

Chancellor's Year in Review 2022/2023

Social protection

The rise in the cost of living has also hit hard those who previously coped without state aid or with benefits paid by the state. Recipients of work ability allowance find themselves in a big financial predicament. The state work ability allowance is currently lower than the sum for minimum subsistence outlined in the [Revised European Social Charter](#).

While pensions have been exceptionally increased three times in recent years, no similar extraordinary measures have been implemented for work ability allowance. In one instance, the amount of work ability allowance was reduced to such an extent that the person was essentially left without income for one month. The Chancellor [approached](#) the Riigikogu Social Affairs Committee to resolve this problem.

On the basis of the Chancellor's application, the Riigikogu amended the provision of the law according to which pupils of vocational educational institutions were allowed to register as unemployed, but not upper secondary school pupils. At the end of 2022, the Riigikogu adopted a new [Labour Market Measures Act](#), which also takes into account the position of the Chancellor of Justice that the state should treat upper secondary school pupils in the same way as pupils of vocational educational institutions when registering as unemployed. The law will enter into force on 1 January 2024.

During the reporting year, the Chancellor submitted several opinions to the Supreme Court on the constitutionality of special pensions and answered questions regarding amendment of the Family Law Act and the Family Benefits Act.

Supporting families with children

The Chancellor was asked whether it was constitutionally compatible that only half of the allowance for a previous family with many children was taken into account in calculating maintenance support and the other half remained for increasing the well-being of the new family of the parent.

The Chancellor [explained](#) that the concept of a family with many children and the amount of benefits for the family do not arise from the Constitution but are decided through legislation by the Riigikogu. This means that the Riigikogu has the right to decide where to set a balance point when supporting families.

The Chancellor was also asked for an opinion on the draft law amending the Family Benefits Act, implemented as of 1 January 2023, which aimed to reduce the allowance for families with many children from 1 January 2024.

The Chancellor [confirmed](#) that the Riigikogu is entitled to choose how to support families with many children. According to § 28(4) of the [Estonian Constitution](#), families with many children are under the special care of the state and local authorities, yet it does not entitle anyone to demand assistance in a certain way or in a certain amount. However, if the Riigikogu has decided to financially support families with many children, then a person's right to support can be protected in court on the basis of both the fundamental right to property (§ 32 Constitution) and the provision on protection of parents and children (§ 27 (4) Constitution).

A right granted to a person carries more weight the stronger the person's legitimate expectation of continued support. Thus, creating any expectation by law constitutes great responsibility. Lightly making a promise and withdrawing it quickly damages the credibility of the Riigikogu. However, based on a Supreme Court judgment, it cannot be asserted that in the present case reducing the allowance for a family with many children by 200 euros and waiving indexation of the allowance violates the principle of legitimate expectations (Supreme Court [judgment No 5-20-3](#), paras 56–58).

At the same time, the Chancellor found that a transitional provision that would have deprived the family □ whose one child turns 19 years old after 1 July 2023 □ of family allowance for a family with many children would have infringed the principles of legal certainty and equal treatment. The Riigikogu took the Chancellor's position into account when adopting the law and made the relevant amendments to the Draft Act.

The concerns of several parents were resolved in cooperation with the responsible authorities. For example, a parent asked the Chancellor why the Social Insurance Board paid them the allowance for the fourth child as if it were the first child of the family. It was found that the benefit for the family's first three children and the fifth child had been applied for by the mother while the application for the fourth child had been submitted by the father. The

father was paid benefit as if he only had one child, even though all the family's children were the common children of the parents. The Social Insurance Board admitted the mistake and the petitioner's concern was resolved: the data about the family in the database were rectified and the unpaid benefit was paid retroactively.

The Chancellor was contacted by a parent who believed that they had been unfairly deprived of the childbirth allowance paid by the city. The issue was that the parent had applied for childbirth allowance from the city later than the deadline but still before the time limit for reinstatement of a procedural deadline as laid down by § 34 of the [Administrative Procedure Act](#).

The Chancellor [asked](#) the city to assess whether any of the facts put forward by the applicant may have been compelling enough to prevent them from filing a childbirth allowance application in a timely manner. If the city finds that, under these circumstances, the deadline for applying for allowance cannot be reinstated, then the city must explain to the person why this is the case.

