



Õiguskantsler
Chancellor of Justice

**Report of Chancellor of Justice of the Republic of Estonia
on implementation of UN Convention on the Rights of the Child**

about fourth and fifth regular report of Republic of Estonia

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Foreword

Pursuant to the Constitution of the Republic of Estonia¹, the Chancellor of Justice is an independent constitutional institution that is not part of the legislative, the executive or the judicial power. Neither is the Chancellor of Justice a political or law enforcement authority. The Chancellor of Justice is appointed to office by the Riigikogu on the proposal of the President of the Republic for a term of seven years. The Chancellor of Justice has its own independent budget. The Chancellor of Justice exercises control over compliance of legislation of general application to the Constitution and laws. In addition, the Chancellor of Justice performs tasks of the ombudsman – this means protects fundamental rights and freedoms of persons in relations with state power. It is also an institution for prevention of torture and other cruel, inhuman or degrading treatment or punishment. The Chancellor of Justice was granted the competence of the ombudsman for children with an amendment to the Chancellor of Justice Act² in 2011. Pursuant to the Act, the Chancellor of Justice performs the tasks of protecting and promoting the rights of the child set forth in Article 4 of the UN Convention on the Rights of the Child (the CRC). In protection of the rights of the child, the Chancellor of Justice uses all the above-mentioned competences.

In the scope of its work on promotion, the Chancellor of Justice independently draws attention to the problems related to the area of children (e.g. the public address of the Chancellor of Justice to the Minister of Social Affairs³ for prohibition of corporal punishment of children and the roundtable of the Chancellor of Justice for mitigation of child poverty⁴). The Chancellor of Justice also introduces the principles of the rights of the child to both children and adults (incl. the organisation of training and seminars), helps children start discussions in society about topics that are important for them, organises and supports the carrying out of surveys and analyses, makes recommendations on how to improve the situation of children, and cooperates with various organisations that focus on the protection and promotion of the rights of the child in Estonia and in other countries. The Chancellor of Justice has been a full member of the European Network of Ombudspersons for Children⁵ (ENOC) since autumn 2012.

The Office of the Chancellor of Justice has a Children's and Youths Rights Department, which in 2015 has five employees who advise the Chancellor of Justice in the performance of the tasks of the ombudsman for children. The Advisory Committee of the ombudsman for children⁶ was also established in 2011 and it consists of the representatives of various children's organisations. The task of the Advisory Committee is to advise the Chancellor of Justice in their activities as the spokesperson of children, and the introducer and supervisor of the rights of the child. The Advisory Committee gives children the opportunity to raise any important issues related to children, express their opinions and have a say in matters that concern children.

¹ English version: <https://www.riigiteataja.ee/en/eli/ee/rhvv/act/521052015001/consolide>

² English version: <https://www.riigiteataja.ee/en/eli/505012015001/consolide>.

³ English version: <http://lasteombudsman.ee/en/chancellor-of-justices-public-address-to-the-minister-of-social-affairs-on-prohibition-of-corporal>.

⁴ Estonian version <http://lasteombudsman.ee/et/lasteombudsman-ootab-reaalseid-samme-laste-vaesuse-leevendamiseks>.

⁵ English version: <https://www.crin.org/en/enoc>.

⁶ Read more in English: <http://lasteombudsman.ee/en/advisory-committee>.

The Chancellor of Justice presents an annual report to the Riigikogu once a year.⁷ Since 2011, the annual report of the Chancellor of Justice contains a chapter about the activities of the Chancellor of Justice as ombudsman for children.

There are many ways in which children can contact the Chancellor of Justice. The Chancellor of Justice has a separate child-friendly website⁸, which contains information for children and adults. Children rarely contact the Chancellor of Justice directly and any issues concerning the protection of the rights of the child are more frequently raised by the adults who look after the children. However, the advisers to the Chancellor of Justice talk to children whenever they pay an inspection visit to a children's institution in order to discuss their lives and concerns directly with the children. The advisers also visit schools, children's organisations and various meetings to introduce the rights of the child and listen to the opinions and thoughts of children. Children usually participate in the surveys and analyses organised by the Chancellor of Justice. For example, the Chancellor of Justice initiated a monitoring of the rights of the child and parenting in 2011⁹, which for the first time included comparative interviews with children and adults about the rights of the child. Discussions with children about their role and opportunities in organising local life were held on the initiative of the Chancellor of Justice before the local elections of 2013, and based on these meetings the Chancellor of Justice prepared a public summary of the expectations and needs of children in relation to local life.¹⁰ Children have taken part in the drawing competition initiated by the Chancellor of Justice¹¹ and express their thoughts about the surrounding environment, their relationships, and their concerns and expectations in a writing competition¹². The special programme of the rights of the child organised by the Chancellor of Justice and the other partners is screened once a year at the Children and Youth Film Festival Just Film¹³, which is a sub-festival of the Black Nights Film Festival (PÖFF). The programme focuses on the rights of the child, their protection, promotion and violations, and create a good opportunity for discussing the important topics and shortcomings related to children on a broader scale in society. The discussions with experts after the films give the viewers the opportunity to associate what they saw on screen with the situation of Estonian children and express their opinions. The special programme of the rights of the child will be screened for the fifth time in 2015.

The Chancellor of Justice organises various roundtables, conferences¹⁴, seminars and training¹⁵ in cooperation with other organisations in order to give information about and promote the rights of the child, and issues the award *Lastega ja lastele* (With Children and to Children)¹⁶. In order to inform children, parents and specialists who work with children, the

⁷ English version: <http://lasteombudsman.ee/en/annual-reports>.

⁸ English version: <http://lasteombudsman.ee/en/welcome>.

⁹ Brief summary of the monitoring in English:

http://lasteombudsman.ee/sites/default/files/IMCE/summary_of_the_monitoring_of_the_rights_of_the_child_and_parenting.pdf.

¹⁰ News in English: <http://lasteombudsman.ee/en/ombudsman-for-children-children-should-be-more-involved-in-organisation-of-local-life>.

¹¹ Estonian version: <http://oiguskantsler.ee/et/oiguskantsler/suhted-avalikkusega/uudised/lasteombudsmani-korraldatud-joonistusvoistluse-voidutood>.

¹² Estonian version: <http://lasteombudsman.ee/et/lasteombudsmani-ja-eesti-lastekirjanduse-keskuse-kirjutamisuleskutse-tulemused>.

¹³ English version: <http://www.justfilm.ee/en/history>.

¹⁴ For example, the conference 'Bullying-free Education'. English version: <http://lasteombudsman.ee/en/chancellor-of-justice-invites-schools-to-fight-bullying>.

¹⁵ Topical activities are covered in the news section on the website of the ombudsman for children. English version: <http://lasteombudsman.ee/en/whats-new/news>.

¹⁶ Estonian version: <http://lasteombudsman.ee/et/tunnustusauhind-lastega-ja-lastele>.

Chancellor of Justice issues information materials in Estonian and Russian¹⁷, and organises various training events (e.g. for school boards, social and child protection workers, teachers, judges). The advisers to the Chancellor of Justice frequently express their opinions in media¹⁸. The ombudsman for children Facebook page¹⁹ of the Chancellor of Justice is mainly aimed at informing adults and monitored by many specialists who work with children.

The objective of the report is not to give an all-encompassing overview of the organisation of and shortcomings in the area of children in Estonia, but to draw attention to the most significant shortcomings identified in the work of the Chancellor of Justice. The report relies on the surveys and analyses carried out by the Chancellor of Justice as well as other agencies about the well-being of children and the organisation of child protection.



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The Chancellor of Justice in Estonia

¹⁷ For example, see the booklet “Psühholoogilise ja psühhiaatrilise abi saamise võimalused Eestis” /Options for Obtaining Psychological and Psychiatric Help in Estonia/ (in Estonian: http://lasteombudsman.ee/sites/default/files/IMCE/lasteombudsman_psuhh_abi_loplik.pdf), the guidelines “Abivajavast lapsest teatamine ja andmekaitse” /Informing about a Child in Need and Data Protection/ (in Estonian: http://lasteombudsman.ee/sites/default/files/IMCE/abivajavast_lapsest_teatamine_ja_andmekaitse_-_juhend_0.pdf), counselling booklet “Bullying-free School” (in English: http://lasteombudsman.ee/sites/default/files/IMCE/kool_kiusamisest_vabaks_voldik_eng_veebi.pdf).

¹⁸ Read the articles and interviews on the website of the ombudsman for children. Estonian version: <http://lasteombudsman.ee/et/taiskasvanu/aktuaalne/artiklid-ja-intervjuud>.

¹⁹ Estonian version: <https://www.facebook.com/lasteombudsman>.

I General measures for implementation of the CRC

1.1 Strategic development documents in the area of children

The general strategic development document that concerns the well-being of children in Estonia at present is the Development Plan of Children and Families 2012-2020²⁰, which has been approved by the Government of the Republic. The Ministry of Social Affairs is responsible for the implementation of the development plan. However, the development plan does not cover the area of education and health, which are regulated by separate strategy documents and the implementation of which is the responsibility of other ministries.²¹ It is therefore particularly important that the activities and policies in areas that concern children are coordinated with each other and serve the same purposes. However, the Chancellor of Justice finds that coordination between areas and ministries, or the different structural units of ministries, is lacking.²² The Chancellor of Justice also finds that Estonia does not have a comprehensive cross-sectoral child policy.

The government committee, called child protection council, that will be established based on the new Child Protection Act²³ that will enter into force on 1 January 2016, will hopefully improve the situation as its functions include establishing of the objectives of the state child policy and coordination of the activities necessary for the implementation thereof. The opinion of the Chancellor of Justice was also submitted during the preparation of the draft of the Child Protection Act, which highlighted among others that the content of the work of the child protection council could be explained in greater detail (e.g. in the explanatory memorandum to the draft act) and the Chancellor of Justice as ombudsman for children should have the right to attend the meetings of the child protection council with the right to say.

Recommendations for the state:

- *to develop uniform general principles of child policy and to guarantee effective cooperation between all areas concerning children; and*
- *to guarantee the actual and effective launch and operating of the child protection council to be established on the basis of the Child Protection Act.*

²⁰ English version: https://www.sm.ee/sites/default/files/content-editors/Lapsed_ja_pered/lpa_fulltxt_eng_83a4_nobleed.pdf.

²¹ The main strategy document in the area of health is the action plan of safe and healthy development of children and adolescents of the National Health Plan 2009–2020 (see pp 32-38 in the English version, https://www.sm.ee/sites/default/files/content-editors/eesmargid_ja_tegevused/Tervis/Aruanded/rta_2009-2020_2012_eng.pdf). The main strategy documents in education is the Estonian Lifelong Learning Strategy 2020 (English version https://www.hm.ee/sites/default/files/estonian_lifelong_strategy.pdf) and the Youth Field Development Plan for 2014–2020 (Estonian version: https://www.hm.ee/sites/default/files/noortevaldkonna_arengukava_2014-2020.pdf).

²² PriceWaterhouseCoopers found in the Analysis of Child Protection carried out in 2013 as commissioned by the Ministry of Social Affairs that “Every ministry has its area of administration, but there is no central, cross-sectoral and well-functioning structure that would coordinate the area of child protection. [...] The area is largely developed on project-basis (e.g. from EU funds and Norwegian Financial Mechanism), which in its turn puts limits on targeted, consistent and sustainable development. Moreover, there is no integration or cooperation between the different parties, no clear and distinguishable priorities in the area, and they are neither developed nor financed.”

²³ English version: <https://www.riigiteataja.ee/en/eli/506052015001/consolide>.

1.2 Financing of the area of children

Local governments play an important role in supporting children and families and in financing the child welfare, as they perform the functions arising from the Social Welfare Act²⁴ (social services and benefits).²⁵ As the size and the administrative and financial capacity of local governments differs vastly across Estonia²⁶, then the regional differences in child welfare are a problem in terms of service accessibility and quality (see also point 7.2.3).²⁷ The lack of financial resources means that many local governments have no child protection workers and the tasks concerning child protection have been assigned to some other official. Only 38% of local governments have separate child protection workers and one-fifth of Estonian children live in local government units that have no child protection workers.²⁸ The Chancellor of Justice agrees with the opinion expressed in the analysis carried out by the National Audit Office in 2013²⁹ that the Ministry of Social Affairs must take specific measures to increase the number of child protection workers, incl. consider legal requirements that would assign every child to a specific child protection worker and encourage local governments to cooperate. The Chancellor of Justice is of the opinion that every local government should have a child protection worker or the duties of a child protection worker should be performed by another official with an equivalent qualification, and actual time resource must be allocated to such an official for the performance of these duties. Unfortunately, the new Child Protection Act that enters into force on 1 January 2016 does not require local governments to establish the position of child protection worker. The Chancellor of Justice criticised the provision of the Child Protection Act that required local governments to establish the position of child protection worker only ‘if necessary’. The Chancellor of Justice is of the opinion that the effective implementation of most of the measures set forth in the new Child Protection Act depends on the existence of child protection workers.³⁰ The effective version of the act passed

²⁴ English version: <https://www.riigiteataja.ee/en/eli/530062015001/consolide>.

²⁵ The main benefits paid by the state to families with children are the one-off childbirth allowance (320 euros), the monthly child allowance until the child turns 16 or, in the case of studies, 19 (45 euros per month for the first and second child and 100 euros per month from the third child), and the monthly child care allowance for a parent raising a child of up to three years of age or the person who uses the parental leave instead of the parent (the allowance depends on the rate of the child care allowance, which is 76.70 euros). The state also pays an adoption allowance, single parent’s child allowance, conscript’s child allowance or child allowance for person in alternative service, foster care allowance, start in independent life allowance, allowance for parents of families with seven or more children. In comparison, the minimum monthly wages for full-time work in Estonia in 2015 are 390 euros. The amount of the minimum means of subsistence is the same.

²⁶ There are 213 local governments in Estonia. 39 of them have fewer than 1,000 residents, one has more than 100,000 (in English: <https://www.siseministeerium.ee/en/regional-affairs/local-governments>).

²⁷ The Development Plan of Children and Families 2012-2020 highlights that “Local authorities, especially those with a small revenue base, do not have enough resources for the development and implementation of child protection services at present. Many local authorities have no professional child protection workers. A situation like this means that the implementation of effective help measures and timely intervention in order to guarantee the well-being of children is impossible” (p 29). PriceWaterhouseCoopers found in the Analysis of Child Protection carried out in 2013 that “The administrative capacity of local authorities varies and the local authorities with a small revenue base do not have enough resources for the development and full implementation of child protection services at the local level”.

²⁸ ‘Organisation of child welfare in municipalities, towns and cities’ by the National Audit Office (2013).

