Chancellor’s Year in Review 2022/2023

Children and young people

Estonia ratified the UN Convention on the Rights of the Child in 1991. Under Article 4 of the Convention, States Parties must undertake all appropriate legislative, administrative, and other measures to ensure respect for the rights recognised in the Convention.

Since 2011, in Estonia, the function of the independent ombudsman for children is performed by the Chancellor of Justice. The task of the Ombudsman for Children is to ensure that all the institutions and persons that pass decisions concerning children proceed from the best interests of the child.

The Chancellor’s assistance is often sought by parents who have been unable to agree with each other on matters of child custody, maintenance or access. The Chancellor does not resolve disputes between parents; however, the Chancellor’s advisers do help to clarify these situations.

Certainly, it would be best if separated parents could find consensus on issues concerning the child and make a joint effort for the child's well-being. Agreement is part of parental responsibility and, if necessary, assistance of an impartial intermediary, i.e. a national mediator, can be sought to reach agreement. However, state coercion cannot mend human relationships. If parents are unable to agree on custody of the child and access to the child, the dispute is resolved by a court. When making its decision, the court must take into account the specific circumstances and proceed from the child’s best interests.

Parents who have decided to have recourse to the court are often also dissatisfied with the actions of a child protection worker and consider the position of the child protection worker submitted to the court to be biased. In these cases, the Chancellor’s advisers explain that, in litigation concerning a child’s living arrangements, a child protection worker must also submit a reasoned opinion. The child protection worker is expected to offer an assessment as to the best solution for the child. Parents, in turn, can present to the court their views and evidence about the actions and opinions of a child protection worker. The court decides what weight it gives to the position of the child protection worker. The Chancellor of Justice cannot assess a

court judgment.

The Chancellor is often approached by parents who have not been given a kindergarten place by a local authority. There are also complaints about lack of necessary support in kindergartens, such as speech therapists. Problems still persist in relation to organising school transport and education for children with special needs, as well as other issues, such as the quality of school meals and the use of smart devices at school. Problems related to hobby education have also been the same over the years: the Chancellor is asked about the funding of hobby education and local government support. The rules on payment of benefits have caused confusion in cases where a child lives in one local authority but attends school in another.

Prompted by an increasing number of cases in recent years in which a trainer has allegedly ill-treated a pupil during training, the Chancellor's advisers thoroughly studied the requirements imposed on work as a trainer. Potential problems were analysed with trainers, athletes, federations and experts in sports ethics. During the discussions, it was found that safe sport for children is supported if the parent, child and trainer reach a uniform and clear understanding among themselves of the aims of engaging in sport. It would be best if the child, parent and trainer together discussed all the rules applicable at a training session, including rules aimed at maintaining order. Agreements help prevent misunderstandings, conflicts and ill-treatment of the child.

The parent should also closely monitor how the child feels. The training load and expectations for athletic performance, as well as school absenteeism due to competitions and concerns about coping at school, can affect a child's mental health. The parent must support the child and, together with the school and the trainer, help to find the necessary balance between sports, studies and family life. These and many other recommendations were aggregated in the safe sporting guide "Turvaline sport" (Safe sports), about which an information leaflet for children was also prepared.

Discussions with sport experts showed a lack of clear and binding rules in sport as to what kind of behaviour should be considered abuse. It is important to agree on what will be done in the event of a violation of rules or agreements. According to the Constitution, the dignity of all parties must always be respected in any procedure.

Prisons have introduced a number of changes in their work based on recommendations by the Chancellor of Justice. One major and important change is that children coming to a prison

to visit a parent no longer have to undergo a strip search. Visiting and waiting rooms in prisons have been made more child-friendly. Imprisoned parents can take a picture with their children during a visit. The living conditions of young people serving a prison sentence have also improved: communal rooms of young people have been fitted with more comfortable furniture, and murals cover the walls of the rooms. Viru Prison has abandoned the daily routine search of young people.

An appropriate physical environment and treatment that respects human dignity makes it easier for young people to return to normal life after release from detention. It is also positive that the repeated recommendation by the Chancellor of Justice to create an opportunity for prisoners to communicate with their family and next of kin via a video link has finally been taken on board. This issue has been resolved in the Draft Act amending the Imprisonment Act. Video meetings are also important for children whose parent is in prison.

Children and parental care

Parental maintenance obligation

The Chancellor was approached by a parent who was annoyed that the rural municipality government, which had been appointed as guardian of their child, demanded maintenance support for the child from the parent.

The Chancellor's advisers explained to the parent that the municipality had acted lawfully because changes made to the right of custody do not relieve the parent of the obligation to maintain their child. Thus, a parent whose right of custody has been restricted or suspended and whose child is in alternative care must also maintain their child.

Enforcement of a maintenance claim

The law lays down that child maintenance claims are enforced as a priority. Due to a mistake by a bailiff, a child did not receive money from the father's mandatory funded pension disbursement to cover the maintenance claim. Since the bailiff failed to determine the type of claim correctly, the claim reached the Pension Centre's information system as an ordinary attachment and in making disbursements the Pension Centre proceeded from the order in which attachment notices had been received (the maintenance claim was the second in the queue).

The Chancellor found that the bailiff had failed to demonstrate sufficient diligence in

enforcing the maintenance claim and recommended that the bailiff should consider remedying their error. In the subsequent dispute, the bailiff took the view that, even though the claim in question was a child maintenance claim, only periodic maintenance claims and not the maintenance debt should be enforced as a matter of priority.

The Chancellor did not agree with this interpretation and reiterated her recommendation. The law does not stipulate that only periodic maintenance claims must be enforced as a matter of priority. Nor does the law contain a provision to the effect that a maintenance debt accumulated from the moment of submission of a maintenance claim to the entry into force of a court decision, or a maintenance debt incurred after the entry into force of a court decision (including during enforcement proceedings), might not be enforced as a matter of priority.

The bailiff refused to remedy their error and believed that the matter should be resolved in court.

Infants in a shelter

Unfortunately, it still happens that a child has to live in a shelter for a long time. During the reporting year, the Chancellor was contacted by a mother whose pre-school-aged children had lived in a shelter for eight months.