Increasingly often, people who have gone to live or work abroad are asking the Chancellor for advice. For example, a person working in Finland wanted to know why their children were not paid family benefits applicable in Estonia.

Under European Union social security coordination rules ([Regulation 883/2004](#) of the European Parliament and of the Council) family benefits are not usually paid from several countries simultaneously. A person receives benefit from the state where they work. This specific family was paid family benefits by Finland.

At the same time, European Union rules allow the children's country of residence to pay supplementary benefit to the family if the benefits of the parent's country of residence are higher than the benefits of their country of work. In Estonia, a family with three children is paid a higher benefit than in Finland.

While resolving this petition, it was found that under the [Family Benefits Act](#) in force until 31 December 2022 the family had two children receiving child allowance. The family's eldest child was not entitled to child allowance since the child was adult and not enrolled in study. On 1 January 2023, an amendment to the law entered into force, according to which the family's eldest child also began to receive child allowance. The Social Insurance Board granted the family a supplementary family allowance retrospectively – starting from 1 January 2023 –

in the amount by which the Estonian family allowances paid to that family were higher than the Finnish family allowances.

The Chancellor also dealt with the conditions on cancelling a study loan on preferential terms. One parent had applied for cancellation of a study loan on the grounds of caring for a disabled adult child, but the Social Insurance Board rejected the application.

The Chancellor [explained](#) that under § 22(3) of the [Study Allowances and Study Loans Act](#) a study loan can be cancelled if the recipient's child is found to have a severe or profound disability. Under Estonian legislation, all young people under the age of 18 are considered to be children (see § 3(2) Child Protection Act). Since the Study Allowances and Study Loans Act does not specify a child's age, the provisions of the Child Protection Act must be taken as a basis and it should be concluded that after the child has reached the age of majority, the parent is no longer entitled to apply for cancellation of a study loan.

Labour market services

The Chancellor was asked why it was not possible for upper secondary school pupils enrolled in full-time study to use all the labour market measures stipulated for vocational school pupils. For example, upper secondary school pupils cannot be registered as unemployed.

The Chancellor [approached](#) the Riigikogu Social Affairs Committee, after which, on a proposal by the Committee, the Draft Labour Market Measures Act pending in the Riigikogu Social Affairs Committee was supplemented. The parliament passed the new law and, as a result, the Estonian Unemployment Insurance Fund will also be able to register upper secondary school pupils as unemployed in the future. This ensured equal treatment between upper secondary school pupils enrolled in full-time study and vocational school pupils. At the same time, the law was also supplemented so that a student acquiring higher education in full-time study can also be registered as unemployed. The [Labour Market Measures Act](#) enters into force on 1 January 2024.

The Chancellor's assistance was sought by a person who had been deprived of unemployment allowance for one month. The reason was that during that month the person had been refunded overpaid income tax paid in the previous calendar year.

The Chancellor explained that unemployment allowance is paid with a view to actual need for assistance. The Estonian Unemployment Insurance Fund may suspend or terminate payment

of unemployment allowance if a person's monthly income exceeds the amount equal to at least 31 times the daily unemployment allowance rate. If an unemployed person's income is equal to or greater than the established minimum, payment of unemployment allowance is suspended for 30 days (§ 32(1) clause 4 [Labour Market Services and Benefits Act](#)). After that, payment of unemployment allowance is resumed. Unemployment allowance is paid for a total of up to 270 days (§ 30(1)) and the number of days on which the person is entitled to unemployment allowance does not decrease. Thus, payment of unemployment allowance may be spread over a longer period on account of an income tax refund.

The Estonian Unemployment Insurance Fund estimates that currently about 20 per cent of people with no capacity for work are engaged in work (the total number of people with no capacity for work is approximately 38 000). The Chancellor has been asked why it is not possible for people with no capacity for work to apply for occupational rehabilitation services. The state should not deprive people of necessary assistance if, with such support, they could work even a little and thereby improve their material and mental well-being.