Summary in English:

<http://www.riigikontroll.ee/DesktopModules/DigiDetail/FileDownloader.aspx?AuditId=2272&FileId=12395>.

²⁹ Estonian version:

<http://www.riigikontroll.ee/DesktopModules/DigiDetail/FileDownloader.aspx?AuditId=2272&FileId=12354>.

³⁰ The importance of having a child protection worker is illustrated by the examples given in the 2013 analysis (Ibid.) of the National Audit Office. For example, the fact whether or not child welfare goals are separately set forth in the relevant local government’s development plans depends on the existence of a child protection worker – the development plans of 48% of local authorities that had hired child protection workers contain goals related

by the Riigikogu stipulates that a local government unit must create the conditions for child protection work in order to guarantee the performance of the functions set forth in the act. The wording is too generic and does not assign any specific obligations to local governments.

The area of children should be financed systematically and thoughtfully. In order to achieve this goal, the state must have an overview of how much money is spent on the area of children as a whole, incl. in the areas of administration of different ministries. No such budget analysis is done in Estonia at present. The state has therefore not taken adequate steps to comply with the relevant recommendations of the Committee (16 c).

Recommendations for the state:

- *to guarantee systematic and thoughtful financing of the area of children, incl. to analyse the expenditure aimed at children; and*
- *to regulate obligations of local governments related to establishing the position of child protection worker at the level of law, e.g. by connecting the existence of a child protection worker with the number of children living in the local government. If there is no child protection worker, the official performing these tasks must have the qualification of a child protection worker.*

1.3 Informing about the principles of the CRC and the rights of the child

Article 42 of the CRC obligates participating states to make the principles of the Convention widely known, by appropriate and active means, to adults and children. In its report to the Committee, the state has explained that it has supported the activities of NGOs in making the content of the CRC known to adults and children, and that the Estonian representation of UNICEF³¹ and the Union for Child Welfare are working on introducing and implementing the CRC in society. The Chancellor of Justice as the ombudsman for children has also been informing the general public about the rights of the child and the principles of the CRC since 2011. However, the Chancellor of Justice is of the opinion that the state should contribute more to making the CRC and its principles known both at the level of specialists (police officers, judges, prosecutors, lawyers, teachers, doctors and other persons who work with children) as well as the society on a broader scale. Contacts of the Chancellor of Justice with children, parents and specialists in the area of children indicate that informing about the rights of the child and the principles of the CRC has been neither sufficient nor systematic.

Recommendation for the state:

- *to prepare and implement an information plan for making the general public (incl. the specialists who work with children) aware of the rights of the child and to provide the necessary funding for communicating such information. For example, it is essential to have the General Comments of the Committee³² and the Implementation Handbook of the CRC translated into Estonian and Russian, and to make them easily accessible (e.g. online).*

to children whilst the development plans of 27% of local authorities that did not have child protection workers included goals related to children (p 14). Also, the local authorities that do have child protection workers have a more acute sense of the underfunding of this area – 40% of the respondents in these local authorities found that actual outgoings do not consider all of the needs, and 30% of respondents in the remaining local authorities were also not satisfied with financing (p 15).

³¹ UNICEF Estonia terminated its activities in 2015.

³² The Union for Child Welfare had General Comment No 14 translated into Estonian in 2015 and the translation is publicly accessible. The Chancellor of Justice has also made it accessible on its website.

1.4 Ratification of the third optional protocol to the CRC

The Republic of Estonia has not joined the Optional Protocol to the Convention on the Rights of the Child on a communications procedure (OP3). The European Union Agency for Fundamental Rights has also drawn attention to the need to ratify OP3 in European Union Member States.³³

Recommendation for the state:

- to ratify Optional Protocol 3 to the CRC.

1.5 Statistics concerning children

The number of children in Estonia as at the beginning of 2015 was 244,403, which is 18.5% of the total population.

The assessment of the situation of children in Estonia is insufficient considering the rights and well-being of the child. Irrespective of the Committee's recommendations (No 10), the data of children under the age of 18 are not published annually in regular statistics. The obstacles are the structure of databases (data are collected in aggregated format) as well as the lack of data. For example, the fact that data is aggregated makes it difficult to obtain an overview about children aged 0-17 in the area of health, monitor the progress of children in alternative care and analyse the impact of the services provided to them, incl. monitor the implementation of case plans. There is also no overview of the children of parents working abroad and children whose parents are in prison.

In 2013 the Chancellor of Justice, Statistics Estonia, ministries, boards and universities published the joint publication 'Child Well-being'³⁴ and in 2014 prepared the underlying material 'Measuring the Well-being of Children'³⁵ which takes a look at well-being as a whole, and recommends the regular publication of child-focussed indicators (child as the unit of observation) and indicators gathered from the child's perspective (child as the source of data). Irrespective of this, Statistics Estonia has not started publishing these indicators regularly yet, although this is required by the work plan³⁶ approved by the Government of the Republic.

'Measuring the Well-being of Children' pointed out that indicators gathered from the child's perspective were missing in several areas, incl. in the description of economic and social well-being. In addition to the lack of data and surveys that reflect the subjective opinions of children, the data published so far can be criticised for the lack of child-focussed statistics in mainstream statistics: for example, statistical data about the number and share of households with children are regularly published (household as the unit of observation), but there are not child-focussed statistics about the number and share of children in various types of households (child as the unit of observation), which gives the data a different, child-focussed meaning.

³³ See 'Fundamental rights: challenges and achievements in 2013', p 116. English version: http://fra.europa.eu/sites/default/files/annual-report-2013-chapter-4_en.pdf.

³⁴ English version: http://lasteombudsman.ee/sites/default/files/IMCE/laste_headolu.pdf.

³⁵ Estonian version: http://lasteombudsman.ee/sites/default/files/IMCE/lapse_headolu_mootmise_kasitlus.pdf.

³⁶ Estonian version: <https://www.riigiteataja.ee/akt/317062014013>.

Recommendations for the state:

- *to publish in mainstream statistics both child-focussed data (child as the unit of observation) and data from the child's perspective (child as the source of data) by highlighting the 0-17 age group in all areas;*
- *to continue collecting data from children themselves, also covering issues related to economic and social well-being;*
- *to create a system of indicators of the well-being of children and to publish the relevant indicators annually for the purpose of assessing the ensuring of the rights of the child;*
- *to replace the aggregated data concerning children in data collection systems with individual data or to amend the data collection systems in such a manner that it would be possible to make extracts and to combine and publish data about different age groups of children considering the needs and traditions of the stakeholder.*

II Definition of the child

Pursuant to Estonian laws, a child is person under the age of 18 and a person who has turned 18 has full active legal capacity. However, different legal acts contain a number of different age limits. For example, adopting a child aged 10 requires the child's consent; medical tests can be performed on children aged seven only with the consent of the child; children aged at least 10 must be heard in civil court in cases that concern the child; children aged 14 who have sufficient discretion and judgment have the independent right of appeal in family matters that concern them, etc. Until now, there has been no analysis of whether these age limits established in different areas have been well thought through and justified. The Chancellor of Justice has advised to remove the age limit of 10 years established for hearing a child in the Code of Civil Procedure and to proceed from the child's actual maturity and level of development, as required by the CRC.

Recommendation for the state:

- *to systematically analyse the age limits contained in legal acts and to assess them in light of the principles of the CRC; to eliminate specific age limits where possible and to tie the rights of the child to the child's actual maturity and level of development.*

III General principles

3.1 Best interests of the child

The Child Protection Act that has been in effect since 1991 and the new Child Protection Act that will enter into force on 1 January 2016 both stipulate the principle that the best interests of the child must be a primary consideration. The Chancellor of Justice is of the opinion that the implementation of these principles at all levels (i.e. the level of state, local governments, single authorities and persons) is a problem. The Rules for Good Legislative Practice and Legislative Drafting³⁷ do not oblige to assess separately the impact on children in legislative

³⁷ English version: <https://www.riigiteataja.ee/en/eli/508012015003/consolide>.

drafting. Assessment of the impact of local government initiatives that concern children is also not common to the knowledge of the Chancellor of Justice.

Speaking of specific decisions that concern children, the lack of methodological study and supporting material for assessment of the best interests of the child is a problem.³⁸ There is a need for training about the best interests of the child and, on a broader scale, about the assessment of child well-being for all specialists that come to contact with children in their work (judges, prosecutors, police officers, lawyers, teachers, doctors, etc.). Based on the experience of the Chancellor of Justice, specialists working in the area of law have received such training, but it is obvious that the need to assess the best interests of the child does not arise in legal proceedings alone. This is why the Union for Child Welfare deserves recognition for having General Comment No 14 of the Committee on the Rights of the Child translated into Estonian and published. Hopefully, this material helps state and local government authorities and other institutions to assess the best interests of the child. Advisers to the Chancellor of Justice also deal with informing the general public and training the specialists who work with children about the general principles of the CRC.

Recommendations for the state:

- *to develop the methodological materials that concern the general principles of the CRC, incl. the assessment of the best interests of the child, and to systematically organise relevant training; and*
- *to make the assessment of the impact on children mandatory when decisions are made at the level of local governments and the state.*

3.2 Right to express one's views

The attitudes in Estonian society generally support hearing out children. According to the Monitoring of the Rights of the Child and Parenting of 2012³⁹, 72% of children and 70% of adults strongly agree that hearing children out is as important as hearing out adults. The monitoring also indicated that when it comes to the rights of the child, the one that children themselves are the most aware of is the right to express one's opinion and to express oneself (94% of children). Surveys show that people are used to involving children in traditional home-related issues, but children have fewer opportunities to participate in the organisation of school and social life.⁴⁰

³⁸ In the 'Survey of Child Well-being Assessment' carried out by the Union for Child Welfare and the Institute of Social Work of the Tallinn University in 2013, 40.7% of the interviewed child protection workers said that they had no instruments that could be used to assess the well-being of a child. 94.9% of the interviewed child protection workers found that assessment instruments are necessary for the collection of objective information from the viewpoint of assessing the child's well-being, and 74.6% found that there are no uniform assessment principles among child protection specialists.

³⁹ Brief summary in English:

http://lasteombudsman.ee/sites/default/files/IMCE/summary_of_the_monitoring_of_the_rights_of_the_child_and_parenting.pdf.

⁴⁰ See also the survey of the Union for Child Welfare 'Supporting the Participation of Children and Inclusion in Decision-making Processes'. Estonian version: <http://www.lastekaitseliit.ee/wp-content/uploads/2011/04/Uuring-%E2%80%9CLaste-osaluse-toetamine-ja-kaasamine-otsustusprotsessides%E2%80%9D.pdf>.

Recommendation for the state:

- *to encourage children to participate in making decisions about issues that concern them in all areas of life and to introduce to the society best practices concerning participation of children.*

IV Civil and political rights

4.1 Stateless children, regulation of the residence permit

A positive development that can be highlighted is the amendment of the Citizenship Act⁴¹, which will enter into force on 1 January 2016 and make it easier to grant citizenship to the children of stateless parents. Subsection 13 (4) of the Citizenship Act (CA) stipulates that a minor under 15 years of age who was born in Estonia or starts residing permanently in Estonia with a parent or parents immediately after birth is granted Estonian citizenship by naturalisation from the moment of birth if his or her parents or the parent who raises the child alone, who are not recognised by any other state to be citizens of that state in accordance with the legislation in force, have lawfully resided in Estonia for at least five years by the time the child is born. The child is not granted Estonian citizenship if the parents request renouncement of their citizenship before the child turns one (subsection 13 (5) of the CA). The Act therefore grants parents the option to not acquire Estonian citizenship for their child. However, the relevant amendment should lead to more stateless children born in Estonia acquiring Estonian citizenship, as the currently effective regulation states that the acquisition of citizenship depends on whether a parent applies for citizenship for his or her child. Based on the same principles, it is also possible for the children under 15 years of age who were born in Estonia before 1 January 2016 to acquire Estonian citizenship (subsection 36³ of the CA).

The Chancellor of Justice has approached the issue that concern a parent's options of applying for a residence permit in Estonia if they have an underage child who resides in Estonia. For example, this may concern the situation where a parent used to have a residence permit due to marriage, but the marriage ended and it is no longer possible to extend the residence permit on the basis of this, but the applicant does not meet the conditions required for applying for a residence permit on any other basis either. The Chancellor of Justice found that the Aliens Act⁴² is in contravention of the fundamental right to family guaranteed with §§ 26 and 27 of the Constitution, because it does not grant a legal basis for applying for a residence permit in the case where the person has a minor child residing in Estonia, and made a proposal to the Minister of the Interior for amendment of the Aliens Act.⁴³ Amendments to bring the Aliens Act in compliance with the Constitution have not yet been launched.

Recommendation for the state:

- *to include a legal ground in the Aliens Act for a parent to apply for residence permit, if his/her child lives in Estonia on a legal ground.*

⁴¹ Estonian version: <https://www.riigiteataja.ee/akt/123032015260>.

⁴² English version: <https://www.riigiteataja.ee/en/eli/525062015011/consolide>.

⁴³ Estonian version:

http://oiguskantsler.ee/sites/default/files/field_document2/6iguskantsleri_margukiri_elamisloa_taotlemine_kui_estis_elab_taotleja_alaealine_laps.pdf.

4.2 Right of a minor to self-determination

A positive example that can be given is that on the proposal of the Chancellor of Justice⁴⁴, the Riigikogu restored in 2015 the procedure pursuant to which the right of a pregnant woman under 18 years of age to decide on the termination of her pregnancy is not restricted in favour of the legal representative solely because the pregnant woman is a minor. Pursuant to the Act that was in force from 2009-2015, it was impossible to consider the maturity of the minor or whether the involvement of the legal representative was in the minor's interests. A gynaecologist had to demand informing the parents or guardian even if it was in contravention of the pregnant woman's interests due to reasons arising from them. It was impossible not to involve the legal representative even if the teenager was justifiably against it and capable of considering the pros and cons of termination with responsibility. As an exception, it was possible to replace the consent of the legal representative with the permission of a court, which was of no use, as informing the legal representative and his or her refusal to give their consent was the precondition for requesting the permission of the court. Therefore, if a woman under 18 years of age wanted to terminate her pregnancy safely and without involving her parents or guardian, the law prohibited her from doing so. The legal amendment guaranteed minors the constitutional right to self-determination, privacy and protection of health by allowing a minor to terminate her pregnancy on the basis of her informed consent. Involving the legal representative is not required if the pregnant woman does not consent to this with good reason or if the decision of the legal representative is in conflict with her interests. However, the minor must be informed about the importance of involving a trustworthy adult with active legal capacity before the pregnancy is terminated. The healthcare professional must also inform the pregnant women of the opportunities to get psychological or other appropriate counselling if necessary.