The Chancellor's advisers explained to the city government responsible for the children's living arrangements that a child has the right to alternative care and that the city government must ensure this for the child even if the parental right of custody has been temporarily suspended.

As a rule, a child should stay in a shelter as briefly as possible. Even a child that is in need of substitute care for a brief period should live in a foster family rather than in a shelter. Exceptions are allowed if this is in the child's best interests.

Safety of children in a substitute home

The Chancellor was informed that there could be problems with ensuring the safety of children in one of the substitute homes. The Chancellor's advisers went to check the situation, and it was found that some children living in the family house could indeed endanger others and themselves through their behaviour. Children who had been victims of ill-treatment also lived in the family house.

The Chancellor's adviser asked the Children's House (*Barnahus*) specialists of the Social Insurance Board to assess the children's need for assistance and to offer counselling to the staff of the family house. The Social Insurance Board complied with the proposal. Counselling is ongoing. The Chancellor's advisers recommended that the family house should provide sex education training to family parents, so that they can better protect and support children.

Referral of a child to a closed medical institution

The Chancellor was approached by a parent who was dissatisfied that the rural municipality government had not applied to the court for referral of their child to a closed medical institution.

The Chancellor explained that an application for involuntary treatment does not necessarily have to be submitted to the court by the municipality where the person in need of treatment lives. According to the law, this application can also be made by a child's guardian and the chief doctor of the hospital. Thus, the parent who has the right to custody of the child may also apply to the court.

Ill-treatment of children in a closed childcare institution

In January 2023, three former employees of Lille Home of AS Hoolekandeteenused were convicted of ill-treatment of disabled children. All the defendants were sentenced to a term of imprisonment on probation. Such a light sentence for this criminal offence breached people's sense of justice and raised many questions among the public. The Estonian Chamber of People with Disabilities asked the Chancellor to assess the proceedings of the case.

The Chancellor concluded that, in this particular case, existing legal provisions and the internal control systems of the institutions did not sufficiently protect the rights of particularly vulnerable children. The Chancellor of Justice asked the Riigikogu to consider introducing new rules so that people in a vulnerable or helpless situation could be protected against ill-treatment or systematic degradation of human dignity. This concerns care for both children

with disabilities and adults with disabilities, as well as care for people in need of assistance and support due to age or illness (e.g. failure to help a person in need of support when eating and degrading treatment of those in need).

The Chancellor of Justice also called on the Riigikogu to consider whether it would be necessary to introduce a lifetime ban on working with children if a child has been repeatedly or systematically physically abused. Under § 121 of the Penal Code currently in force, a convicted person may resume work involving children after the person's criminal record has been deleted from the criminal records database. In the Lille Home case, this is three years after the end of the probation period imposed by the court judgment.

Ukrainian children in Estonia

The Chancellor of Justice inquired about the situation of children who fled to Estonia from the war in Ukraine. To that end, the Chancellor's advisers examined the children's study conditions at the Vabaduse Kool (School of Freedom) and also visited the Tallink ship *Isabelle*, where some refugees were provided with initial accommodation.

The Chancellor's advisers organised a workshop for Ukrainian children on the ship. The advisers told the children about the rights of the child and heard how the children were doing in Estonia and what they would like to be different.

Conversations revealed that it took the children a long time to get to school because their schools were located quite far from the port. Several children followed additionally the Ukrainian school programme. Children also wished to have more opportunities to do sports and engage in hobbies. Due to the heavy study load, several children (especially those following both the Estonian and Ukrainian school curricula) did not make it to the training, hobby groups or youth centre, which are quite far away from the port. The ship had play areas for smaller children, but there were no rooms adapted to the needs and interests of older children.

The Chancellor recommended offering children more recreational opportunities on board the ship and providing information on public sporting opportunities near the port. All the observations and recommendations were sent to the Social Insurance Board.

The Chancellor's advisers also visited family houses where Ukrainian children who arrived in Estonia without their parents were living. Ukrainian children living in family houses were mostly satisfied with their lives. They said that they were well received in Estonia. Ukrainian

children in family houses have the same living conditions as Estonian children who have been deprived of parental care. During the visits, it was found that some young people needed support in dealings with the authorities (for example, applying for documents) and finding a family doctor, and some needed help in finding a job and starting an independent life. The Chancellor's advisers explained to young people and family parents what their rights and opportunities are and where to ask for support if necessary.

Kindergarten

The Chancellor receives many petitions from parents complaining that not enough kindergarten places are available for their children of creche age.

Under the Preschool Childcare Institutions Act, a rural municipality or city must give a kindergarten place to each child at least 1.5 years old whose residence is within the boundaries of that rural municipality or city and coincides with the residence of at least one of the parents. A rural municipality or city has complied with its duty if it gives a family a kindergarten place within a reasonable time. Merely placing a child in a queue for a kindergarten place is not sufficient.

The state should understand that even though the law requires a local authority to ensure a kindergarten place, all in all the shortage of kindergarten places is not just the problem of occasional families or merely local authorities. Under the Constitution, provision of education falls under state supervision. If a local authority is unable to comply with the law and regularly leaves parents in trouble, the state must intervene.

Ensuring a kindergarten place

According to the law, a local authority must give a kindergarten place to each child at least 1.5 years old whose parent expresses a wish for this. If a local authority has failed to comply with this requirement, the Chancellor will explain to parents their right and how they can defend their rights in court, if necessary.

Many parents have had recourse to court with a complaint about having been deprived of a kindergarten place, and extensive case-law has developed based on these cases. According to the courts, a family must generally be given a kindergarten place within two months of submission of an application. The courts have ordered local authorities to provide kindergarten places, and local authorities have also complied with court decisions. The courts

have also ordered local authorities to pay compensation for the costs incurred by the family because the local authority had failed to give them a kindergarten place within a reasonable time.