The Chancellor informed the Riigikogu [Social Affairs Committee](#) of the concerns of people with no capacity for work, so that the Riigikogu could consider the possibility of also granting the right to occupational rehabilitation to those people with no capacity for work who wish to continue working or find new work within their abilities.

Reduction of work ability allowance

Under § 28(2) of the Constitution, Estonian citizens have the right to assistance from the state in the case of incapacity for work. In line with § 28(4), persons with disabilities are under the special care of the state. This means that in the event of loss of capacity for work (and the resulting loss of income), a person must be offered financial support that protects them from poverty.

Under the [Revised European Social Charter](#), it has been found that if someone is deprived of income due to loss of capacity for work then the state must ensure them income not lower than 50 per cent of the median equivalised net income of a member of the household. If a person also receives other benefits, compensation paid in case of a decrease in capacity for work may be 40-50 per cent of the median. Compensation of less than 40 per cent cannot under any circumstances be considered sufficient. The latest data on the median equivalised net income in Estonia date back to 2021, and work ability allowance accounted for only 37.1%

of this. Although the calculations have been made for 2021, there is no reason to believe that the situation has improved significantly so far.

Before the work ability reform, incapacity for work pensions were increased at the same pace as old-age pensions, but now that work ability allowance is no longer part of the pension system, the recipients of work ability allowance have been forgotten. For example, in 2020, the base amount of the pension was increased by 7 euros, in 2021 by 16 euros and the national pension by 30 euros, and in 2023 both the base amount of the pension and the national pension rate were increased by 20 euros (see § 61(1⁷)-(1⁸) of the [State Pension Insurance Act](#)). If work ability allowance had been increased at the same rate as pensions, each work ability allowance recipient would receive over 500 euros more each year than currently.

A problem may arise if, in the same month, a person with no capacity for work is paid the salary for the previous calendar month along with termination of employment remuneration for the work performed, as well as remuneration for unused vacation days. As a result, a person's work ability allowance may be reduced in the second month after termination of employment to the extent that the person is left without any income in that month.

In one such case, a person received only 35 euros work ability allowance a month. After termination of employment, the person had been paid the last month's salary normally paid at the beginning of the month and, in addition, salary for the month of termination of employment, as well as remuneration for unused vacation days. The employer declared the social tax payable on these amounts to the Tax and Customs Board at the beginning of the month following termination of the employment relationship. The Estonian Unemployment Insurance Fund considered these amounts to be income of the month following the end of the employment relationship and, as a result, reduced the person's work ability allowance in the second month. If the person had left work at the beginning of the month and not at the end of the month, their work ability allowance would not have been reduced.

It is clear that the person was caught in the cogwheels of the system. Therefore, the Chancellor approached the Riigikogu Social Affairs Committee. The Social Affairs Committee discussed the Chancellor's application in two sessions in January 2023, but no solution was reached in the Riigikogu. The Chancellor drew attention to the problem once again in a written [report](#) (see page 3 para. 6) sent to the Social Affairs Committee of the new composition of the Riigikogu at the end of May.

Conditions for receiving a pension

A parent wanted to know whether, under § 28(2) clause 12 of the [State Pension Insurance Act](#), a parent who has paid maintenance to a child is also considered to be the parent who has raised that child. Specifically, that provision stipulates that raising a child is to be accounted as contributing to the length of pensionable service of the parent who has actually raised the child for at least eight years.

The Chancellor [found](#) that the provision is in accordance with the Constitution. This condition has been set with a view to supporting, in particular, those people who have been able to work less because of raising children. A parent who has only paid maintenance to their child has had more time to insure themselves for old age in other ways.

Since a parent is obliged to ensure the well-being of their child until the child reaches the age of majority, the statutory condition that, in order to obtain pensionable service, the parent must have been raising the child for at least eight years is also justified. This means that under the State Pension Insurance Act, a parent who has only paid maintenance to a child is not considered to be the person who actually raised the child.

The Supreme Court asked the Chancellor of Justice for an opinion in two constitutional review cases concerning the pensions of police and border guard officers.

One case (No [5-23-1](#)) concerned the second part of § 111²(2) of the [Police and Border Guard Act](#) in force from 11 January 2020 to 30 June 2022, which did not enable calculation of a police officer's superannuated pension to be based on the salary rate in force on the date starting from which the pension was granted. The Supreme Court judgment in this matter is still pending.