V Violence against children

5.1 Explicit prohibition of corporal punishment

The explicit⁴⁵ prohibition of corporal punishment of children in the Child Protection Act that will enter into force on 1 January 2016 is highly commendable, and something that the Chancellor of Justice also demanded in a public address to the Minister of Social Affairs⁴⁶. The liberal attitudes towards corporal punishment that prevail in society⁴⁷ reflect the need to clearly acknowledge the consequences of physical punishment, introducing methods of child-raising that are free of violence, and conscious self-control of parents to create a violence-free childhood for every child. Parents admit that they are under a lot of stress and need

⁴⁴ Estonian version: <http://oiguskantsler.ee/et/seisukohad/seisukoht/ettepanek-alaalisusega-seotud-piirangud-raseduse-katkestamisel>.

⁴⁵ The physical abuse is punishable under the Penal Code also at present (i.e. before the new Child Protection Act enters into force), and the Family Law Act contains provisions that prohibit the use of child-raising measures that are degrading or cause torture or physical injury to the child.

⁴⁶ English version: <http://lasteombudsman.ee/en/chancellor-of-justices-public-address-to-the-minister-of-social-affairs-on-prohibition-of-corporal>.

⁴⁷ A quarter of parents do not regard corporal punishment as violence: 25% of parents fully disagree or rather disagree with the statement that corporal punishment is violence, not a method of child-raising. 38% of parents find that imposing corporal punishment on children is understandable in certain situations. However, only 8% of parents find that using physical methods to solve problems between adults is understandable (source: summary of the survey of children and adults of the 'Monitoring of the Rights of the Child and Parenting').

assistance⁴⁸, but actually requesting assistance is rare because of stigma or lack of knowledge about opportunities of getting help⁴⁹. This is why it is necessary to communicate more information about the impact of violence on the child's development and the opportunities of getting help. It is also important to give future parents knowledge about violence-free child-raising whilst they are expecting a child, but this kind of awareness raising is not done systematically at present.

Recommendations for the state:

- to systematically organise training for parents, which covers positive and violence-free parenting practices (see also recommendations in point 6.1); and
- to organise nationwide campaigns for adults and children to inform them that corporal punishment is prohibited.

5.2 Safe relationships at school and nursery school

One of the priorities of the Chancellor of Justice as ombudsman for children is the right of the child to childhood that is free of violence. Since most children spend the majority of their waking hours at school or nursery school, one of the objectives is to make the environment and relationships in these institutions safer.

Surveys indicate that 22% of schoolchildren in Estonia are victims of bullying.⁵⁰ The Basic School and Upper Secondary School Act⁵¹ requires schools to guarantee the mental and physical safety of children during the time spent at school and to set forth a plan for solving relevant cases, but there is no substantive supervision over compliance with these requirements at the level of state. Parents whose children have been bullied at school have repeatedly contacted the Chancellor of Justice, because the school has failed to solve the problems. Thus, it is necessary to strengthen substantive supervision over guaranteeing safety at school and give schools advice and support to achieve this goal. Informing schools about existing anti-bullying programmes should be a function of the state. The Chancellor of Justice has created a separate web environment 'Bullying-free School'⁵² that gives useful information and advice to schoolchildren, teachers and parents. The Chancellor of Justice also participates in the work of the Bullying-free Education Movement⁵³. The joint goal of the movement is to create a viable cooperation platform via which evidence-based programmes for the prevention and solution of bullying would reach all children's educational institutions in Estonia.

⁴⁸ One-fifth of parents admit that they are often stressed out, one-third say that they sometimes feel like that. Every tenth parent is often depressed, 27% feel like this sometimes. However, coping with stress is the area about which parents know the least in their own opinion: 4% of parents noted that they have no such knowledge and one-third admitted to having a little knowledge (source: the publication 'Child Well-being').

⁴⁹ 53% of parents have found themselves in the situation during the year before the survey where they would have needed advice and help as parents, but didn't know where to go or who to turn to. The share of parents who were afraid to turn to someone for advice and assistance was 32% (Ibid.).

⁵⁰ The survey 'Deviant Behaviour of Children in Estonia' of the Ministry of Justice. Estonian version: http://www.kriminaalpoliitika.ee/sites/www.kriminaalpoliitika.ee/files/elfinder/dokumendid/laste_kaitumise_uuring_2014.pdf.

⁵¹ English version: <https://www.riigiteataja.ee/en/eli/525082015003/consolide>.

⁵² Estonian version: <http://lasteombudsman.ee/koolikiusamine/>.

⁵³ The Bullying-free Education Movement was established in December 2014 by NGO Bullying-free School, Youth Associations TORE, Union for Child Welfare and the Centre for Ethics of the University of Tartu. The Ministry of Education and Research and the Chancellor of Justice support the movement within the limits of their competence.

Recommendations for the state:

- *to carry out systemic and effective supervision over schools in guaranteeing a mentally and physically safe school environment; and*
- *to make the implementation of anti-bullying programme(s) that are evidence-based or have yielded good results mandatory for nursery schools and schools, and to offer advice and financial support to schools if necessary.*

5.3 Informing about a child in need of assistance

Noticing violence and neglect is the first step in dealing with these issues. It is therefore important to encourage both children and adults to report acts of violence against children and children in need of assistance. Although the readiness of children and adults to report children in need of assistance is relatively high, 37% of adults do not report when such a situation actually occurs.⁵⁴

Recommendation for the state:

- *to inform the general public how to notice a child in need of assistance, whom to inform about such a child, and to provide primary training about the assessment of a child's need for assistance to all specialists working with children (child protection workers, doctors, teachers, police, judges etc.).*

VI Family environment and alternative care

6.1 Family environment and support to parents

6.1.1 Structure of Estonian families and factors that threaten family well-being

According to Population and Housing Census, the share of households with children among all households is decreasing: in 2000 it was 34%, but in 2011 only 25%. The share of households with co-habiting couples has increased and the share of households with married couples has decreased, which is why the share of children living with co-habiting parents has increased considerably (from 16% to 28%) and the share of children living with married parents has decreased (from 54% to 45%).⁵⁵ The younger the children, the more of them have co-habiting parents.⁵⁶ The majority of children are born to unmarried couples.⁵⁷ The share of divorces comprises more than half of marriages⁵⁸ and has a direct impact on children. Unfortunately, there are no official statistical data about the break-ups of co-habiting couples, but considering the high number of divorces, their number can also be presumed high. Changing family relationships are also reflected in the family structure in which children are growing up. It is remarkable that one-fifth of children (21%) grow up in single-family

⁵⁴ See 'Monitoring of the Rights of the Child and Parenting'. Brief summary in English:

http://lasteombudsman.ee/sites/default/files/IMCE/summary_of_the_monitoring_of_the_rights_of_the_child_and_parenting.pdf.

⁵⁵ The share of households with co-habiting couples has increased from 10% in 2000 to 14% in 2011. The share of households with married couples has decreased from 37% in 2000 to 30% in 2011. See the chapter 'Child in Different Environments' in the publication 'Child Well-being'. English version:

http://lasteombudsman.ee/sites/default/files/IMCE/laste_headolu.pdf.

⁵⁶ 42% less than three years of age and 22% aged 12-17 (Ibid.).

⁵⁷ According to Eurostat, 58.4% children were born out of wedlock in 2012 – the only country where this indicator is even higher is Iceland (66.9%).

⁵⁸ The share in 2014 according to Statistics Estonia was 52%.

households with a single parent. Almost half of these children (47%) also have one or several siblings. Most children who live with one parent (93%) live with their mothers.⁵⁹

A precondition that threatens the well-being of a child is growing up in a single-parent family or a large family, because these types of families are the most vulnerable in terms of economic coping, especially in labour market relationships (unemployment, inactivity).⁶⁰ In 2012, there were 21,400 families with one adult and a child or children, and there were 11,400 couples with at least three children and 12,700 couples with underage and grown-up children. As in Estonia the gender pay gap that affects the poverty of children and mothers was the highest (29.9%) among all European Union Member States in 2013, the poverty risk of children living with a single mother is particularly high.

The well-being of children may also come under threat in families where one or both parents work abroad. Although there are no accurate data about parents working abroad, it can be said on the basis of various studies that this problem concerns many children in Estonia. The well-being of such children is lower⁶¹ and they may have to face various problems. One of the risks is that the probability of such children committing offences increases, especially when it is the mother going to work abroad.⁶² The possibilities of the state in this respect are mainly limited to informing parents about their rights and obligations, and contributing to parental education. The child protection workers of local governments, schools and nursery schools also have an important role to play in noticing such children and offering them support.⁶³

6.1.2 Custody and right of access disputes between parents

The large number of petitions and telephone calls about custody of and the right of access to children received by the Chancellor of Justice refers to serious problems that relate to how parents guarantee children's interests and arrange children's lives after they have broken up.⁶⁴ The Chancellor of Justice is of the opinion that in order to protect the interests of children, it is necessary to offer parents more opportunities of family counselling and conciliation services. It is important that these services are accessible nationwide and affordable for parents. The analysis carried out by the Chancellor of Justice revealed that although § 563 of

⁵⁹ See the publication 'Child Well-being'. English version: http://lasteombudsman.ee/sites/default/files/IMCE/laste_headolu.pdf.

⁶⁰ Ibid.

⁶¹ According to the survey by Talves and Kutsar of 2014, the general opinion of children in Estonia whose parents work abroad (the survey covered 2nd, 4th and 6th year students and the data of the 6th year students were used in the aforementioned survey) of their satisfaction with life and of their future is clearly lower than that of the children whose parents do not work abroad.

⁶² See the survey 'Deviant Behaviour of Children in Estonia' of the Ministry of Justice. Estonian version: http://www.kriminaalpoliitika.ee/sites/www.kriminaalpoliitika.ee/files/elfinder/dokumendid/laste_kaitumise_uuring_2014.pdf.

⁶³ The main recommendations given in the survey 'Families with parents who work abroad and children who live in Estonia: best practices and possible threats', which was carried out by the Centre for Applied Social Sciences of the University of Tartu in 2014 on the order of the Ministry of Social Affairs, are to raise the awareness of parents and specialists (teachers, child protection workers, family doctors) by distributing information materials and training. It was also emphasised that parents should notify schools and nursery schools when they go to work abroad and inform them about the person the parents have authorised to look after the child.

⁶⁴ The number of children involved in disputes resolved out of court with the participation of the local government has increased 1.5 times in the last four years, reaching 8,493 in 2014. According to the data of local governments, courts have resolved disputes about child custody, right of access, right to manage the child's assets, performance of the child maintenance obligation or power of decision in relationships with the child or another dispute in the case of 1,325 children in 2014. The same indicator in 2011 was 973 children. Source: Report of the Ministry of Social Affairs 'Children without parental care and in need of assistance'.

the Code of Civil Procedure⁶⁵ (CCP) is aimed at conciliation of parents, courts do not have a cognizant practice of whether to refer parents to counsellors or to conciliate the parents by judges themselves. When parents are referred to counselling, there is no uniform approach in terms of who this counsellor is – a conciliator belonging to the union of conciliators or some other counsellor (family therapist or psychologist). The practice in terms of who covers the cost of counselling is also different – if the court finds the counsellor with the assistance of the local government's child protection worker, the parents have received counselling at the expense of the local government; if the parents find a counsellor themselves, they have to pay for the counselling themselves.

If one of the parents breaches the court ruling that determines the procedure for accessing the child, the law permits to resort to compulsory enforcement of said court ruling. The Chancellor of Justice is of the opinion that the effective rules of enforcement proceedings are in contravention of the Constitution, as they permit enforcement of court rulings on access procedure without the bailiff evaluating whether enforcement is in the best interests of the child and do not allow the bailiff to refuse to perform the enforcement act if the enforcement is in conflict with the best interests of the child, incl. against the will of the child, provided that the child's maturity and level of development allow him or her to express his or her will, and the child's expression of will has been assessed by a person with special expertise. The Chancellor of Justice has made to the Ministry of Justice the proposal⁶⁶ to draft an amendment that would consider the best interests of the child.

Access to high-quality and affordable legal counselling service is also a problem. Parents face various complicated issues when they separate, incl. custody of and right to access the child, in which they need the advice of a specialist. Parents often contact the Office of the Chancellor of Justice for advice, as they cannot afford to pay for high-quality legal counselling.

More attention should be given to making parental education accessible and providing training and counselling for the development of parenting skills. In the opinion on the draft of the Child Protection Act⁶⁷, the Chancellor of Justice wrote that the promotion of positive child-raising practices and development of parenting skills should be the key point of the prevention activities of the state and local authorities, and they should also be clearly stipulated by law.

Recommendations for the state:

- *to offer parents information and advice about custody and right of access as well as the existing counselling, incl. legal counselling options (e.g. sharing relevant information on the Internet);*
- *to improve the accessibility of the conciliation service, also to offer courts and local authorities information about the conciliation service providers and the options of funding this service;*

⁶⁵ English version: <https://www.riigiteataja.ee/en/eli/516062015009/consolide>.

⁶⁶ Estonian version:

http://oiguskantsler.ee/sites/default/files/field_document2/6iguskantsleri_margukiri_taitemenetluse_seadustiku_kooskolla_viimine_pohiseadusega.pdf.

⁶⁷ Estonian version: <http://oiguskantsler.ee/et/seisukohad/seisukoht/arvamus-eelnouule-lastekaitseadus>.

- *to prepare a commented edition of the Family Law Act and organise training about it.*⁶⁸

6.1.3 Children of prisoners and communication with detained parent

So far, the children of prisoners have been invisible for the general public in Estonia.⁶⁹ Yet they are facing many challenges: stigma, exclusion, family breakdown, changing their place of residence and school, loss of income, poverty and so on. The children whose parents are in prison are also at greater risk of mental health problems, incl. addiction. These risks increase the probability of antisocial and criminal behaviour by the child. All this underlines that these children are particularly vulnerable and need protection by the state. However, the positive measures applied by the state cannot be proactive without the state having an overview of the children who need assistance and protection. In order to have an idea of how many children may be affected by the imprisonment of a parent, it is necessary to systematically collect information about children whose parents are in prison (number, age, location, etc. of such children) and publish the relevant statistics.

In addition to the question of what becomes of the child of an imprisoned parent during the imprisonment – who cares for, supports and protects the child – it is equally important to decide on how the parent and the child can communicate during the parent’s imprisonment.