In her opinion to the Supreme Court, the Chancellor emphasised that, according to the Constitution, local authorities may not refuse to comply with the law. Through the population register, cities and rural municipalities can generally find out how many children of kindergarten and school age live in their territory and how many children will soon reach kindergarten age. A local authority can also give a family a kindergarten place in cooperation with a neighbouring municipality or a private kindergarten.

In view of this, the Chancellor concluded that the provision in a regulation of Rae rural municipality, which made obtaining a kindergarten place dependent on the availability of a vacancy in the relevant age group in the kindergarten, was unconstitutional. The Supreme Court agreed with the Chancellor and acknowledged that the provision in question was unconstitutional and invalid (judgment in case No 5-22-10).

In its decision, the Supreme Court noted that both the state and local authorities are responsible for access to preschool education. They both have a responsibility to find a systemic solution to the problem that will enable children to receive preschool education and help families reconcile their professional and family lives. In the opinion of the judicial panel, a situation cannot be allowed in which the availability of public services largely depends on the extent to which a city or rural municipality decides to fulfil the obligations imposed on it by law (judgment No 5-22-10, para. 58).

The Chancellor is convinced (reply to a question by a member of the Riigikogu) that the state as a whole is ultimately responsible for access to education, including preschool education. Under the Constitution, provision of education falls under state supervision. Consequently, the state must be active in case it is found that a service that is so important for children and families is not provided as prescribed by law. The fact that it is possible for parents to claim compensation from the local authority directly or through the court, or that in some places social benefits are paid if the local authority violates the law and fails to offer a kindergarten place, does not solve the problem and does not comply with the principle of the rule of law. Laws must be complied with.

Availability of a kindergarten place

Many parents have considered a kindergarten place offered to them as unsuitable, since in the family's opinion, the kindergarten is located unreasonably far from home.

According to the Chancellor's assessment, the law does not give a parent the right to get a kindergarten place in the specific kindergarten that the parent prefers or that is closest to their residence or place of work. It is important that the child has a reasonable opportunity to attend kindergarten, taking into account public transport timetables or the time required for a car trip and related costs (see Tallinn Court of Appeal judgment in case No 3-21-336).

When resolving a petition concerning this issue, the Chancellor concluded that the particular municipal council had not acted manifestly unreasonably when designating kindergarten service areas. What is important is that the kindergarten service should be available to a family.

In another case, the Chancellor explained that a travel time between 10 and 15 minutes cannot be considered excessively tiring or burdensome for a child. However, since the child cannot go to the kindergarten on foot, the parent has the right to assume that the local authority will arrange a transport opportunity for the family, if necessary. It should be borne in mind that a kindergarten day, which also includes going to the kindergarten and time spent on the trip home, should not be excessively long and tiring for a child.

The amount of kindergarten fees and seasonal closure of a kindergarten

The Chancellor was also asked about kindergarten fees. Parents were concerned about the increase in place fees as well as the differential treatment of families, and the summer place fee.

The Chancellor found that, as long as the municipal council does not exceed the statutory decision-making limits when increasing the kindergarten fee, the Chancellor cannot interfere in determining the fee. The city council may decide how to divide the maintenance burden of kindergartens between the city budget and families, i.e. service recipients.

It is certain that the kindergarten fee may not exceed 20 per cent of the minimum wage established by the Government of the Republic. However, the law allows the municipal council to differentiate the kindergarten fee, taking into account a child's age, the management costs of the childcare institution, or other circumstances. The Chancellor considered the grounds for differentiation established by a regulation of Pärnu City Council

(existence of a swimming pool, location of a childcare institution in the city) to be reasonable and permissible.

The Chancellor further explained that families who cannot afford to pay the fee can apply for assistance from the city or social benefit from the state to pay it, or ask to be exempted from the place fee, if the municipality has laid down such a possibility.

Analysing the procedure for paying kindergarten fees in Saku rural municipality, the Chancellor came to the conclusion that the municipal council may also decide that families pay the same amount of fee every month. That way, the fee is not higher in winter months, nor is it lower in summer. Although this solution may seem unfair to parents, it fits within the frame of the law.

One parent asked why the kindergarten was closed after the Christmas holidays, i.e. from 27 to 31 December. The Chancellor explained that, although a child is entitled to attend kindergarten throughout the school year, the kindergarten may still be seasonally closed if the rural municipality or city government so decides on the basis of a proposal from the board of trustees. This decision was not arbitrary and it was announced early on so that parents could reckon with the temporary closure of the kindergarten. The municipality offered childcare as a replacement service for families during that period.

A petitioner enquired whether a provision in Keila City Council regulation, according to which the rate of the kindergarten fee is lower if both parents are registered as residents of Keila city, and higher if only one parent is registered as a resident of Keila, was compatible with the principle of equal treatment. The Chancellor concluded that a local government has a constitutional right to give preference to residents of its community when granting voluntary benefits and support. However, in no case (including when only one parent is the city resident) may the kindergarten fee exceed the upper limit set for the place fee.

A petitioner also asked about the difference in the kindergarten fee established by Saue Rural Municipal Council. According to the procedure set by the council, the kindergarten fee for children over three years of age is two times lower than the fee for younger children. The Chancellor maintained her earlier opinion and explained that introducing a more favourable fee for children over three years of age can be considered a voluntary benefit or support offered by the municipality. Such a benefit does lead to differential treatment, but a reasonable and relevant justification exists for this: to motivate parents of children between the ages of three and seven to put their children in kindergarten in order to support the

child’s development.

Cooperation of a kindergarten with parents

Complaints from several parents revealed that some kindergartens continued to enforce restrictions imposed due to the Covid-19 epidemic and did not allow parents into kindergarten premises if parents wanted to take a closer look at life in kindergarten groups.

The Chancellor explained to the parents that the kindergarten cannot impose such a blanket ban. Parents have the legal right to see the conditions in which the child spends a large part of their day, since the child’s well-being is primarily the responsibility of the parent. Nor can state supervision replace observations by parents. How parents can get the best overview of the conditions in kindergarten should be decided by the kindergarten together with the parents.