The second case (No [5-23-25](#)) concerned the issue of the constitutionality of § 114(3) clause 3 of the [Police and Border Guard Act](#). This provision does not allow a police officer to receive a

superannuated pension at the age of 50 if, by 1 July 2007, the officer had accumulated at least 20 years of police service under the Police Service Act and they entered the border guard service after 1 July 2007 but before 1 January 2010 when the Police Board and the Border Guard Board were merged, and they continued service as a police officer in the police service from 1 January 2010 until attaining 50 years of age. Unlike the Chancellor of Justice, the Supreme Court concluded that § 114(3) clause 3 of the Police and Boarder Guard Act is constitutional.

The Supreme Court also asked for the Chancellor's opinion in constitutional review case [No 5-22-12](#). The issue concerned § 132⁷(2) of the [Courts Act](#) insofar as it excludes indexation of a judge's pension calculated on the basis of the current year's salary. Similarly to the Chancellor of Justice, the Supreme Court found that § 132⁷(2) of the Courts Act contravenes the Constitution.

The Chancellor also [explained](#) the possibilities to collect a pension during a hospital stay. The person's concern was resolved in cooperation with the Social Insurance Board. The Social Insurance Board also promised to supplement the information on payment of pensions published on the Board's website.

Allowance for pensioners living alone

Some people complained that they had not received a single pensioner allowance.

Since 2017, the state pays an [allowance](#) of 115 euros once a year to pensioners living alone. In paying the allowance, the Social Insurance Board relies on data in the population register. The main obstacle to receiving the allowance may be that, according to the population register, the pensioner does not live alone in the dwelling. At the same time, the population register data may be outdated: for example, because someone who had lived together with the pensioner has failed to submit a new notice of residence after moving to a new residence. The Chancellor has explained that, in this case, in order to receive the allowance, the pensioner must apply for amendment of the residence data, which may take some time. As long as the conditions for receiving the allowance are not met, the pensioner cannot receive the single pensioner allowance.

Human error, due to which inaccuracies may appear in the population register data, is not excluded. For example, the dwellings of a co-owned residential building had separate addresses, but one of the co-owners chose the wrong address when registering their

residence, and because of this, the pensioner was deprived of the allowance. The problem was resolved in cooperation between the authorities: Tartu City Government notified the co-owner and a correction was made in the register on the basis of their application. The Social Insurance Board paid the allowance to the pensioner one month later than usual.

In one case, a person was deprived of the single pensioner's allowance because their address data were not correct: their dwelling did not have a separate address. The pensioner lived on the first floor of a detached house, while on the second floor of the house lived another household, which had a separate entrance to the house, as well as a separate electricity, water and sewerage system. Tallinn Urban Planning Department agreed to clarify the address data.

The Chancellor was also asked to justify why only old-age pensioners can receive the single pensioner allowance. The Estonian Association for the Blind approached the Chancellor expressing a desire that people with no capacity for work should be paid the same one-off benefit as pensioners living alone. The Chancellor explained that the conditions for payment of the allowance depend on political choices, which the Chancellor of Justice cannot assess. However, people may propose amending the law to the Riigikogu.

Provision of social welfare services

The Chancellor of Justice was asked for help by a person living in Maardu as the examination of and decision on their application for assistance took the city government nearly seven months. The applicant had applied to the city for assistance to their family member.

The Chancellor [found](#) that Maardu City Government had failed to comply with deadlines when arranging assistance. An application for social assistance must be resolved within ten working days as of its correct submission (§ 25(1) [General Part of the Social Code Act](#)). The Chancellor asked the city government to explain to the person why the city considered that it had already adequately assisted the person in need and that the person did not need other services (e.g. the service of a personal care assistant).

The Chancellor was also asked whether a personal care assistant could be appointed for a person under guardianship.

The aim of the personal care assistant service is to increase the self-sufficiency of an adult who needs physical assistance due to disability, as well as to reduce the burden of care for

the person's legal carers. A personal care assistant helps a person with their daily activities, such as moving around, eating, preparing food, dressing, household chores and other activities (§ 27(1) and (2) [Social Welfare Act](#)). Thus, it is important that due to disability the person needs physical external assistance in their everyday activities.

