõju julgeolekule" (Human rights – their connection with and impact on security) at the XLVII [Estonian National Defence Course](#).

In May, the journal *Juridica* published an [article](#) by the Chancellor's Senior Adviser Merle Malvet titled "Fundamental Right to Social Security. Practice of the Supreme Court in the Interpretation of Subsection 28(2) of the Constitution" in which the author dealt with the state-

guaranteed right to financial assistance when a person's income falls, and how the Supreme Court has interpreted that right.

## International relations

The Chancellor of Justice has been internationally active since the institution of Chancellor was re-established. First, cooperation contacts were created with colleagues in neighbouring countries; subsequently the Chancellor has joined international organisations and networks uniting chancellors of justice, ombudspersons and human rights institutions.

Since 2001, the Chancellor has been a member of the [International Ombudsman Institute](#) (IOI). The Institute includes over 200 national and regional ombudspersons from over a hundred countries worldwide. In May 2023, the Chancellor of Justice Ülle Madise was elected for the second time to the Board of the International Ombudsman Institute European region. The Board of the European region comprises seven members and currently includes ombudspersons from Greece, Portugal, the United Kingdom, Belgium, Slovenia, the Netherlands, and Estonia.

In addition, the Chancellor of Justice is a member of the [European Network of National Human Rights Institutions](#) (ENNHRI), the [European Network of Ombudspersons for Children](#) (ENOC) and the networks of [European Ombudsmen](#) (ENO), the [International Conference of Ombuds Institutions for the Armed Forces](#) (ICOAF), [police ombudsmen](#) (IPCAN) and National Preventive Mechanisms (NPM).

### Cooperation and meetings

During the reporting year, ombudspersons from several countries visited Estonia. In September, the Chancellor hosted a meeting of ombudspersons and chancellors of justice from the Baltic and Nordic countries, which had repeatedly been postponed due to the corona pandemic. The meeting dealt with issues of artificial intelligence and automatic administrative decisions. The foundation for this form of cooperation was laid in the 1990s when, at the invitation of Eerik-Juhan Truuväli, the then Estonian Chancellor of Justice, the Finnish Chancellor of Justice, the Finnish ombudsman and the Latvian ombudsman met for the first time. Over time, other Baltic and Nordic colleagues also became involved in annual meetings. The next meeting will be organised by the Danish ombudsman in autumn 2023 in Copenhagen.

In April, the Chancellor organised the annual cooperation meeting of Baltic and Polish ombudspersons for children. This time the meeting focused on involvement of children in decision-making concerning them and problems of assisting Ukrainian refugees. In the same month, the Chancellor received a visit from the Finnish Ombudsman for Children as well. The Chancellor also received visits from the Azerbaijani ombudsman and the Chair of the Estonian parliamentary group of the Ukrainian parliament together with an adviser to the Ukrainian ombudsman.

In addition, the Chancellor received representatives from several international organisations and European countries. In September and June, the Chancellor received visits from judges from European countries participating in a training programme in Estonia. On the Estonian side, the training of judges is organised by the Supreme Court.

In June, the Chancellor introduced her work concerning supervision of surveillance agencies to members of the G10 Commission of the German Bundestag. In the first half of 2023, the Chancellor also received visits from the ambassadors of Ireland, Latvia and Georgia.

In January, a delegation of the OSCE Office for Democratic Institutions and Human Rights arrived for a visit to Estonia in order to familiarise themselves with preparations for the Riigikogu elections and the competence of the Chancellor of Justice in this respect. In February and July, the Chancellor had a visit from the fundamental rights monitors of the European Border and Coast Guard Agency (Frontex) in order to learn about guaranteeing fundamental rights at the Estonian border, which is simultaneously also a European Union external border. In February, an online meeting with European Commission officials took place to discuss the situation of the rule of law in Estonia. In April, the Chancellor met with representatives of the Monitoring Committee of the Congress of Local and Regional Authorities of Europe (CLRAE) and representatives of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

During the reporting year, the Chancellor and her advisers also participated in several events organised by colleagues in other countries and by international organisations. For example, at the invitation of her colleagues the Chancellor participated in meetings in Strasbourg and in Vitoria-Gasteiz to discuss the tasks of an ombudsman in an increasingly rapidly developing digital world. The Chancellor's advisers represented the Chancellor in working groups set up by the European Network of National Human Rights Institutions and in several meetings organised by ombudspersons for children and other networks.

In December and January, in the frame of the Nordic-Baltic Mobility Programme for Public Administration, the Chancellor's advisers visited their colleagues in Denmark and Finland. During the study visits, issues of involuntary psychiatric care were discussed and local psychiatric hospitals visited. A contribution towards the cost of the study visits was made by the Nordic Council of Ministers.

In April, the European Network of National Human Rights Institutions (ENNHRI) convened for an extraordinary meeting to vote on the exclusion of the Russian Commissioner for Human Rights (i.e. the Russian human rights institution, or NHRI) from the organisation. Members of the network found that the *modus operandi* and statements of the Russian Commissioner for Human Rights did not comply with the goals and activities of the network and decided to exclude the Commissioner from the organisation (see the news on the [vote](#) by the members of the network). The UN Sub-Committee on accreditation of national human rights institutions (SCA) also decided to launch a special review of the Russian Commissioner for Human Rights in order to assess the Commissioner's compliance with the requirements for human rights institutions, i.e. with the [Paris Principles](#) (see para. 4.3 of the [report](#)).

## **International reports**

The Chancellor participated in drawing up several international reports. For example, the Chancellor submitted her opinions to the Monitoring Committee of the Congress of Local and Regional Authorities of Europe which is preparing a report on the situation of Estonian local authorities, and to the European Commission, which drew up a [report](#) on the situation of the rule of law in European Union member states. The Chancellor also contributed to preparation of the rule of law report by the European Network of National Human Rights Institutions (ENNHRI) (see the [State of the rule of law in the European Union](#)), the purpose of which was to provide additional information for the above-mentioned report drawn up by the European Commission.

Estonia acceded to the UN Convention on the Rights of the Child in 1991 and thereby assumed the obligation to regularly monitor the situation of children. Responsible for monitoring implementation of the Convention is the UN Committee on the Rights of the Child to which States Parties must submit regular reports on the situation of the rights of the child. In May, the Estonian government submitted to the Committee its combined fifth to seventh periodic reports on implementation of the Convention on the Rights of the Child. In August, the Chancellor submitted her [report](#) on implementation of the Convention. In addition, Estonian children are for the first time sending to the Committee their overview of the situation of children in Estonia. Assistance to children in writing the report was offered by advisers from the Children's and Youth Rights Department of the Chancellor's Office and staff of the Union for Child Welfare. The Committee will examine the reports on Estonia at a session taking place in winter 2024.

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