There may be several factors that obstruct communication between a child and an imprisoned parent. For example, the child and the imprisoned parent may have no money, incl. for buying a phone card, stationery or stamp, or for covering the costs of a meeting arranged in prison (transport, food, toiletries), etc. The time allocated for using the phone or meetings in the prison may also be an obstacle, e.g. the child is at school or engaged in other activities at the same time, the meeting times are on working days or too early in the morning, etc. An obstacle for calling may also be prison settings where the phone is in a publicly used room or right next to a TV set.

Child may be deterred from meeting with his or her parent by unsuitable prison environment. For example, if there are no things in the meeting room that the child and parent could use for doing something together, or if there are no possibilities for contact without physical barriers, etc. The meeting of a child and an imprisoned parent may be cancelled for the reason that the parent has lost the right to meetings as a form of disciplinary punishment. The child may also have a negative perception of the procedures preceding the meeting (e.g. strip searches may sense uncomfortable, unpleasant and humiliating), and therefore not want to meet the parent at the prison. Another possible problem is the lack of competent prison officials, who have been trained how to welcome, accompany and treat children and families appropriately during the meetings. In order to encourage communication between the child and the parent, it is also necessary to consider the communication channels commonly used by children, e.g. e-mail, video calls, etc.

Recommendation for the state:

- *to support the relationships between imprisoned parents and their children, incl.*

⁶⁸ The Centre for Applied Social Sciences of the University of Tartu also made this recommendation in the ‘Survey of Determination of a Parent’s Child Custody Rights’. Estonian version: http://www.ec.ut.ee/sites/default/files/www_ut/vanema_hooldusoigus_loppraport_isbn.pdf.

⁶⁹ The exact number of children in Estonia whose parents are in prison is not known, but existing data suggest that the number may be 1,000 or more, as the total number of prisoners is *ca* 2,800.

- a. to systematically collect data about children whose parents are in prison;
- b. to create in prison a physical environment for the meetings of children and imprisoned parents, which supports meetings, incl. to allow the children and parents to meet without physical barriers, and to create possibilities for the joint activities of the children and parents indoors and outdoors at the prison;
- c. to start using additional communication channels, e.g. video calls and suchlike;
- d. not to use prohibition of meetings with children as a disciplinary punishment;
- e. to use alternative tools and measures of search in case of children, e.g. frisking, using scanners to inspect people and things, service dogs, etc., and to strip search children strictly in compliance with the principle of proportionality, legality and necessity; and
- f. to offer training to the officers who interact with the children and families who visit prisons.⁷⁰

6.2 Separation of a child from the family

Pursuant to the Family Law Act⁷¹, a local government must immediately go to court to have the issue of the parent's right of custody resolved if it has separated the child from his or her family without requesting the prior permission of the court. However, the Chancellor of Justice is aware of several cases where local governments postpone going to court for as long as several months, or go to court without applying for provisional legal protection. Confusion about the right of representation, custody and access concerning the child tends to occur during the period from the separation of the child until the court ruling is made. For example, the local government decides on the education and health of the child, even though the parent still has the right of custody to represent the child on these issues. Also, local authorities often restrict the child's right to contact with the parent, even though they have no right to do so without a court ruling. If the child cannot live with relatives, he or she will spend the whole period in a shelter, which should, however, be a short-term solution. The situation should be solved by the Child Protection Act that will enter into force in 2016, as it requires local governments either to go to court within 72 hours of separating the child or return the child to the parent when the threat has passed. However, it is impossible to predict the implementation of this obligation unless sufficient awareness of local governments is guaranteed.

Recommendations for the state:

- to raise the child protection capacity of local governments (incl. awareness of case management requirements), see also the recommendation in point 1.2; and
- to raise the awareness of local governments of family law and procedural law (incl. about the principles of applying for provisional legal protection and separating a child from the family).

⁷⁰ See summary of the inspection visit of the Chancellor of Justice to Viru Prison in 2014 (English version: http://oiguskantsler.ee/sites/default/files/IMCE/inspection_of_viru_prison_2014.pdf), the recommendation of the Chancellor of Justice about the conditions of detention at Tallinn Prison of 14.11.2014 (Estonian version: http://oiguskantsler.ee/sites/default/files/field_document2/6iguskantsleri_soovituse_ee_tallinna_vangla_kinnipidamistingimused.pdf) and the opinion of the Chancellor of Justice about the intention to develop the draft of the act for amendment of the Imprisonment Act of 29.04.2015 (Estonian version: http://oiguskantsler.ee/sites/default/files/field_document2/6iguskantsleri_arvamus_vangistusseaduse_muutmise_seaduse_eelnou_valjatootamise_kavatsusele.pdf).

⁷¹ English version: <https://www.riigiteataja.ee/en/eli/514082015002/consolide>.

6.3 Reuniting families, taking the child illegally to another country and failure to return

The awareness of parents and local authorities of the Hague conventions on child abduction and child protection, Council of the European Union Regulation 2201/2003 (so-called Brussels II Regulation) and the role of Estonian central authorities is low. The Chancellor of Justice has been contacted by several parents whose children have been illegally taken to another country or who have done so themselves, and who have been advised by the Chancellor of Justice to contact the Ministry of Justice as the relevant central authority. The Chancellor of Justice has also noted in its supervision activities that local governments do not know and do not cooperate with the child protection workers of other countries when it is necessary to resolve the issues of access rights of a child who lives in Estonia and a parent with limited or no custody who lives in another country.

Recommendation for the state:

- *to raise the awareness of local governments and the general public about rules of solving cross-border disputes over right of custody and of access (e.g. whom to turn to, which state's law is to be applied etc.).*

6.4 Children deprived of family environment

6.4.1 Shelter service

The shelter service has been stipulated in the Social Welfare Act⁷² for the initial and temporary alternative care of a child separated from parents and without a possibility to live with relatives. Although the law allows to place the child in a foster family until the custody issues of the parents are resolved, there are no data about the extent to which this option is actually used for short-term alternative care. It is worrying that at least one-fifth of the children placed in shelters due to separation from their families are under the age of three.⁷³

The shelter service is still substantively unregulated. Health protection requirements⁷⁴ have been established, but the service standard⁷⁵ is optional. The possible regulation of the service has been prepared in the draft of the Social Welfare Act that is in legislative proceedings of the Riigikogu since autumn 2015. However, there is no requirement of a ratio of children to employees in the draft. In practice, shelters do not always have enough employees who look after the children. For example, one carer was looking after ten children at the time of the Chancellor of Justice's inspection visit to the shelter in summer 2015. As there was an 18-month-old baby as well as preschool and school-aged children, some of whom had special needs, among the children, the Chancellor of Justice came to the conclusion that it was impossible to guarantee that all of the children received enough attention and had a possibility to spend time outdoors.

⁷² English version: <https://www.riigiteataja.ee/en/eli/530062015001/consolide>.

⁷³ 23% (16 of 70) of the children who were in shelters at the end of 2013 due to separation from their families and 19% (13 of 69) of the children who had been separated from their families in 2014 and were still in shelters at the end of the year were less than three years old. The data can be found in the S-veeb online environment (children without parental care and in need of help 2014, Table 1.3).

⁷⁴ Estonian version: <https://www.riigiteataja.ee/akt/128032014030>.

⁷⁵ Estonian version: http://www.sm.ee/sites/default/files/content-editors/eesmargid_ja_tegevused/Sotsiaalhoolekanne/Muud_toetused_ja_teenused/sotsiaalministeerium_turvakod_uteenus_lapsele.pdf.

Recommendations for the state:

- *to raise awareness among local governments of the possibility to place children (especially those under the age of three) in foster families instead of shelters also for short term, also to support the preparedness of foster families to take in such children (by offering foster families trainings and counselling); and*
- *to establish a standard for the shelter service, incl. a requirement of the ratio of children and employees.*

6.4.2 Substitute home service

Long-term alternative care of children who have been deprived of their families can be arranged in four different ways: in substitute homes and foster families (which is decided by the local government) and in a guardianship or adoptive family (which is decided by the court).

The substitute home service can be considered a form of institutional alternative care, even though the service is provided in a manner that makes it as similar to a family as possible (e.g. there may be up to eight children in a family), and in *ca* one-fourth of the families children are looked after by family parents working 24/7 (like in SOS children's villages) instead of carers who work in shifts. Compared to the previous reporting period of the CRC, the state has made the substitute home service considerably more similar to a family than before due to implementation of the requirements stipulated in the Social Welfare Act, and it has also improved the living conditions by building new family houses. Irrespective of this, the Chancellor of Justice found in its analysis from 2013⁷⁶, which was based on inspection visits to half (18 of 35) of all substitute homes nationwide, that there are repeated and systematic omissions in guaranteeing the basic rights of children. The elimination of these omissions would make the lives of children in substitute homes even better.

The Chancellor of Justice advised to establish a financing model and a service standard that corresponds to the primary needs of the children. In terms of the service standard, it is so far unclear what the primary needs are that a substitute home has to satisfy. In terms of financing, the state does not consider the actual expenses of covering the primary needs of children and complying with law when it determines the price of and pays for the service. The Ministry of Social Affairs prepared at the end of 2014 the Green Paper on Alternative Care that offers solutions to these problems. The plan is to update the service quality requirements and carry out a comprehensive analysis that among others should define the basis on which the cost of the service is calculated. However, the time by which the necessary amendments in the regulation should be developed and when they should enter into force has not been determined.

Pursuant to law, up to eight children may live in a family and at least one carer must look after them at all times of the day. However, the Chancellor of Justice found during inspection visits that this ratio of children to employees was not adhered to in two-thirds of substitute homes. Either there were more children in the family than permitted or a carer was responsible for more than one family's children. The biggest number of children in one family was 17 instead of the permitted eight. In another substitute home three carers were looking after 57 children. The inspection visits made after the analysis have indicated that adherence with the requirement of a ratio of children to employees is still a problem in substitute homes and the

⁷⁶ See the English version of the news about the analysis: <http://lasteombudsman.ee/en/ombudsman-for-children-analyses-how-the-rights-of-children-in-substitute-homes-are-guaranteed>.

Chancellor of Justice made recommendations about this to another five institutions. Starting from 2017, the family in a substitute home can consist of six children maximum.

The inspection visits of the Chancellor of Justice to substitute homes have indicated that local governments and substitute homes restrict the right of the children living in the substitute homes to have access to their parents. However, a parent's right of custody and right of access pursuant to the Family Law Act are two different legal institutes and the right of access does not depend on whether the parent's right of custody has been restricted or not. Almost half of the substitute homes visited from 2011–2015 had established various restrictions on the children's and parents' right of access. The rules or child visitation of several substitute homes stated that parents who want to visit their children in substitute homes need the permission of the local government. Some substitute homes also described that in practice, parents have to apply for permission from the local government in order to visit their children. Many substitute homes had established organisational restrictions on visitations: limited visitation hours or duration, prohibition to leave the substitute home or the requirement to have the carer present during the visit. According to the rules of two substitute homes children could be forbidden to go to their families as a sanction if they failed to follow the substitute home rules. One substitute home had implemented this prohibition in practice. There were no cases in the inspected substitute homes where a court had restricted a parent's right of access to the child.

A substitute family (foster family, guardian or adoptive parent) is found for three quarters of the children who have been deprived of their biological parents, but a quarter of them end up in substitute homes.⁷⁷ The share of children who live in substitute homes has not changed much over the years. If anything, it has increased.⁷⁸ The majority of children living in substitute homes are disabled⁷⁹, school-aged,⁸⁰ or have several siblings. So far, finding people who would be prepared to accept such children in their families has been difficult in Estonia. Although the share of children under three years of age in substitute homes is rather small⁸¹, it is still a concern that children as young as this are placed in such institutions.

In addition to the low awareness and preparedness of families, there are other systemic reasons why so many children are still in institutional care. For example, the present regulation of case management in child protection work does not require local governments to prefer and look for family-based alternative care opportunities before placing the child in a substitute home. Once the children are placed in substitute homes, local governments rarely look for opportunities to place children in family-based care later on during the periodic review of children's cases. Compared with adoption, the general public have little information about the need of children for foster and guardianship families and of possibilities of becoming such a substitute family. Information about potential substitute families is fragmented between the numerous local and county governments. The substitute home service is financed by the state and although the state also pays benefits to foster, guardianship and adoptive families, substitute families may need more support, counselling, etc. from local

⁷⁷ At the end of 2014, 1.4% of all Estonian children were in alternative care (3,362 children in total). 25.5% of them lived in substitute homes (861 in total), 6.5% in foster families (216 children in total), 39.5% in guardianship families (1,331 children in total) and 28.5% had been adopted (954 children in total). The data can be found in the S-veeb online environment.

⁷⁸ See, for example, the report of the state, Table 12.

⁷⁹ 43%, 372 of 861 children. See the internet-based aggregation of welfare statistics in the H-veeb online environment (substitute home service 2014, Table 1.1).

⁸⁰ 81.5%, 702 of 861 children (Ibid.).

⁸¹ 4.5%, 39 of 861 children (Ibid.).

governments than substitute homes. All in all, the state has not achieved success in de-institutionalisation. Although the Green Paper on Alternative Care prepared in 2014 contains a number of steps for promotion of family-based forms of alternative care, the state has not indicated in its latest CRC report the measures taken so far.

Recommendations for the state:

- *to establish a substitute home service standard and financing model that meets the primary needs of the child;*
- *to guarantee compliance with the requirements concerning the ratio of children to employees at all substitute homes;*
- *to raise the awareness of local governments and substitute homes of the regulation of the right of access; and*
- *to take fast and systemic steps towards the de-institutionalisation of the alternative care of children and to set specific deadlines for their implementation (incl. raise general awareness of possibilities of caring for children who are deprived of their biological parents).*

6.5 Right of the child to periodic review of care and treatment

The inspection visits by the Chancellor of Justice to substitute homes have revealed that local governments fail to show sufficient interest in the development and matters of the children for whose well-being and case management they are responsible for. This is illustrated by problems with case management plans, which should be the most important documents in mapping the child's individual needs, planning the activities required for his or her development and monitoring every aspect of his or her well-being. The plans have either not been prepared at all, not updated once a year or not correctly signed as required by the Social Welfare Act. There are children in every fourth substitute home who have not been regularly visited by a representative of the local government of their registered residence, which if it was done would guarantee that the child protection worker has a personal contact with the child and is up-to-date on the child's development. This means that the right of the child to be included in the decisions made about him or her is also not guaranteed.