The laws do not regulate how the process of getting used to the kindergarten should take place. The presence of a parent can give the child a greater sense of security and help the child adapt to kindergarten life faster. A parent may wish to evaluate how a particular kindergarten and group suit the child and how the parent can help the child adapt. If parents and kindergarten staff do not reach an agreement on arrangements for adapting a child to the kindergarten, it is worth seeking advice from a child psychologist or educational scientists.

Kindergartens have asked the Chancellor for recommendations on how to interact with a parent who behaves aggressively. The kindergarten must ensure a safe working environment for its staff. Internal rules may regulate how to organise communication between a parent and the childcare institution. It is possible to use several communication channels, but none of them can be completely excluded for security reasons. A kindergarten teacher should receive mental support to cope with conflicts or other difficult situations, for example, from a psychologist.

The Chancellor was also asked about outdoor activities of kindergarten children, specifically how many times a day children should go outside in kindergarten. According to the regulation laying down the health protection requirements for a kindergarten, a child must go outdoors once or twice a day, depending on the weather; and, in good weather, as many activities as possible must be organised outdoors. The Chancellor explained that the statutory ratio of kindergarten staff to children must be guaranteed both indoors and outdoors, i.e. during the entire working time of the group.

The issue of the midday nap of children was raised. Based on her earlier opinion, the Chancellor explained to both the parent and the kindergarten concerned that a child over the age of four should be able to choose between sleep and quiet activities. On the other hand, the daily schedule of childcare (including the time of a midday nap) is determined by agreement between the childcare facility and the parent. Whether a child needs any daytime sleep is primarily for the parent to assess. If childcare staff notice that a child needs a midday nap and wishes to sleep during resting time, but the parent believes that the child does not need such a long sleep period as prescribed by the daily schedule, the parent should discuss the child's need for sleep with the childcare staff and the best solution for the child should be found together.

A child with special needs in a kindergarten

Under the law, all children from the age of one-and-a-half to seven years must receive a kindergarten place if their parents so wish. No distinction is made with regard to children with poorer health or those needing additional support at a kindergarten. Although legislation and sectoral development plans have deemed it important that a child's special need is noticed at an early stage and the child is quickly offered effective assistance, the actual situation is often different. It still happens that a parent must battle to obtain a support service or a place in an adaptation or special group for their child.

The Chancellor was approached by a parent to whom the rural municipality refused to reimburse expenses incurred in connection with the child's speech therapy. The pre-school counselling team had identified that the child needed the help of a speech therapist, but this was not provided in kindergarten. The Chancellor explained that a child is entitled to receive free speech therapy in kindergarten. Timely treatment increases the likelihood that the child's need for assistance will decrease when going to school. A municipality cannot refuse to provide support to a child due to the fact that there is no speech therapist in the

kindergarten. If a local authority places performance of its task on a parent, the local authority must at least reimburse the expenses incurred by the parent.

In another similar case as well, the Chancellor had to explain to the local authority that, although the child receives speech therapy on a small scale within the frame of a rehabilitation service, has a support person in the kindergarten and the kindergarten staff support the child, this does not give the kindergarten the right not to arrange assistance by a speech therapist and a special education teacher for the child. The kindergarten must follow the recommendation of the external advisory team (Rajaleidja).

The Chancellor was also approached by a parent whose child with diabetes could not attend kindergarten because no sufficient support was provided there. The Chancellor's advisers contacted the local authority, and subsequently the city, in cooperation with the kindergarten, found a solution to the problem: a support person was appointed for the child, the procedure for substituting the support person was agreed, and the kindergarten prepared itself to support the child diagnosed with diabetes.

The Chancellor also had to investigate a case where kindergarten teachers restricted the interaction and play together of children with special needs, as parents of children with special needs feared that interaction between children with different levels of development might have a negative impact on some children.

The Chancellor emphasised that the kindergarten management and teachers must proceed in their work from the best interests of the child. If a decision concerns several children, this principle requires that the interests of each child should be ascertained before a decision is taken and a solution must be found that best meets the interests of all children.

According to an expert who assessed the situation, studies suggest that if meetings between children with different levels of development are well organised then no negative consequences have been observed in the interaction among children. On the contrary, interaction between kindergarten groups with different levels of development can be beneficial for all children. Teachers need to think through such joint activities taking into account the specific needs of children, and to guide and support children. The expert also noted that a disparaging attitude is often caused by parents' own fears and ignorance. Kindergarten teachers can dispel those fears.

Compensation for childcare service

The Chancellor made a proposal to Tallinn City Council to bring the first sentence of § 2(5) of the council regulation on the "Procedure for financing the childcare service" into line with the principle of equal treatment set out in § 12 of the Constitution. Under that provision, an application for childcare service compensation may be made only as of the day following termination of parental benefit for the child for whom childcare is purchased.

When setting the conditions for the childcare service, the council failed to take into account that a family may also use parental benefit in parts, on a single-day basis, until the child reaches the age of three.

According to the regulation, parents who are not paid parental benefit or who receive parental benefit for another child who does not attend childcare are entitled to childcare service compensation. However, parents who need a place in childcare but who continue to be entitled to parental benefit are not entitled to childcare service compensation. This means that parents of children between the ages of one-and-a-half and three years old are treated differently when granting childcare service compensation. No relevant reason exists for such a difference in treatment.

School

Compliance with the duty to attend school

The Chancellor of Justice was asked whether a Ukrainian child residing in Estonia can be exempted from the duty to attend school in Estonia if the child studies at a Ukrainian school online. The Chancellor explained that, according to Estonian law, a child residing in Estonia and subject to the duty to attend school must attend an Estonian school. This also applies to children who moved to Estonia from Ukraine due to the war. The Chancellor added that, understandably, the duty to attend school does not extend to those who have come to Estonia for a short period. However, if a child lives in Estonia, they must also attend school here.

Compliance with the duty to attend school also arose in connection with a petition in which the parent expressed a wish to homeschool their child permanently residing in Estonia, as no school had been found for the children that would organise homeschooling in English. The Chancellor was asked whether children could study at home under the study programme of a

school in the United States.