The Chancellor explained that if a person with intellectual disability in need of physical assistance is able to communicate what they want within the limits of their communication skills (for example, asking to be supported when moving from one room to another), there is no reasonable justification why the possibility of using a personal care assistant should be restricted only because the person in need has an intellectual disability or that, for example, in financial matters their legal capacity is limited. Failure to provide a personal care assistant to someone with restricted legal capacity would be contrary to international agreements. The [Revised European Social Charter](#) (Art 15 para. 3), as well as the [UN Convention on the Rights of Persons with Disabilities](#) (Art 19), stipulate that people with disabilities have the right to independent living ([General Comment by the Committee on the Rights of Persons with Disabilities, No 5](#) (2017), paras 8, 16 (c, iv), 17, 21).

The Chancellor's assistance was also sought by a person to whom the rural municipality government refused to reimburse the costs of adapting the dwelling. The municipality government justified its decision both by lack of money as well as the fact that there was nothing to adapt, because the person in need had already done the necessary work themselves. The Chancellor [recommended](#) that the municipality should find out whether, based on communication with municipal officials, the person may have developed an understanding that the municipality would retrospectively reimburse to that person the expenses they had incurred. Subsequently, the municipality should take a position as to whether the petitioner had thereby suffered harm which the municipality should compensate under the [State Liability Act](#).

The Chancellor was informed that, as of 1 January 2023, Tallinn will no longer appoint a carer for children with moderate disabilities. When investigating the situation, it was found that the city replaced the social benefit paid voluntarily from its budget with a social service. At the same time, the city increased the opportunities to obtain the care service for a disabled child, as this service is now provided to all children with disabilities. Adapting to the changes may take some time, so that the city will continue to pay the benefit until the end of the previously set deadline.

The Chancellor [found](#) that the changes introduced in Tallinn did not contravene the

Constitution. It is important that those needing help (including disabled children and their families) are not left without assistance and that their ability to cope does not deteriorate in the changed situation.

Sometimes the Chancellor has to approach a rural municipality or city government repeatedly to resolve the same problem. For example, Kambja rural municipality government failed to assess a person's need for assistance immediately after receiving an application for assistance. The municipality did not make decisions within the time limit prescribed by law and these decisions did not adequately satisfy the needs of the person. The Chancellor advised the rural municipality government to re-examine the application, assess the person's need for assistance as soon as possible, and decide by an administrative act what social services the person needs.

The rural municipality government made a new decision, but this, too, did not cover the person's entire need for assistance. The Chancellor reminded the municipality that, before making a decision, the municipality must hear the opinion of the person needing help, and then make a proper decision. If the person's opinion is not taken into account, the municipality must justify this in its decision.

The guardian of a person receiving special care services wanted to know if a care home is entitled to charge a higher fee for a place in the care home than laid down by law. The Minister of Social Protection has established the conditions for provision of special care services. However, if the service is provided under better conditions, the [Social Welfare Act](#) (§ 73(6)) allows charging a higher fee for the service than prescribed.

The Chancellor found that the conditions for payment of expenses for accommodation and meals for people living under better conditions, as well as their annual changes, may remain incomprehensible to care home residents. For this reason, the Chancellor [proposed](#) that the Social Insurance Board should include a clause against unexpected price increases in future contracts. The Social Insurance Board promised to do so.

The Chancellor was approached with a concern that Tallinn did not sufficiently support people receiving the supported daily living service in paying expenses.

The Chancellor explained that Tallinn has helped to pay the own contribution of those people receiving 24-hour special care services under better conditions than required by law (§ 73(6) Social Welfare Act. The city pays them support on the basis of § 10(2) of "[The procedure for the provision of social assistance](#)

”. Under this provision, assistance may be given in the case of emergence of exceptional circumstances or an urgent problem.

The Chancellor [asked](#) Tallinn City Council to consider whether and under what conditions the city could permanently pay support to those people receiving special care services who do not have enough money to pay their own contribution.