Recommendation for the state:

- *to increase the effectiveness of supervision over local governments' compliance with the requirement to periodically review the care of a child, which is set on them by law.*

6.6 Guaranteeing child maintenance, maintenance support

According to the data for 2013, 15.8%⁸² of households with one parent raising a child or children lived in absolute poverty, in whose case the indicator is significantly higher in comparison to couples raising a child or children. The situation of households with one parent raising a child or children is difficult as in covering costs they can rely on the income of only one adult. In Estonia, great number of children who are raised in single parent families do not receive the maintenance support the court has ordered the other parent to pay. According to the data provided by the Ministry of Justice in October 2015 there were 12,767 maintenance support claims, 9,872 claimants and 9,206 debtors. However, these data do not give an overview to how many children maintenance support has been ordered to.

⁸² Source: Statistics Estonia.

The state has started taking forceful and commendable steps to reduce the number of maintenance support debtors. The legal amendment that allows a court to suspend a maintenance support debtor's right to hunt or drive a motor vehicle, small vessel or personal watercraft, and to suspend the validity of the debtor's fishing card, weapons permit and weapons procurement permit, will enter into force on 1 March 2016. This summer, the Government also approved the principles of the maintenance allowance fund – the scheme should enter into force from 2017 and the fund should guarantee the minimum means of subsistence for the child one of whose parents has been ordered to pay maintenance support by a court. The existing Maintenance Allowance Act⁸³ stipulates that the state pays maintenance allowance to a child, whose parent has been ordered to pay maintenance support by a court but who fails to perform this obligation, a maintenance allowance for 90 days maximum, and such an allowance is calculated on the basis of the child allowance rate.⁸⁴ It is noteworthy that according to surveys, non-payment of maintenance support is directly related to the right of access.⁸⁵

Separate attention must be drawn to the maintenance support of children living in substitute homes. Courts had ordered payment of maintenance support to just 11% of the children who were living in substitute homes at the end of 2014.⁸⁶ The Chancellor of Justice drew attention to this problem already in 2011 by asking local governments as the guardians of children without parental care to always demand courts to order payment of maintenance support to minors depending on the situation from either the child's parent or grandparent.

Recommendations for the state:

- *to inform parents of their rights and obligations (incl. the obligation to provide maintenance to the child) and to advise parents about the developmental needs of children;*
- *to contribute to changing the attitudes of the society in respect of gender roles and the common responsibility of parents to guarantee the child's well-being and consider the child's best interests as primary consideration; and*
- *to raise the awareness of local governments of the obligation and need to demand maintenance support for children without parental care.*

⁸³ English version: <https://www.riigiteataja.ee/en/eli/513102014001/consolide>.

⁸⁴ The maximum amount of maintenance allowance based on said rate is 288 euros.

⁸⁵ 'Survey of Determination of a Parent's Child Custody Rights' by the Centre for Applied Social Sciences of the University of Tartu: "When speaking about disputes concerning right of access, several of the interviewed judges and lawyers pointed out that they are often reduced to score-settling between the parents, where one of the parties (usually the father) does not want to pay maintenance support because the child lives with the other parent (the mother) and they do not get along, not because they do not care about the child. The other parent in their turn does not want the other parent to have access to the child because of the bad relationship with the other parent, not because the other parent is a threat to the child". Estonian version:

http://www.ec.ut.ee/sites/default/files/www_ut/vanema_hooldusoigus_loppraport_isbn.pdf.

⁸⁶ 109 of 1009. The data can be found in the S-veeb online environment.

VII Health protection and social welfare. Children with disabilities

7.1 Health and healthcare services

7.1.1 Monitoring the health of children in family healthcare system

The family doctor is at the centre of first contact care in Estonia. The family doctor carries out primary health checks, refers the patient to a specialist if necessary, issues prescriptions for medicines, etc. Family doctors should also monitor children's health, promote health and prevent diseases. Additionally, the school nurse deals with health checks and disease prevention in the case of schoolchildren. The work of school nurse covers health supervision, prevention of diseases (incl. vaccination), promotion of health and well-being and, if necessary, provision of first aid. The school nurse should play an active role in ensuring that the home and the school, incl. the school psychologist and social pedagogue, cooperate in the interests of the child's health and well-being.

Children's who do not yet attend school access to health services, their health checks and prevention depends primarily on the parents. Health protection is guaranteed if the parents themselves are aware of the possibilities of the health system and use them in the interests of the child. However, if the parents are unable to cope with their own lives (problems with drugs and alcohol, etc.), the health of the child also suffers. There is also a separate group of parents who are principally opposed to having their children vaccinated or treated with the methods of modern medicine.

If the parents fail to take care of their child adequately and the child does not have a family doctor either, the child may be left without timely medical attention as a result. Namely, a new-born is currently not added to a family doctor's practice list automatically, but it is done on the basis of the application of the child's legal representative, or determined by the Health Board.⁸⁷ The situation of children who do not yet attend school can primarily be approved on the basis of family health care. However, the first thing that must be done to achieve this is to enter new-borns in a family doctor's practice list already at the maternity hospital. This would avoid some children getting lost for the health system. Of course, it is also important that family doctors actually deal with the children entered in their practice lists, incl. if they need special attention due to their parents. One way of doing this are mandatory home visits by family doctors or nurses, the necessity of which has also been acknowledged in policy-making.⁸⁸

Being examined by a family doctor (in the format of a home visit, if necessary) is not necessary for health protection alone, but also to ensure that a child in need of assistance is not left without attention. For example, if a family doctor notices during a home visit that the child is in need of assistance or abused, the doctor should immediately inform the social or

⁸⁷ New-borns are automatically covered by health insurance, but the legal representative of the child must submit an application for entering the child in a family doctor's practice list. This can be done after the child has been issued with a personal identification code. According to the Health Insurance Fund, the number of insured persons without family doctors as at 6 November 2013 was 3,369. 1,026 of them were children aged 0-18. The Health Board appointed family doctors for 109 persons in 2013. In recent years, the Health Board has appointed family doctors for considerably fewer people, citing the difficulties in notifying the person as one of the reasons for this.

⁸⁸ Although a family doctor may already pay home visits by agreement of the parties, this is not a widespread practice. See the 'Strategy of Children and Families 2012-2020', pp 35-37. English version: https://www.sm.ee/sites/default/files/content-editors/Lapsed_ja_pered/lpa_fulltxt_eng_83a4_nobleed.pdf.

child protection worker of the local government about this. However, surveys⁸⁹ indicate that there is room for development in the capacity of family doctors to recognise risks related to children and to pass on information about them to social and child protection workers. Family doctors need to be advised about this.

7.1.2 Regional accessibility of healthcare services

One of the problematic areas is families in risk that are moving from one local government to another. Often these families do not register their changing of residence in the population register nor exchange their family doctor. The present information exchange in the child protection system does not guarantee that the information about a person who moves to another place with a child follows them.⁹⁰ The protection of a child's health is also significantly reduced when family health care actually proves to be inaccessible for the child after they have moved. What also must be considered that home visits are not prescribed for patients living outside the doctor's catchment area even if they are in the doctor's practice list.

A family doctor located far away may remain inaccessible due to logistical reasons (considering, among others, that family practices are generally not open outside working hours). The National Audit Office has noted that the family doctor has first been contacted in fewer than half of all cases where children were brought to the accident and emergency (A&E) department of the children's hospital. Adolescents also tend to skip the family doctor and only go to hospital when they need emergency care.⁹¹

Guaranteeing equal regional accessibility of health services is a fundamental principle of health insurance, which the Health Insurance Fund proceeds from in the financing of health services. The problems in practice, however, are long waiting lists, and the fact that in some specialities, patients prefer to drive to a hospital in a larger centre instead of visiting the one close to home. Regional inequality has been bigger in the case of special need for help, such as pregnancy crisis counselling⁹² and child psychiatry⁹³. Opening regional mental health centres has improved children's access to psychiatric help.

⁸⁹ See, for example, the Analysis of Child Protection. Estonian version:

https://www.sm.ee/sites/default/files/content-editors/Lapsed_ja_pered/lastekaitse_alusanaluus_pwc_2013_27.11_2.pdf.

⁹⁰ The local government plays a central role in child protection, but in the interests of guaranteeing the well-being of children, there must be cooperation with state agencies as well as outside the agencies (covering social and educational institutions, private healthcare providers and others). The obstacle here is the lack of a reasonably and safely accessible database about care provided at the local level. See the explanatory memorandum to the draft of the Act for Amendment of the Social Welfare Act (Estonian version:

<http://www.riigikogu.ee/tegevus/eelnoud/eelnou/af50e8c-3583-465d-941a-744e0631fee1/Sotsiaalhoolekande%20seadus/>).

⁹¹ 39% of the visits to A&E departments studied by the National Audit Office comprised of cases where the patient should have received help primarily from the family doctor. Unjustified visits to A&E departments were more common among young patients. Only 45% of the A&E patients of the children's hospital had contacted the family doctor first of all. However, the possible connection between A&E visits with the limited availability of appointments with the family doctor has also been considered. See audit report Organisation of the Family Doctor Service of the National Audit Office of 8 November 2011. Summary in English:

<http://www.riigikontroll.ee/Riigikontrollipublikatsioonid/Audituaruanded/tabid/206/Audit/2172/language/et-EE/Default.aspx>.

⁹² The Chancellor of Justice drew attention to the importance of relevant counselling in relation to permitting minors to have abortions without the consent of their parents or other legal representatives. Proposal of the Chancellor of Justice No 27 of 3 June 2015, point 35. Estonian version:

http://oiguskantsler.ee/sites/default/files/field_document2/6iguskantsleri_ettepanek_nr_27_alaealisusega_seotud_piirangud_raseduse_katkestamisel.pdf.

7.1.3 Prevention

Prevention of accidents involving children must be given separate attention in the protection of children's health. Statistics⁹⁴ indicate that most accidents happen with children when they're not at school or nursery school. When the state reflects risk assessment in schools and nursery schools in its report to the Committee, it is also important to focus on making the public space and homes safer, and special attention must be given to raising the awareness of parents and the society as a whole about the prevention of risks related to children.

The low share of children who have had their teeth examined in order to prevent dental diseases must be mentioned as a problem that needs attention. Although the state finances examinations and prophylactic activities as preventive services, for example, only 40% of children of the relevant age visited a dentist for a prophylactic check in 2012⁹⁵. This why the cooperation between family nurses, school nurses and dentists must be improved and it is also necessary to raise the awareness of parents of the services related to children's dental care.

7.1.4 Treatment of alcohol addiction

The most common reason why a child is separated from the family and placed in substitute care according to the survey of the child protection and social workers of local governments⁹⁶ is the alcohol addiction of one or both parents. This is why treatment of alcohol addiction is the preventive measure considered to be the most important by child protection and social workers. However, the accessibility of addiction treatment is insufficient in Estonia. The problems related to the treatment of alcohol addiction are mapped in the 2014 Green Paper on alcohol policy⁹⁷. For example, it points out that the health system does not have the services required for addiction treatment, and there are also no rehabilitation or special care services in the social system that would help treat alcohol addiction or keep the addiction under control and help with social coping.

⁹³ "[---] In addition to the shortage of school psychologists, the possibility of referral to a child psychologist is also not equally guaranteed across regions. [---]" Mapping Mental Health Services and Analysis of Needs. See p 38 of the Mapping Mental Health Services and Analysis of Needs commissioned by the National Institute for Health Development. Estonian version: <http://www.epry.ee/assets/Uploads/133180653216Vaimse-tervise-teenuste-kaardistamine-ja-vajaduste-analys.pdf>.

⁹⁴ The analysis (2014) by the task force established by the Government Office indicated that home was in a strong first position among the places where most of the children brought to Tallinn Children's Hospital sustained their injuries with 50%. It was followed by streets-roads-car parks, sports fields-parks-recreation areas, and playgrounds (each with over 10%). The share of schools and nursery schools as places where accidents occurred remained within the limits of 5% for each.

⁹⁵ Examinations and prophylactic activities are financed as separate preventive activities for children aged six, seven, nine and twelve, and arranging the optional referral of such children to a dentist is the duty of the family or school nurse. See also the children's health chapter of the publication 'Child Well-being'. English version: http://lasteombudsman.ee/sites/default/files/IMCE/laste_headolu.pdf.

⁹⁶ Estonian version: http://www.sos-lastekyla.ee/wp-content/uploads/2014/03/--RO-Laste-asendushoolduse-juhiste-rakendamise-Eestis_2013.pdf.

⁹⁷ Estonian version: http://www.tai.ee/images/PDF/Alkoholipoliitika_roheline_raamat.pdf.

Recommendations for the state:

- *to guarantee protection of children's health and access to the health system irrespective of how parents cope, how active they are, and where the child lives, incl.*
 - a. *to increase the control of the first contact care system (family doctors and nurses) in respect of infants so that all children get the attention they need and all health risks are detected in a timely manner. Making children's health checks mandatory should also be considered;*
 - b. *to give parents and the general public relevant information about the importance of health checks and options of accessing health services;*
 - c. *to guarantee that all children are entered in a family doctor's practice list immediately during the birth registration, without waiting for the parents' application; and*
 - d. *to provide training for medical doctors and other medical workers on noticing and assessing a child's need for help (see also point 5.3).*
- *to continue the implementation of measures that make the treatment of alcohol addiction of parents more effective.*

7.2 Standard of living, poverty, measures

7.2.1 Poverty indicators of Estonian children

Poverty is the most direct threat to the well-being of children. The Chancellor of Justice pointed out the acute problem of child poverty three years ago in 2012⁹⁸ by highlighting the problems and needs of families with children and collecting the proposals on how to alleviate child poverty. Unfortunately, Estonia does not have a detailed strategy for alleviation of child poverty.

The number of children living in relative poverty⁹⁹ in 2013 was 49,200 or 20.2% of all children under the age of 18, which shows a small increase (1.7 percentage points) compared with earlier years. The number of children living in absolute poverty¹⁰⁰ was 24,600 or 10.1% of all children under the age of 18, and the level of absolute poverty of children has remained around one-tenth for the last five years. Child poverty in rural areas is bigger than in urban areas. The poverty risk of children is the highest in North-Eastern Estonia, where the poverty rate is considerably higher than in other regions¹⁰¹. 19.5% of all children in 2013 lived in material deprivation (which is reflected in the lack of various possibilities related to housing, food, holidays and items), 7% were in severe material deprivation¹⁰².

⁹⁸ Roundtable of the ombudsman for children of 26 April 2012 (Estonian version: <http://lasteombudsman.ee/et/lasteombudsman-ootab-reaalseid-samme-lastevaesuse-leevendamiseks>) and overview by the ombudsman for children 'Poverty and Related Problems in Families with Children' (Estonian version: http://oiguskantsler.ee/sites/default/files/ylevaade_vaesus_ja_sellega_seotud_probleemid_lastega_peredes.pdf).