The Chancellor explained that the Constitution and laws support the view that a child subject to the duty to attend school who is permanently residing in Estonia must study at a school located in Estonia. The state must ensure that all children subject to the duty to attend school living in Estonia can attend school and acquire education of such quality and content that is in accordance with the Constitution and laws of Estonia.

Exclusion from school

The Chancellor received a letter from a pupil asking whether a pupil who had created an Instagram account could be expelled from school because another pupil considered a comment published about them on the account as bullying.

The Chancellor explained that if pupils encounter problems at school, an attempt should be made first of all to find solutions within the school. Social media is mostly not a suitable tool for this. An anonymous account opener must consider the consequences of posting offensive information on social media. Under the Law of Obligations Act (LOA), defamation – including by passing undue value judgments, the unjustified use of a person's name or image – is a violation of privacy or another personality right (§ 1046(1)). Defamation or insult may result in an obligation to compensate for harm caused (§ 1043 LOA).

The school must ensure the safety of all pupils, as prescribed by the internal school rules (§ 44 Basic Schools and Upper Secondary Schools Act (BSUSSA)), and the head of the school is responsible for this. The school's internal rules must state how situations that threaten safety are prevented and cases of bullying resolved. An incident of bullying or violence at school must be reported to the school as soon as possible as well as to the parents of the children involved in the incident.

The head of school is responsible for provision of necessary support to pupils at school. The school may implement support measures and sanctions laid down by the school's internal rules to ensure that pupils behave in accordance with the internal rules and respect others. Internal rules should prevent the emergence of situations jeopardising safety at school (§ 58(1) BSUSSA). Before taking support measures or imposing sanctions, the pupil's explanations are heard and the reasons for the choice of the particular support measure or sanction are explained to the pupil. In that case, the pupil and their parent must be given an opportunity to express their opinion regarding the pupil's behaviour and imposition of the

sanction (§ 58(2) BSUSSA).

Exclusion from school is regulated by § 28 of the Basic Schools and Upper Secondary Schools Act. Under that provision, a pupil is excluded from school if, by their behaviour, the pupil jeopardises the security of others at school or repeatedly violates the internal rules, except a pupil subject to the duty to attend school (§ 28(1) clause 4). The law allows the internal rules of upper secondary schools to stipulate additional grounds for exclusion from upper secondary school (§ 28(2)). These additional conditions may also be stricter than those laid down by law.

Exclusion from school is an extreme measure that a school may not apply arbitrarily. It would be reasonable first of all to try and resolve cases of bullying at the school itself. This can best be done in cooperation between pupils, the school and parents, based on dialogue and mutual respect. A school psychologist can help with hearing the parties. Practical advice on what to do in case of bullying can be found on the websites of the Chancellor of Justice and the Foundation Kiusamisvaba Kool.

Restrictions on leaving the school building

A disgruntled parent wrote to the Chancellor that a school security guard had not allowed their child out of the school building on the basis of a notice of absence written by the parent but required confirmation from the class teacher for the pupil to be able to leave.

The Chancellor explained to the parent that the school must ensure the safety of the child and may therefore restrict a basic school pupil from leaving the school building. The school's internal rules stated that the parent would submit a notice of absence to the class teacher, who would write permission to leave the school, which the child would give to the security guard.

The head of the school explained that the security guard is not part of the school staff and does not have access to information published in the e-school application, so that when allowing children out of the building the guard will rely on permission given by the class teacher. At the same time, the head of the school conceded that the situation described in the petition could have been resolved better, so the child should not have felt uneasy.

Graduating from basic school

The Chancellor was approached by a person in the final year (pre-graduation) at basic school

with a concern that due to distance learning it was difficult for pupils to reach at least the 50 per cent threshold required to pass the final exam.

However, the Chancellor of Justice cannot assess education policy decisions. The Chancellor explained that it is also possible to graduate from basic school if a pupil receives less than 50 per cent of the highest possible number of points in one or two final exams. In that case, the pupil can take a re-examination as a school exam. Even if one or two marks in the school examination are unsatisfactory, the pupil can still graduate from basic school and get a school leaving certificate – if the pupil themselves, their parent and the teachers' council agree.

Help for final-year pupils at basic school in preparing for exams is also available from universities that offer free e-courses for this purpose.

Determination of the place of study

The Chancellor was also approached with an accusation that the school had constantly violated a pupil's rights. Among other things, the parent and the school did not reach consensus on determining the child's place of study.

The Chancellor found that organisation of studies outside the school could be carried out on the basis of an individual curriculum. The individual curriculum had to be approved by decree of the head of the school. The head of the school also had to approve an amendment to the individual curriculum that terminated studies outside the school. According to the law, parent(s) must be involved in preparing an individual curriculum, but if no agreement is reached, the head of the school may still approve the curriculum. The parent may challenge the approved curriculum.

The Chancellor recommended that, in the future, the school should proceed from the legal bases laid down by law and the conditions for implementation of those bases when organising studies outside the school for a pupil. The Chancellor also recommended that the school should by decree approve an individual curriculum and changes to the place of study provided therein.

The parent also asked for the position of the teachers' council of the school on whether and how their child's instruction for an additional year could be organised in the form of homeschooling. The Chancellor noted that the school had not responded to that request, although it should have done so. The Chancellor recommended that, in the future, the school should respond to parents' requests as required by law.

Organisation of the route to school

The Chancellor was asked to assess whether a rural municipality government had acted lawfully in organising school transport for a 12-year-old child. The Chancellor concluded that the rural municipality government had failed to follow the principle of good administration (§ 14 Constitution) when organising the child's school route because it had failed to assess whether the school route was sufficiently safe for the child (§ 16, § 28(1) Constitution) and how this affected the child's ability and will to learn (§ 37(1) Constitution). The municipality had failed to ascertain the child's best interests (§ 21 Child Protection Act) or all the relevant circumstances (§ 6 Administrative Procedure Act).

The local authority must organise a pupil's transport to and back from the school assigned to the pupil based on their place of residence. In this respect, it should be taken into account that the length of walking distance for a child should not be more than three kilometres. The purpose of these requirements is to give an opportunity for the child to receive basic education at the school in their place of residence. When considering transport options, the local authority must also assess how the way to school affects a child's ability and will to learn. The route to school must not endanger the child's life and health, nor should it be too tiring. Once at school, the child must be able to learn.