⁹⁹ Persons whose income is below the at-risk-of-poverty threshold are considered to be relatively poor. The at-risk-of-poverty threshold is 60% of the median equalised yearly disposable income. In 2013, it was 358 euros.

¹⁰⁰ The absolute poverty threshold is the estimated subsistence minimum, which is based on the minimal level of resources per person that are considered necessary (food, housing and other essentials). In 2013, it was 205 euros.

¹⁰¹ The rate of relative poverty of children in North-Eastern Estonia was 33.2% and the rate of absolute poverty was 17.3%.

¹⁰² The rate of material deprivation indicates the share of persons who cannot afford at least three components of the following nine: pay rent or utility bills in a timely manner; keep home adequately warm; face unexpected expenses; eat meat, fish or a protein equivalent every second day; a week's holiday away from home for the

The more children there are in a family, the bigger their poverty – whilst 21% of children raised as the only child in a family lived in relative poverty and 9% in absolute poverty, then the same indicators of children raised in families with at least three children were 28% and 16%, respectively¹⁰³. Single parent families and families with many children are at the biggest risk of poverty. A disability or health issue of a parent, or the need to look after a disabled child or another family member, may also be the reason why people end up in poverty. The employment of a parent who raises a child or children on their own (as well as employment of other parents) is made difficult by the shortage of nursery school places and the high price of childcare services (see also point 8.1.2 about childcare services).

Although the living conditions of children have improved slightly over the years, the data of Statistics Estonia indicated that in 2013, 16% of children lived in homes where the roof was leaking, the window frames or floor were rotten, or the walls, floors or foundation were damp. In addition to being unpleasant, living in such conditions also threatens the children's quality of life, including health. The biggest share of children living in such conditions are also in relative poverty (21%), but 15% of children who are not in relative poverty also live in conditions like these. In addition, almost one-fifth (21%) of children raised in single-parent households and 15% of children in families with three and more children are growing up in these conditions.

The positive steps of the state that can be highlighted are the amendments for improving the well-being of children that entered into force at the beginning of 2015: raising the child allowance to 45 euros per month; making the subsistence level of a minor family member equal to the subsistence level of the first family member (instead of the earlier 80% of the subsistence level of the first family member); and the calculation of subsistence benefit was changed in such a manner that the child allowance paid for the third and each subsequent child is not fully considered part of the income of families.

Recommendation for the state:

- *to develop and implement an action plan for reducing child poverty. Several proposals made in this report are directly aimed at improving the situation of families and children living in poverty. For examples, guaranteeing nursery school places for all children, improving the accessibility of the services and allowance of local governments, developing a transparent and justified methodology for calculating the subsistence level, etc.*

7.2.2 Subsistence level and conditions for payment of subsistence benefit

Subsistence benefit is the financial support offered by local authorities to families in need from the funds allocated for this by the state in order to guarantee minimal dignified subsistence. The need of families for support is assessed via the subsistence level: families whose monthly income is below the subsistence level after the deduction of the fixed costs of housing have the right to subsistence benefit. Thus, the subsistence level has a direct impact on whether or not a family is entitled to subsistence benefit. Although the law stipulates that the subsistence level should be enough to satisfy primary needs, i.e. to cover the minimal consumption expenses related to food, clothing and footwear as well as other goods and

whole family; a car; a washing machine; a television set; a phone. Families that cannot afford at least four of the aforementioned nine components are in severe material deprivation.

¹⁰³ Source: Statistics Estonia.

services, the state does not have a methodology for determining the subsistence level. This means that there are also no answers to the questions of what constitute primary needs and to which extent the funds received as subsistence benefit should cover the expenses that must be incurred to satisfy these primary needs.

For example, comparing the minimal cost of a food basket and the subsistence level¹⁰⁴ indicates that in recent years, the subsistence level has been smaller than the minimal cost of a food basket in the same year, although the subsistence level should also cover the costs of other primary needs in addition to food. The survey commissioned by the Ministry of Social Affairs itself, titled Use of Subsistence Benefit and Impact on Household Poverty from 2005-2010¹⁰⁵, indicated that subsistence benefit is sufficient for avoiding absolute poverty only in the case of elderly people living on their own and clearly insufficient for families with children. The Chancellor of Justice¹⁰⁶ and the Supreme Court¹⁰⁷ have also drawn attention to the problem. In its report of 2013, the European Committee of Social Rights came to the conclusion that the situation in Estonia does not comply with the requirements of Article 13(1) of the Charter, as the persons without any means of subsistence are not given enough social assistance.¹⁰⁸ The Parliament has increased the subsistence level a little in recent years (64 euros in 2010 and as much as 90 euros in 2015) and plans to do it in the next year as well¹⁰⁹, but without knowing the methodology used to determine the subsistence level, it is impossible to assess whether the level allows the state to perform its obligation to guarantee a dignified subsistence for everyone. Establishing methodology for calculating the subsistence level would also give people the opportunity to defend their right to government assistance in case of need.

Recommendation for the state:

- *to develop a transparent, consistent and justified methodology for calculating the subsistence level, which upon the payment of the subsistence benefit would guarantee dignified subsistence of deprived families.*

7.2.3 Uneven accessibility and quality of social services in local governments

A serious problem in Estonia in terms of social services is that their accessibility is not always guaranteed due to the different financial and administrative capacity of local governments.

¹⁰⁴ For example, the estimated minimum means of subsistence calculated by Statistics Estonia in 2014, which is also the line of absolute poverty, was 203.44 euros per month and the minimal cost of food basket comprised 91.96 euros of this amount. However, the subsistence level established with the State Budget Act was 90 euros per month in 2014.

¹⁰⁵ Estonian version: http://www.sm.ee/sites/default/files/content-editors/Ministeerium_kontaktid/Uuringu_ja_analuusid/Sotsiaalvaldkond/toimetulekutoetuse_uuringu_lopparuanne_loplik.pdf.

¹⁰⁶ The last time the Chancellor of Justice drew the attention of the Ministry of Social Affairs to the need to develop the subsistence level methodology was in its opinion on the draft of the Social Welfare Act in 2014.

¹⁰⁷ The Supreme Court noted in Case Bo 3-4-1-67-13 that it “has doubts about the suitability of the basis and size of the subsistence benefit set out in the Social Welfare Act in exceptional situations” (point 51).

¹⁰⁸ English version: http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/Estonia2013_en.pdf.

¹⁰⁹ According to the draft of the 2016 State Budget Act, the subsistence level will increase to 130 euros per month.

For example, the National Audit Office found in its report Organisation of Child Welfare in Municipalities, Towns and Cities of 2013¹¹⁰ that social counselling service was the only social service aimed at children that was equally accessible in all of the ten audited local governments whilst other services were only provided by a few local authorities.

Several examples of the uneven quality of social services can also be found in the practice of the Chancellor of Justice. Transport for the disabled is often the subject of the complaints received. Recently, the Chancellor of Justice was contacted by a mother whose son has been diagnosed with a severe intellectual disability in the form of autism, because the city did not provide transport to help the child go to nursery school. It became evident that the city does offer transport for the disabled, but due to the nature of his disability, the child did not belong to the target group for whom the city had foreseen the relevant service. The Chancellor of Justice is of the opinion that city should have assessed the child's need for assistance and guaranteed the help he needed if the child's fundamental rights had been disproportionately infringed on without it.¹¹¹ The second example concerns the situation where the city did not treat underage deaf persons equally with adult deaf persons when paying for the services of a sign language translator. It became evident that unlike adults with hearing impairments, the city provided children assistance for using the translation service only if the child and his or her family could not afford it or if the child needed the translation service without the knowledge of the parent (or guardian or actual carer). The Chancellor of Justice found that the city was not acting in the best interests of children when organising sign language translation services and failed to provide age-appropriate and suitable assistance to children with impaired hearing.¹¹²

The law requires county governors to supervise the quality of the social services of local authorities in the course of supervision. The supervision carried out by county governors in practice is limited solely to the evaluation of compliance of formal legal requirements. One of the reasons is the lack of uniform requirements for the quality of the social services of local authorities. This is a conclusion that the National Audit Office arrives at in its 2013 report Organisation of Child Welfare in Municipalities, Town and Cities.¹¹³ The importance of supervision in guaranteeing the quality of services has also been emphasised in the Strategy of Children and Families until 2020¹¹⁴, one of whose goals is to the development of uniform quality assessment criteria and a supervision standard.

The uneven accessibility and quality of social services in local governments is not balanced by the system of social benefits. Local governments pay social support voluntarily from their budgets (with a few exceptions, such as the subsistence benefit). The conditions and procedure for payment of such social support is established by the local government council.

¹¹⁰ Summary in English:

<http://www.riigikontroll.ee/Suhtedavalikkusega/Pressiteated/tabid/168/ItemId/664/View/Docs/amid/557/laaguag/et-EE/Default.aspx>.

¹¹¹ See the Estonian version of the recommendation made by the Chancellor of Justice:

http://oiguskantsler.ee/sites/default/files/field_document2/6iguskantsleri_soovitus_pohioiguste_ja_-_vabaduste_paremaks_tagamiseks_invatransporditeenuse_osutamine_tallinnas.pdf.

¹¹² See the Estonian version of the proposal made by the Chancellor of Justice:

http://oiguskantsler.ee/sites/default/files/field_document2/6iguskantsleri_ettepanek_rikkumise_korvaldamiseks_viipekeele_tolketeenuse_korraldamine_tallinnas.pdf.

¹¹³ Summary of report in English:

<http://www.riigikontroll.ee/Suhtedavalikkusega/Pressiteated/tabid/168/ItemId/664/View/Docs/amid/557/laaguag/et-EE/Default.aspx>.

¹¹⁴ English version: https://www.sm.ee/sites/default/files/content-editors/Lapsed_ja_pered/lpa_fulltxt_eng_83a4_nobleed.pdf.

As the financial and administrative capacity of the 213 local governments is very different, the quantity of social benefits that affect a child's well-being is also very different.

Considering the small size and geographic location of Estonia, it would be unreasonable to demand that all local governments provide the same selection of social services. Estonia does not have enough specialists to allow each local government to provide all of the necessary or potentially necessary social services with sufficient quality. Therefore, in many cases it would be more practical to have the services provided by the state and to implement innovative approaches, which among others take advantage of the opportunities offered by cooperation (e.g. between local governments or with private sector and NGOs) and information technology (e.g. sign language translation via video broadcast).

Recommendations for the state:

- *to harmonise the accessibility of social services in regions, using state-based social services and implementing innovative approaches if necessary; and*
- *to improve supervision of the quality of the social services provided by local governments.*

7.3 Children with disabilities

The problems in the accessibility of social services that were described above have a particularly big impact on children with disabilities (see the examples above, point 7.2). The problem of physical access to educational, care and other institutions also add to this. The Strategy of Children and Families 2012-2020¹¹⁵ points out that 20% of schools, 44% of nursery schools, 18% of municipality governments, 26% of youth centres, 27% of day centres and 22% of hobby centres are physically accessible for disabled children. An environment like this considerably limits the opportunities of disabled children to participate in daily life.

The present rehabilitation system also fails to meet the needs of children and families. Rehabilitation services are provided to children on the basis of administration contracts financed by the state, but if the contract volume is smaller than the demand, people may have to wait for the service. For example, the Chancellor of Justice received a complaint where a four-year-old child with a severe mobility disability needed regular physiotherapy according to the rehabilitation plan. For almost four months, it was impossible for the child to receive the service at a location within reasonable distance of his home, because all of the service providers nearby had performed the contract with the state to the extent of 100%. The Chancellor of Justice found that the state had violated the child's right to receive a rehabilitation service within reasonable distance of his home, because the child's right to said service had become illusory due to its actual use being impossible – receiving the service would have required the parent to take the disabled child 73-83 km from home by coach, pay the transport and food expenses, give up some of the income earned from work and tolerate other difficulties.¹¹⁶

There are also serious shortcomings in assistance aimed at disabled children (primarily children with special developmental and educational needs). In addition to social welfare services, such children need various services in the areas of education and healthcare. In

¹¹⁵ Ibid.

¹¹⁶ See the Estonian version of the recommendation made by the Chancellor of Justice: http://oiguskantsler.ee/sites/default/files/field_document2/6iguskantsleri_soovitus_riigi_rahastatav_rehabilitatsiooniteenus.pdf.

practice, however, the accessibility and levels of services are uneven and different across local governments, the activities of the specialists who deal with the child and the families is not coordinated and there is no comprehensive approach to the satisfaction of the needs of children and families. This is how the current situation has been mapped in the survey ‘Cohesive model of the educational, health, rehabilitation and social services provided to children with moderate, severe and profound intellectual disabilities and special developmental and educational needs children with severe and profound mental disorders’¹¹⁷, which was commissioned by the Ministry of Education and Research. The development of the cohesive model of services with possible solutions can be considered a significant positive step towards solving the problem, but the changes must be implemented before any results can be achieved.

Assistance provided for a care taker of a disabled child depends largely on the ability of each local government. Since 2009, the state no longer pays the carer’s allowance meant for people who care for disabled children, but instead pays support to local governments that the latter can use to provide services and support for a child’s care taker at the local level. The relevant legal amendment was driven by the idea of increasing flexibility: local governments were given the option to establish their own conditions for paying the allowance or for providing services instead of the allowance, e.g. the childcare service to allow the parents of disabled children to go to work.¹¹⁸ It has, however, led to a situation where the assistance provided to the care taker of a disabled child varies considerably across the local governments.

The disabled children living in welfare institutions are also not always guaranteed equal opportunities for acquiring an education or for health protection compared with other children. For example, the Chancellor of Justice has identified cases where disabled children living in substitute homes do not attend nursery school or if school-aged are educated at home. The reluctance of family doctors to add several children with profound disability in their practice lists or pay home visits to them is also a problem. In addition, ambulances do not always agree to respond to calls from substitute homes if the children who need help are not subject to resuscitation and stage III intensive care according to the decision of the medical council.¹¹⁹ In addition to orphans and children without parental care, there are 47 children with severe and profound disabilities in substitute homes, to whom the substitute home service is provided on the basis of a parent’s application.¹²⁰ This indicates that there are parents who are unable to raise their disabled children at home for one reason or another, and have asked for their children to be placed in substitute homes.

The Chancellor of Justice has also repeatedly received information about cases where a local government has advised the parent of a disabled child to waive their parental rights or agree to

¹¹⁷ Estonian version: https://www.sm.ee/sites/default/files/content-editors/Lapsed_ja_pered/Puudega_laps/teenuste_sidustatud_mudeli_ettepanek.pdf.

¹¹⁸ Explanatory memorandum of the draft amendment act, p. 80. Estonian version: <http://www.riigikogu.ee/tegevus/eelnoud/eelnou/13f8b46d-2f09-9470-40a3-31e3c10bf788/Sotsiaalhoolekande%20seaduse.%20puuetega%20inimeste%20sotsiaaltoetuste%20seaduse%20ja%20nendega%20seonduvate%20seaduste%20muutmise%20seadus/>.

¹¹⁹ Inspection visits of the Chancellor of Justice to Käopesa Small Children’s Home in Tartu in 2012 (Estonian version: http://oiguskantsler.ee/sites/default/files/field_document2/kontrollkaigu_kokkuvote_tartu_vaikelestekodu_kaopesa.pdf) and to the Centre for Infants and Disabled Children of Tallinn Children’s Home in 2013 (Estonian version: http://oiguskantsler.ee/sites/default/files/field_document2/kontrollkaigu_kokkuvote_tallinna_lastekodu_imikute_ja_puuetega_laste_keskuse_kontrollkaik.pdf).

¹²⁰ The data can be found in the H-veeb online environment (substitute home service 2014, Table 1.2).

have the child taken away in judicial proceedings in order to make it possible to place the child in a substitute home financed by the state.¹²¹ There is at least one case where a court refused to take away a parent's right of custody due to the child's disability and required the state to pay the child's substitute home service costs.¹²²

Problems concerning access to education necessary for children with disabilities are discussed in the Section VIII of the report.

Recommendations for the state:

- *to guarantee the accessibility of the services and assistance needed by disabled children irrespective of where they live; and*
- *to incorporate educational, health and social welfare services into an integrated and functional whole.*

7.4 Rehabilitation service for children with addiction problems

At present, two closed institutions in Estonia provide rehabilitation services to children with addiction problems. One of them is managed by the City of Tallinn and has 48 places for children and adolescents aged 10-17, most of whom are from Tallinn. The other, which is financed by the state, has 16 places for children and adolescence aged 14-18 from anywhere in Estonia. A child is referred to the centre with the decision of the juvenile committee or the social divisions of local governments. The consent of a parent is also required. The child's consent is not a deciding factor upon referral.

The main problem is that there is still no legal basis for restricting a child's freedom against his or her will in these rehabilitation facilities. Basically, the freedom of children is restricted in these facilities without any legal basis.

The centres perform security checks on children, lock them in isolation rooms, limit their communication, check the content of their phone calls and written correspondence and require children to give urine samples when they return from home to the centre. The employees of the centres are of the opinion that these restrictions are essential for the rehabilitation to succeed, and similar restrictions have been implemented in these institutions for years. However, there is no legal basis for implementing such restrictions in rehabilitation facilities.

There are other problems associated with this: the lack of regulation means that the target group of the service is not clear - are they children with addiction disorders, behavioural problems or complex problems? Children with different needs, risks and problems end up in the centres.

The organisation of studies is also a problem at the centres. The possibility to study according to their abilities has not been guaranteed for all children.

The lack of regulation also means that supervising the activities of these institutions is extremely difficult. There are no requirements for premises and territory, number and qualifications of employees, a service standard, etc.

¹²¹ See, for example, the ERR programme *Puutepunkt*, 13 January 2013. Estonian version <https://arhiiv.err.ee/vaata/puutepunkt-222>.

¹²² Ruling made by Tartu County Court in Civil Case No 2-11-11816 on 9 July 2011.

The Chancellor of Justice has repeatedly drawn attention to the problems. The problem has been described more systemically in the report prepared in 2009¹²³. Back then, the Riigikogu agreed with the criticism and ordered the Government of the Republic to develop the regulation. Unfortunately, no regulation about the activities of these institutions has been passed by the time the additional support is submitted.

Recommendations for the state:

- *to develop a regulation concerning the organisation of rehabilitation of children with addiction problems and the activities of rehabilitation institutions;*
- *to create a clear basis for the restriction of the freedom and other fundamental rights of children at rehabilitation facilities; and*
- *to also determine the following:*
 - a. the target group of the service (in whose case it is necessary to implement a measure that restricts the fundamental rights of children as significantly as referral to a closed institution);*
 - b. the basis and procedure for deprivation of freedom, incl. judicial control;*
 - c. the restrictions of fundamental rights required and permitted in the institutions;*
 - d. the standard and organisation of the service (what kind of assistance the children who have been referred to rehabilitation institutions are entitled to receive – health services, rehabilitation services, education);*
 - e. mandatory requirements for service providers (premises, territory, staff, ratio of children to employees, etc.); and*
 - f. the financing model of the service.*

VIII Education, leisure and cultural activities

8.1 Education

8.1.1 Basic education

The Constitution of the Republic of Estonia stipulates that education for school-age must be free of charge in general schools, incl. basic schools, established by the national government and by local authorities. The Chancellor of Justice prepared a report for the Riigikogu to draw attention to the fact that a basic education corresponding to the requirements of the Constitution is not always accessible to children and asked the Riigikogu to discuss the fundamental right of education as an issue of national importance.¹²⁴

The Estonian education system proceeds from the comprehensive school principle, which means that every basic school student must get the best education that corresponds to his or her abilities. This means that teaching must be adjusted according to the needs of every child – those who struggle must be given help, relevant methods should be used to teach children with special needs, additional teaching and sufficient challenges should be offered to children who are able to do more than required by the curriculum.

¹²³ See the Estonian version of the report of the Chancellor of Justice:

http://oiguskantsler.ee/sites/default/files/field_document2/6iguskantsleri_ettekanne_nr_1_rehabilitatsiooniteenu_se_kattesaadavus_s6ltuvushairetega_lastele.pdf.

¹²⁴ See the Estonian version of the report of the Chancellor of Justice:

http://oiguskantsler.ee/sites/default/files/field_document2/6iguskantsleri_ettekanne_nr_1_pohihariduse_korralduse_pohiseadusparasusest.pdf.

Unfortunately, it has to be said that the potential of children is not always noticed and developed in Estonian schools¹²⁵. Successful inclusion of children with special needs in ordinary schools is also a problem. One of the reasons of the aforementioned problems is the fact that basic school classes in Estonia are relatively big, often up to 30 children.¹²⁶ The children with different needs learning in the same class are taught by one teacher, who does not have time to deal with all these different needs as much as necessary. Pursuant to law, the services of a special education teacher, social education teacher and psychologist must be accessible in schools. The accessibility of these services has improved considerably in recent times. However, the use of assistant teachers, who should help the teacher with the lesson, especially in classes where the number of students exceeds the limit provided for by law, is rare in Estonian schools. Finding and using support persons for special needs children is also a big problem. The support person service is a social service and its accessibility in different local governments is different. Estonian legislation makes it possible to use very different support measures to teach children who need a different approach, e.g. individual study programme, reducing the number of lessons, excusing from certain subjects and so on. There is room for development in Estonian schools in this respect, as not all of the measures and adaptations made possible by legislation are sufficiently implemented in practice.

In addition to the teachers being overburdened and lacking support staff, there are also problems of insufficient qualification and lack of motivation to implement support measures and different (incl. innovative) methodologies. This in its turn is related to the average age of teachers¹²⁷ and the shortage of motivated teachers who are in command of modern and innovative teaching methods. The prestige of teachers is low in society and their salaries are relatively low. There is a shortage of suitable candidates at universities, which means that some persons who take part in teacher training do not actually want to become teachers or are not suitable for the job.

The high drop-out rate of boys has also been a problem in basic education for many years. According to statistics, the drop-out rate of 7th to 9th year boys is twice as high as that of girls.¹²⁸ Although many attempts have been made to identify the reason of this, there is still no clear answer to what causes it or what can be done to stop it. It is good to see that the state has decided to analyse this in detail.¹²⁹

In addition to the issue of the quality of basic education, the other question that has been in the air for years is whether high-quality basic education is accessible free of charge. Namely, it is a widespread trend that various non-profit organisations or foundations are established by schools, which among other things collect money from parents to support the school. In some

¹²⁵ The results of PISA tests indicate, that Estonian schools lack top performers. See the Estonian version of the summary of PISA results:

http://www.innove.ee/UserFiles/%C3%9CIdharidus/PISA%202012/PISA_2012_uuringu_tulemuste_kokkuvote.pdf.

¹²⁶ Pursuant to subsection 26 (1) of the Basic Schools and Upper Secondary School Act, the upper limit of the size of a class is 24 students in basic school but, by way of exception, the owner of a school may, on the basis of a proposal of the head of the school and with the approval of the board of trustees, establish an upper limit higher than the upper limit of the size of a class specified above. In larger local governments, especially Tallinn, increasing the number of students is a widespread practice among schools.

¹²⁷ The share of teachers under the age of 30 has remained around 10% for years. See p 6 of the Estonian version of the Annual Analysis 2015 of the Ministry of Education and Research:

<https://www.hm.ee/sites/default/files/aastaanalys2015.pdf>.

¹²⁸ Ibid., p 7.

¹²⁹ Ibid.

cases, this money has been used to support the implementation of the school's curriculum, e.g. to pay teachers for teaching students according to the curriculum. This is in contravention of legislation in Estonia.¹³⁰

The results of PISA 2012¹³¹ indicate that the level of Russian-language schools has improved strongly. Irrespective of this, there is still a difference between the achievements of Estonian and Russian schools. Work on reducing this gap must continue. The second important issue in the case of Russian-language basic schools is that the quality of teaching Estonian as a foreign language is still not good enough. According to school headmasters the insufficient command of Estonian language of basic school graduates is the main obstacle for them to continue their studies in an Estonian-language upper secondary school and vocational education institution.¹³²

Recommendations for the state:

- *to guarantee that schools offer support services according to the actual needs of children and, if necessary, to create national standards or requirements for support services at the level of regulations; to consider the option of the state financing support services;*
- *to guarantee that schools implement the individual approach to each child set forth by law more than they are doing at present and really take the different abilities and needs of children into consideration;*
- *to supervise compliance with the upper limit of the size of a class stipulated in law;*
- *to work actively on the modernisation of the curricula of universities and popularisation of the profession of teacher; and*
- *to strengthen state supervision of the activities of schools and the owners of schools to guarantee the accessibility of high-quality and free basic education nationwide.*

8.1.2 Preschool education

Pursuant to the Preschool Child Care Institutions Act, a rural municipality or city government must, at the request of the parents, provide all children from eighteen months to seven years of age whose residence is in the territory of the given rural municipality or city and whose residence coincides with the residence of at least one parent the opportunity to attend a preschool institution in the catchment area. A rural municipality or city government may, with the parent's consent, substitute the place of a child from eighteen months to three years of age in a preschool institution with childcare service. Although a very large percentage¹³³ of

¹³⁰ See the report of the Chancellor of Justice to the Riigikogu about the constitutionality of the organisation of basic education (Estonian version: http://oiguskantsler.ee/sites/default/files/field_document2/6iguskantsleri_ettekanne_nr_1_pohihariduse_korralduse_pohiseadusparasusest.pdf) and the audit of the National Audit Office Financing General Education Schools with Parents Money (English summary: <http://www.riigikontroll.ee/Riigikontrollipublikatsioonid/Auditiaruanded/tabid/206/Audit/2369/language/et-EE/Default.aspx>).

¹³¹ See the Estonian version of the summary of PISA results: http://www.innove.ee/UserFiles/%C3%9CIdharidus/PISA%202012/PISA_2012_uuringu_tulemuste_kokkuvote.pdf.

¹³² See the Estonian version of the Annual Analysis 2015 of the Ministry of Education and Research: <https://www.hm.ee/sites/default/files/aastaanalys2015.pdf>. Page 59.

¹³³ According to the Estonian Education Information system, 95.5% of children from four to six years of age attended preschool childcare institutions in the 2013/2014 study year.

Estonian children attend a preschool childcare institution, the service is still not accessible to all children.

Firstly, there is a shortage of nursery school places in some local governments, especially for the smallest children. Local governments have created various support measures to alleviate the shortage of places (e.g. support for children who have to be at home with their parents due to the shortage of places, and support/compensation is also paid when a child attends a private nursery school), but these measures cannot be substitutes for compliance with law. Moreover, local governments are relatively free to set additional restricting conditions for payment of such benefits or support, and thus there are families who do not get the nursery school place stipulated by law or any alternative support.

In certain cases, access to nursery schools is also restricted because of financial resources. Namely, the law gives local governments considerable discretion in establishing the amount of nursery school fees. Although the maximum amount of the fee is set forth by law¹³⁴, there are big differences in the fees established by local governments within the scope of this maximum limit. A local government may decide not to establish any fees at all, the amount of the fees may be differentiated on the basis of different needs, and some people may also be made exempt from payment. The Chancellor of Justice is of the opinion that requesting a fee for the services of preschool childcare institutions is not in contravention of the Constitution, but local authorities can and must consider the needs of specific persons and the amount of the fees cannot be the reason why a child cannot attend a preschool childcare institution.¹³⁵

The topic of disabled child care deserves a separate mention. According to law, local authorities may establish special nursery schools, or special and integration groups. However, their number is too small and they cannot meet the demand for places.¹³⁶ The parents of children with severe or profound disabilities are in a particularly complicated situation. These children need a lot of care. If it's impossible to find the child place in a nursery school, a parent often has to stay at home with the child. This means that the parent cannot go to work. The state has established a childcare allowance for severely or profoundly disabled children, but the amount of it is extremely small.¹³⁷ Also, the disabled child carer cannot always rely on the support of the local government because the level of support provided varies a lot in different local governments (see point 7.3 for details).

Recommendations for the state:

- *to provide all children with a place in a preschool institution in the catchment area as prescribed in law; and*

¹³⁴ Pursuant to subsection 27 (3) of the Preschool Child Care Institutions Act, the amount covered by parents may not exceed 20 per cent of the minimum wage rate established by the Government of the Republic. English version: <https://www.riigiteataja.ee/en/eli/528082015003/consolide>.

¹³⁵ Estonian version:

http://oiguskantsler.ee/sites/default/files/field_document2/6iguskantsleri_seisukoht_vastuolu_mittetuvastamise_k_ohta_lasteaija_kohatasu_pohiseadusparasus.pdf.

¹³⁶ See [Proposal: Cohesive model of the educational, health, rehabilitation and social services provided to children with moderate, severe and profound intellectual disabilities and special developmental and educational needs children with severe and profound mental disorders](#) (2014).

¹³⁷ Pursuant to § 1 of Government of the Republic Regulation No 40 'Establishment of the maximum cost of childcare service financed by state and the maximum cost and price of the substitute home service' of 12 February 2007, the maximum cost of the childcare service is 402 euros per calendar year. Estonian version: <https://www.riigiteataja.ee/akt/117122014010>.