If circumstances change and the transport arrangements no longer meet the needs and best interests of the child, the local authority must reassess the situation.

Depositing smart devices at school

A parent asked the Chancellor if a school may take and deposit a child's phone without notifying the child's parent.

The Chancellor explained to the petitioner that the law allows a smart device to be taken and kept in deposit if a pupil violates the school's internal rules by using it. The legal basis for depositing the device is laid down by the Basic Schools and Upper Secondary Schools Act.

Section 58(3) of the Act sets out sanctions which the school may impose on a pupil who violates the school's internal rules. Under clause 6 of this provision, the school may take and deposit objects (including smart devices) which a pupil uses in a manner incompatible with the school's internal rules. Smart devices and other objects are stored and returned in accordance with the school's internal rules (§ 58(5) of the Act).

The Chancellor has explained that the right granted to schools to temporarily take and deposit a smart device or other object complies with the Constitution. The internal rules of the school in question did not include the requirement to notify the parent that the child's telephone had been taken and deposited.

Quality of school meals

Some parents have expressed dissatisfaction with the quality of school meals. Provision of meals for pupils at school is organised by the local government as owner of the school in accordance with the health protection requirements established on the basis of the Public Health Act (§ 7(2) clause 8 of the Education Act of the Republic of Estonia). Compliance with the requirements for handling food is checked by the Agriculture and Food Board (§ 47(1) Food Act), while the Health Board, in turn, monitors compliance with the health protection requirements at school (§ 15(1) Public Health Act).

The Chancellor has said that a parent can report their concerns to both the school and the caterer. If the problem is not resolved, parents can discuss the issue with the school board of trustees. The board of trustees may make proposals to the owner of the school to resolve issues related to the school (§ 73(1^1) clause 17 Basic Schools and Upper Secondary Schools Act).

Hobby education

Sports and children's safety

Prompted by an increasing number of cases in recent years in which a trainer has allegedly ill-treated a pupil during training, the Chancellor's advisers thoroughly studied the requirements imposed on work as a trainer. Potential problems were analysed with trainers, athletes, federations and experts in sports ethics. During the discussions, it was found that safe sport for children is supported if the parent, child and trainer have a uniform and clear understanding among themselves of the aims of engaging in sport. It would be best if the

child, parent and trainer discussed together all the rules applicable at a training session, including rules aimed at maintaining order. Agreements help prevent misunderstandings, conflicts and ill-treatment of the child.

The parent should also closely monitor how the child feels. The training load and expectations for athletic performance, as well as school absenteeism due to competitions and concerns about coping at school, can affect a child's mental health. The parent must support the child and, together with the school and the trainer, help to find the necessary balance between sports, studies and family life.

The parent also makes sure that the child develops healthy eating, sleep and hygiene habits. The parent should also educate themselves about how to recognise a child's possible ill-treatment and whom to contact with such a suspicion. At the same time, offering guidance during training and competitions should be left to the trainer.

These and many other recommendations were aggregated in the safe sporting guide "Turvaline sport" (Safe sports), about which an information leaflet for children was also prepared.

Discussions with sport experts showed a lack of clear and binding rules in sport as to what kind of behaviour should be considered abuse. It is important to agree on what will be done in the event of a violation of rules and agreements. The Constitution requires that proceedings should always be fair, which also presumes respect for the dignity of all parties.

Supporting hobby education

Parents asked the Chancellor about support for hobby education. For example, the Chancellor had to assess the provisions of the procedure for supporting hobby education in Jõgeva rural municipality. Under this procedure, only young people aged 7–19 who live and study in Jõgeva rural municipality are eligible for support.

In the Chancellor's opinion, the regulation is not unconstitutional, as the provisions of the regulation can be interpreted constitutionally and support can be paid both to those who study at the schools in Jõgeva rural municipality as well as those who study, for example, at a school in a neighbouring municipality. The Chancellor finds it understandable that the municipality wants to encourage young people to attend the municipality's own schools. At the same time, several objective reasons may exist why a young person still chooses a school in another local authority (e.g. young people with special needs, young people acquiring a

vocation).

In her position, the Chancellor emphasised that acquiring hobby education and engaging in hobby activities are not only an opportunity for a child or young person to spend their free time, but also affect their studies (formal education) and subsequent life. For this reason, it is extremely important that the municipality should guarantee children and young people opportunities to acquire hobby education and participate in hobby activities.

People also asked about the financing of hobby education and hobby activities for children from Rapla rural municipality in the hobby schools of a neighbouring municipality. According to the municipality's regulation on payment of support, Rapla rural municipality pays a place fee for children attending hobby schools in the neighbouring municipalities. The municipality itself explained the regulation in the same way. The Chancellor noted that, from the point of view of parents, nothing is changed by the fact that part of the money comes from the state budget and part from the municipality's own budget.

The Chancellor was asked why Saue rural municipality does not support acquisition of hobby education by children of kindergarten age in a hobby school in another local authority, although some local authorities do so. It was explained to the parent that local authorities have different possibilities for supporting children's hobby education and hobby activities. Local authorities are also fairly free to decide on the conditions under which they will pay support. Therefore, Saue rural municipality cannot be required to support children of kindergarten age in acquiring hobby education in another municipality.

Children and health

In recent years, healthcare professionals have begun to ask more frequently about whether and in what circumstances they are allowed to provide child health data to child protection workers or the police.

In response to a request from general practitioners in this regard, the Chancellor of Justice explained that, under the Law of Obligations Act, a healthcare professional is obliged to maintain patient confidentiality, which includes all personal data that the doctor has become aware of in the course of their work. This means that information concerning health, as well as the family and financial situation, must be protected. Any breach of patient confidentiality is unlawful without either the patient's consent or a clear legal basis for doing so.

Under the Child Protection Act, everyone must report a child in need or in danger. This means that a child in need or in danger must also be reported by doctors. The obligation is to report not only an abused or a neglected child, but also a child whose well-being is otherwise endangered or whose behaviour endangers others. In addition, healthcare professionals may reasonably deviate from the obligation to maintain patient confidentiality if a failure to disclose data may result in the patient causing significant harm to themselves or others.

In any other cases, a child protection worker is not entitled to request data about the patient, and the doctor is not obliged to disclose professional secrets. The Ministry of Social Affairs is analysing whether it is necessary to amend the Child Protection Act so that child protection workers would have the right to ask a doctor for more data about a patient.

Patient confidentiality must also be protected in criminal proceedings (i.e. including in the case of procedural measures carried out by the police). The Supreme Court has emphasised that, although the Code of Criminal Procedure stipulates that a doctor may refuse to testify about facts that they have learned in the course of their work, in the context of patient confidentiality this must be understood as an obligation: the doctor may not give such testimony.

Prevention and promotion

The Chancellor's task as Ombudsman for Children involves raising awareness of the rights of children and ensuring that children can actively participate in the society. The Ombudsman for Children initiates analytical studies and surveys and, on that basis, makes recommendations for improving the situation of children. The Ombudsman for Children represents the rights of children in the law-making process and organises a variety of training events and seminars on the rights of the child.

Meetings of the Ombudsman for Children with children and young people have traditionally played an important promotional role regarding the rights of children. During the previous reporting year as well, pupils from several upper secondary schools visited the Chancellor's Office. Pupils from Miina Härma Upper Secondary School and Kaarli School were able to participate in a civics class organised by the Chancellor of Justice, and final-year pupils at the Tallinn Secondary School of Science (Tallinna Reaalkool) were given an overview of the duties of the Chancellor of Justice and the Ombudsman for Children.

Children and young people help to select films for the programme on the rights of children featured in the frame of the youth and children's film festival (Just Film), held as part of the Black Nights Film Festival (PÖFF); and they also participate in the jury of the merit awards "Lastega ja lastele" (With and For Children), as well as in the work of the Advisory Committee on Human Rights set up by the Chancellor.

International cooperation in protecting the rights of the child

The Office of the Chancellor of Justice once again participated in the project "Let's Talk Young" organised under the auspices of the European Network of Ombudspersons for Children (ENOC). Eleven young people from Estonia aged 13-16 years participated in the project. This time young people discussed how the Ombudsman for Children can best promote and protect the rights of children and young people while acting together with children and young people. During the meetings, the Chancellor's advisers introduced their work to young people and listened to young people's ideas, experiences and proposals. Young people had an opportunity to attend a meeting of Estonian, Latvian, Lithuanian and Polish ombudspersons for children and discuss about the work of ombudspersons with them.

Young people participating in the project also visited the Riigikogu. They were welcomed by Helmen Kütt, who introduced the work of the Riigikogu and spoke about cooperation between the Riigikogu and the Office of the Chancellor of Justice. As part of the project, young people met several other inspiring people. Keiu Telve from the Centre for Applied Anthropology spoke about accessibility, Roger Tibar from the Education and Youth Board about participation of young people, and Helen Noormets, who has been the leader of several social campaigns for young people, about promotional work.

Based on these meetings, young people made their recommendations to ombudspersons for children. Since, in the opinion of young people, adults often communicate with them from a position of power and do not accept them as equal partners, young people expect ombudspersons for children to explain to adults that the interests and views of children should be taken into account more in society and that young people must be heard more often. It was emphasised that, in order to understand a child, it is important to place yourself in the situation of the child. It is important for young people that every adult should take responsibility to listen to a child's or young person's concerns and personally try to help the child or young person, rather than immediately refer them to the next helper. According to young people, they need the support of someone reliable at the local level (e.g. at a youth

centre) who would help resolve smaller problems and, in order to resolve larger problems, refer them further (for example, to the Chancellor of Justice).

Two young people attended the meeting of ENOC young advisors in Malta, where they could present the recommendations by young people in Estonia. European ombudspersons for children can now examine the proposals made by young people and, building on them, make their work even more child-friendly.

Graffiti on climate justice was also completed, which was the focus of young advisors of the Ombudsman for Children last year.

Information materials, training and debates

In recent years, the Chancellor has often been asked in which cases it is necessary to obtain the consent of the parents for medical treatment of a child.

In provision of healthcare services, the rule is that a patient may be examined and provided with a healthcare service only with their consent. If a child is not able to responsibly consider the arguments for and against, the child's parents have the right to decide. However, if a healthcare professional deems that a child has the capacity to reason (§ 766(4) Law of Obligations Act), then the child themselves gives consent to treatment or a medical procedure. In that case, a parent cannot make the decision on the child's health instead of the child. This topic has been explained in more detail in the guidance materials "Lapspatsiendi teavitatud nõusolek" (Informed consent of the child patient), "Lapsesõbralik tervishoid. Infoleht lapsele" (Child-friendly healthcare. Information leaflet for the child), and "Lapsesõbralik tervishoid. Infoleht täiskasvanule" (Child-friendly healthcare. Information leaflet for the adult).

Healthcare professionals find it quite difficult to assess a child's capacity to reason because they are not trained for this nor are there enough explanatory writings published on the subject.

In order to find a solution to the problem, the Office of the Chancellor of Justice convened delegates from representative organisations of healthcare professionals, health colleges and the Ministry of Social Affairs. Discussions at the meetings focused on what could be done together to clarify the right of discretion and to train healthcare professionals. It was noted that teaching current and future healthcare professionals the necessary skills should be part of higher education and further training in health. Thus, educational institutions, the Ministry

of Education and Research and the Ministry of Social Affairs play an important role in training healthcare professionals.

It was agreed that participants would discuss in their own organisations the issues about which healthcare professionals need more detailed guidance and, under the leadership of the Chancellor of Justice, guidelines would be supplemented explaining assessment of a child's capacity to reason.

The Chancellor's advisers will continue to introduce the rights of the child patient. During the reporting year, a Chancellor's adviser gave a presentation on "The rights of a child patient in theory and practice" at a conference of the Association of Pharmacists. The topic of patient autonomy and decision-making competence was explained by a Chancellor's adviser in the general practitioners' journal *Perearst*.

The Chancellor's advisers help to prepare video and printed materials introducing the rights of the child. During the year, a guide on safe sport was prepared, and in cooperation with the youth information service *Teeviit Juunior* a video podcast was produced in which young hosts debated with a Chancellor's adviser about what the child's rights and duties are and why they are necessary.

The Chancellor of Justice participated in several online discussions organised by the Social Insurance Board. Together with leaders of the youth guarantee support system, intended for young people who are not in education or employment, it was discussed how best to support young people, while with leaders of the child helpline website discussions were held about what can be done for children. The Chancellor of Justice also spoke at the hobby education conference "Hobby Education Without Borders" in Narva, at a seminar introducing child protection reform held in Tallinn, and at the conference "Õnnelik laps – kuulatud, kaasatud ja mõistetud" (A happy child – heard, engaged and understood) organised by the Estonian Union for Child Welfare.

The Chancellor's advisers also regularly train specialists working with children. During the past year, training was offered to child protection workers, judges, judicial clerks, doctors, nurses, psychologists, and people working with children in non-profit organisations and children's institutions. The Chancellor's advisers participated in discussions on safe sports and ethical prevention at the Opinion Festival.

Report by the Chancellor of Justice to the UN Committee on the Rights of the Child

Implementation of the UN Convention on the Rights of the Child is monitored by the UN Committee on the Rights of the Child to which countries must submit regular reports about the situation of the rights of children. Based on these reports, the Committee assesses how the rights of the child are guaranteed and makes recommendations to the country for improving the situation.

The Estonian government submitted its report on implementation of the Convention to the UN Committee on the Rights of the Child in May 2023. The Chancellor of Justice also prepared an overview of the situation of children's rights in Estonia. The Chancellor submitted its report to the Committee on the Rights of the Child in August 2023.

Children's report to the UN Committee on the Rights of the Child

This autumn Estonian children and young people will also submit their overview to the Committee on the Rights of the Child. The children's report was drawn up by ambassadors for the rights of the child from the Estonian Union for Child Welfare. They were assisted by advisers from the Children's and Youth Rights Department of the Chancellor's Office and staff of the Union for Child Welfare. Young people themselves were able to decide how to gather thoughts and opinions for the report from as many children as possible, and in what form to present their messages to the UN Committee on the Rights of the Child.

To that end, young people participating in the project decided to organise workshops where they introduced the rights of the child to children of different ages and enquired what could be improved in their lives. The workshops were led by children's rights ambassadors. The suggestions and thoughts expressed by the children participating in the workshops were collected anonymously. It was also explained to children and young people whom they can approach in case of questions about the rights of the child or if they wish to talk about their concerns (school psychologists, a child helpline, a child protection worker, the Chancellor of Justice). Information materials about the rights of the child were also distributed.

Children's rights ambassadors also helped children create an online questionnaire. Schools and youth centres were informed about the possibility to fill out the questionnaire, a call was published on social media, and the event was also presented at the annual conference of the Union for Child Welfare, as well as in the frame of the special programme on the rights of the child featured at the Black Nights Film Festival. In workshops and through the online survey,

nearly a thousand children and young people shared their thoughts on the situation of children. Based on the responses received, children's rights ambassadors will submit a summary of children's messages to the UN Committee on the Rights of the Child in autumn 2023.

Programme on the rights of the child at the Black Nights Film Festival

The children's rights programme as part of the youth and children's films (Just Film) featured at the Black Nights Film Festival was once again prepared in cooperation between several organisations (the Chancellor of Justice, the Ministry of Justice, the Social Insurance Board, and the Estonian Union for Child Welfare), and as has become a tradition, children and young people were also invited to help and select the films.

Screening of the opening film was followed by a discussion on safe sports. Indrek Vaheoja, the ambassador of the children's rights programme, Kristel Kiens, a sports psychologist, and Natalja Inno, the Secretary General of the Estonian Gymnastics Federation, spoke with viewers about the film.

The Office of the Chancellor of Justice prepared worksheets to support discussions on three of the films screened in the programme. In addition, schools were able to invite programme makers to schools to carry out discussions about a film. This time, two schools took advantage of this opportunity. Three debates were held in those schools.

A total of 2125 cinema lovers went to see the films within the special programme on the rights of children.

Merit awards event "Lastega ja lastele"

The Ombudsman for Children can further contribute to making society more child-friendly by recognising good people who have done something remarkable either together with children or for children.

The merit awards event "Lastega ja lastele" (With and For Children), which was brought to life by organisations championing the interests of children, was held for the tenth time in 2023. At the family day in Kadriorg, the President of the Republic and the Chancellor of Justice recognised those who have significantly contributed to the well-being of children through their new initiatives or long-term activities. A television programme was also made featuring this year's merit awards event and the activities of the award winners, screened on 1 June, the

International Day for Protection of Children, on the public *ETV* channel.

International cooperation

International cooperation also plays an important role in promoting the rights of the child. Meetings and discussions with colleagues from other countries offer an opportunity to learn from colleagues and exchange knowledge.

During the reporting year, the Chancellor hosted ombudspersons for children from Latvia, Lithuania and Poland. Among other matters, children's rights in sport and supervision of child protection work, as well as data protection issues were discussed. A visit to the Ukrainian School was carried out and discussions held about organising the life of children who arrived in different countries from Ukraine.

The Chancellor of Justice also received the Finnish Ombudsman for Children and her advisers. The Children's and Youth Rights Department of the Chancellor's Office was visited by the heads of the Finnish Central Union for Child Welfare and five other organisations working for children and families. An exchange of experiences and a discussion on the situation of children in Estonia and Finland took place.

Andres Aru, the Head of the Children's and Youth Rights Department of the Office of the Chancellor of Justice was elected as a member of the Bureau of the European Network of Ombudspersons for Children (ENOC). This will allow the Office of the Chancellor of Justice to be even more actively involved in the activities of the network than before.