- *to guarantee to all disabled children the possibility to attend a preschool childcare institution or childcare to the extent that allows their parents to work and rest.*

8.2 Informal education. Playing, leisure, hobby and cultural activities

Participation in hobby education and culture depends on the economic status of the parents (see also point 7.2), the free time the family spends together, the hobby education opportunities offered in the region, the organisation of public transport and a number of other factors. Unfortunately, families with children cannot always spend as much time together as they would like to.¹³⁸ Although some children are overburdened with hobbies and interest, hobby education is not accessible to all children. In addition to economic issues, the problems children pointed out in their conversations with the advisers to the Chancellor of Justice included cases where the bus schedule is not compatible with the opening hours of sports or youth centres, and children living in rural areas said that visiting theatres, cinemas and cultural events is a problem, because there is no public transport for getting back home in the country late in the evening¹³⁹. Children in rural areas were not satisfied with the lack of diversity in hobby education and limited choice of activities. There have been calls to guarantee each child the opportunity to pursue at least one extra-curricular hobby with the support of the state, but they have not led to results yet. And yet, practising a hobby is one of the best opportunities for keeping youngsters on the right side of the law.¹⁴⁰

As schools can demand a charge for participation in hobby clubs, the practice across schools is very different – there are schools where most hobby clubs are free for children and schools where hobby education is for a charge and is perceived as something that the child has to participate in. The National Audit Office¹⁴¹ has highlighted the integration of hobby education for a charge in the school’s education work as a problem. Activities based on the curriculum and the fee-charging hobby education organised by the school are so closely connected in several schools that it has become a part of the school’s character and identity. The National Audit Office is of the opinion that participation in fee-charging hobby clubs must depend fully on the free will of the child and their family. This is why connecting fee-charging hobby education with the school’s curriculum is a problem in the opinion of the National Audit Office, as it may start restricting free choice.

Recommendations for the state:

- *to consider supporting at least one extra-curricular hobby of each child; and*
- *to promote among employers the best practices of reconciling work and family life, so that put into practice, it would enable parents and children to spend more free time together.*

¹³⁸ See the English version of Monitoring of the Rights of the Child and Parenting: http://lasteombudsman.ee/sites/default/files/IMCE/summary_of_the_monitoring_of_the_rights_of_the_child_and_parenting.pdf.

¹³⁹ See also the news about the proposals of children about the organisation of local life. English version: <http://lasteombudsman.ee/en/ombudsman-for-children-children-should-be-more-involved-in-organisation-of-local-life>.

¹⁴⁰ See the ECAD website: <http://www.ecad.net/youth-in-europe>.

¹⁴¹ Audit of the National Audit Office Financing General Education Schools with Parents’ Money. Summary in English: <http://www.riigikontroll.ee/Riigikontrollipublikatsioonid/Audituaruanded/tabid/206/Audit/2369/Area/1/language/et-EE/Default.aspx>.

IX Special protection measures

9.1 Children outside their home country

In the case of immigrant children, the Chancellor of Justice has mainly dealt with the issues related to the living conditions of the minors detained in the Expulsion Centre and the admission of unaccompanied minors.

According to the Police and Border Guard Board (PBGB) 58 unaccompanied minors have stayed in Estonia from 2010-2015. Families with children and unaccompanied minors have both been placed with court permission in the Expulsion Centre of the PBGB.¹⁴² As a result of the inspection visit to the Expulsion Centre in 2013, the Chancellor of Justice drew attention to the principle that detention of minors is permissible only as an extreme measure and that minors should generally not be detained for the purpose of managing migration.¹⁴³

The inspection visit revealed that the minors detained in the Expulsion Centre were not given the opportunity to acquire an education. No other age-appropriate activities were organised for minors either. Also, minors had been handcuffed when escorted (to the medical centre for procedures, to court, to experts for age assessment). According to the explanations of the centre's officers, the approval of the local government as the guardian was not requested when such decisions were made. Although a psychologist visited the centre, the detained persons who do not speak English or Russian could not use the service. No-one among the centre's staff had been tasked with supervision of unaccompanied minors or instructing their leisure activities. As a result of the inspection visit, the Chancellor of Justice made several recommendations to the PBGB about the conditions of detaining minors.¹⁴⁴

Unfortunately, it has become evident that unaccompanied minors and families with children have been placed in the Expulsion Centre later as well. Interviews have revealed that the recommendations made about the detention conditions of minors have not been complied with (except for the use of handcuffs on minors).

The Chancellor of Justice currently works on mapping the situation concerning the admission of unaccompanied minors and carried out an inspection visit to the Expulsion Centre in 2015. The conclusions of the inspection visit were not made by the time the additional support was submitted. The advisers to the Chancellor of Justice have interviewed unaccompanied minors in order to map the situation. The following circumstances came to light during the interviews.

Many unaccompanied minors have been detained after their arrival in Estonia. Unaccompanied minors have been placed in the Expulsion Centre of the PBGB, but they have often also been detained for a short time at other places, such as border guard stations and detention houses. They were not provided with legal advisers when their detention was being

¹⁴² The PBGB must request the permission of a court to detain for longer than 48 hours. See §§ 23-26 of the Obligation to Leave and Prohibition on Entry Act (English version: <https://www.riigiteataja.ee/en/eli/515042015003/consolide>) and § 36² of the Act on Granting International Protection to Aliens (English version: <https://www.riigiteataja.ee/en/eli/525062015013/consolide>).

¹⁴³ English summary of the inspection visit: [http://oiguskantsler.ee/sites/default/files/IMCE/inspection to the expulsion centre of the police and border guard board.pdf](http://oiguskantsler.ee/sites/default/files/IMCE/inspection%20to%20the%20expulsion%20centre%20of%20the%20police%20and%20border%20guard%20board.pdf).

¹⁴⁴ Ibid.

decided. In some cases, unaccompanied minors have been placed from the Expulsion Centre in substitute homes after a certain time.

Pursuant to the Family Law Act, the municipality or city government of the place of stay acts as the guardian. This means that the municipality or city government that acts as the guardian can change repeatedly depending on the relocation of the minor in different places of detention until they are sent to a substitute home. In addition to the change in guardians, it has happened that the officials who perform said task are unaware of the factual and legal circumstances of the minor's status, the guardians have not even met the minor, the PBGB does not send the guardians information about proceedings, they are not aware of their role or the circumstances that should be evaluated when the legal status of the minor is being decided.

Although the Act on Granting International Protection to Aliens¹⁴⁵ stipulates the possibility that the PBGB can enter into a contract with a natural person or legal entity to represent the child in the proceedings stipulated in said Act, no such contracts have been entered into so far.

Assessment of the person's age is arranged if there are doubts about the person being a minor. However, it is often organised with a delay (e.g. more than a month after the minor was detained) and the results are often also delayed. It also became evident that the minors have not always been informed about the expert analysis for age assessment or the procedure of the analysis in a language they understand. The consent of the minor or their guardian for the medical tests required for age assessment has also not requested.

Minors have also said in interviews that they have been offered no counselling after detention. They were therefore completely unaware of their legal status. They had only been told that they would be expelled from the country. It is remarkable that the precept to leave is generally prepared immediately after the person's illegal entry of the country and subsequent detention. No thought is given to which solution would be in the best interests of the child when the precept to leave is prepared and the procedure is nothing but a formality. Also, the guardian had not talked to the minor to find out which solutions must be considered for the development of a long-term solution in the best interests of the minor.

The Chancellor of Justice is still assessing how the admission of unaccompanied minors is organised. The plan is to make detailed recommendations on how to improve the organisation of admission of unaccompanied minors.

Recommendations for the state:

- *when detaining unaccompanied minors or families with underage children, the state must proceed from the principle that detaining them may be permissible only as a measure of last resort and for the shortest time possible;*
- *as a rule, unaccompanied minors must be accommodated in institutions that have been established for this purpose and offer age-appropriate conditions;*
- *unaccompanied minors must be immediately advised about the issues relating to their legal status;*
- *accessibility of legal counselling must be guaranteed to unaccompanied minors;*

¹⁴⁵ English version: <https://www.riigiteataja.ee/en/eli/525062015013/consolide>.

- *the state must organise informing the persons acting as guardians about their obligations and the relevant legal aspects. Possibilities for appointing a competent representative must be found to protect the interests of minors more effectively;*
- *in case there are doubts about the person being a minor, the relevant expert analysis must be carried out and the relevant opinion must be drawn up without delay; and*
- *access to education must be guaranteed to school-age children without unfounded delay.*

9.2 Inspection of the working conditions of minors

In 2014, the Labour Inspectorate asked the Chancellor of Justice to explain whether the Labour Inspectorate has the right to inspect the working conditions of minors in the situation where a contract under the law of obligations has been entered into with the minor, but the content of contract corresponds to an employment relationship. The Labour Inspectorate as a supervisory body had not exercised supervision in said situations, because it found that it does not have the competency to re-qualify a contract under the law of obligations as an employment contract.

The Chancellor of Justice found that employment relationships should be identified on the basis of substantive criteria, i.e. on the basis of the nature of the employment relationship, not the formal title of the contract. It must also be presumed that the contract is an employment contract until the opposite is proven. The Chancellor of Justice therefore found that upon the identification of an employment relationship, the Labour Inspectorate should assess the situation substantively and not proceed formally from the title of the contract alone if the features that characterise an employment relationship are present. It is positive that the Labour Inspectorate now proceeds from the interpretations of the Chancellor of Justice and inspects the working conditions of minors also in the situations where contracts under the law of obligations have been entered into, but the features characteristic of an employment relationship are present.

However, it is a problem that the provisions that regulate the competency of the Labour Inspectorate are not clear and specific enough in this respect. Legal clarity regarding the exact limits of the law is extremely important when state supervision is used as an authorisation of public authority, because the administrative authority can only act by the principle of legality if they have the competence and relevant authorisation. The Chancellor of Justice therefore advised the Minister of Social Affairs to initiate a draft act in order to stipulate explicitly that a body of state supervision has the right to re-quality contracts entered into between parties. The Chancellor of Justice also advised the Minister of Social Affairs to analyse the kind of protection working minors need irrespective of the format of the contract, and to develop the relevant regulation. The regulation has not been developed yet by the time this report is submitted.

Recommendations for the state:

- *to guarantee legally clear and effective inspection of the working conditions of children; and*
- *to analyse the kind of protection working minors need irrespective of the format of the contract, and to develop the regulation that guarantees the necessary protection.*

9.3 Schools for children requiring special educational conditions

The system of dealing with minors who have committed offences is being reformed at the time the additional report is submitted. The area was moved from the area of responsibility of the Ministry of Education and Research to that of the Ministry of Social Affairs in 2015 with a decision of the government. Dealing with juvenile delinquents should become a part of the child protection system as a result of the reform. The new concept should be completed in the Ministry of Social Affairs by the end of 2015.

Schools for children requiring special educational conditions (reform schools) are a part of the system for dealing with juvenile delinquents. Reform schools are basic schools for students needing special educational conditions that are managed by the Ministry of Education and Research. At present, there are two such schools in Estonia: one in Tapa and other in Kaagvere. Both schools will get new buildings in 2015, which will have places for 60 and 76 students, respectively. This is a positive development, as the conditions in the old buildings did not meet the needs of the children and did not support the rehabilitation of the children.

Students who have committed offences are referred to the school either by a decision of the Juvenile Committee of the child's place of residence that has been approved by court or via a court ruling. A court may refer a student to a reform school at any time during the school year either until the end of the school year or for up to two years. Children 10-17 years of age are referred to such schools. Reform schools are closed institutions.

The Chancellor of Justice has identified several problems during inspection visits to reform schools, which have not been resolved by the time this report is submitted. For example, the fact that children with different needs, risks and problems stay at the same school has been a problem for years (children with different mental disorders, who according to psychologists shouldn't be at such schools in the first place; youngsters with prison experience who 'train' others). Also, the approach to children with different needs has not been sufficiently individual. Guaranteeing security and prevention of violence have been serious problems for the schools. Some members of the school staff did not have the skills required to look after children with such serious problems on a daily basis.

Current legislation does not give the schools the right to perform security checks on the children, but this is still regularly done. Violation of the confidentiality of the children's messages has also been a problem.

Recommendations for the state:

- *to develop a regulation that would permit an individual approach to students referred to a school for children who need special educational conditions and consideration of their special needs;*
- *to develop the regulation that sets additional requirements for the training of reform school staff, e.g. requires them to learn about the mental disorders of children and the other special needs of the target group of reform schools. Also to require reform school staff to learn how to recognise abuse and cases of violence, and how to discuss, solve and prevent such sensitive cases with the children. Access to such training and counselling should be guaranteed for all reform school employees; and*

- *to review the regulation that concerns restriction of the fundamental rights of children in the reform schools and to update the provisions according to actual needs and the principle of proportionality.*

9.4 Detention conditions of underage detainees

In Estonia, convicted juvenile offenders are sent to Viru Prison, which is a prison for adults. Although minors are kept in a separate department away from the adults, guaranteeing detention conditions that meet the needs of minors is still problematic. The Chancellor of Justice has made several recommendations for improving the situation of minors in Viru Prison since the prison was opened in 2008. The recommendations concerned education and hobbies, leisure opportunities, food, training for prison officers, accessibility of specialists, etc.¹⁴⁶

After the inspection of Viru Prison carried out in 2014, the Chancellor of Justice recognised the prison for its continuous efforts to organise the detention of minors in the same prison as adults in the best possible manner. Namely, Viru Prison has introduced a motivation system for minors, which allows them to get additional benefits (e.g. the right to have a television set issued by the prison in their cell, the right to a free long-term meeting, the right to an additional home visit, etc.). The prison has also changed the practice of placement of underage detainees as a result of the Chancellor of Justice's proposal that was discussed in and approved by the Riigikogu on 23 January 2014.¹⁴⁷ Arrested minors are placed in minimum-security departments, where they can freely move around in the living quarters for a certain period of time, like convicted offenders.¹⁴⁸

However, the Chancellor of Justice still had to admit after the inspection visit of 2014 that the physical environment in Viru Prison does not comply with the international requirements for detaining minors and works against the aforementioned positive actions of the prison.

Recommendation for the state:

- *to consider the establishment of separate penal institution(s) for detaining convicted juvenile offenders where the environment would serve rehabilitation purposes and would meet the needs of the minors.*¹⁴⁹

¹⁴⁶ See summaries of the inspection visits of the Chancellor of Justice to Viru Prison in 2008 (Estonian version: http://oiguskantsler.ee/sites/default/files/field_document2/kontrollkaigu_kokkuvote_viru_vangla_0.pdf), in 2011 (Estonian version: http://oiguskantsler.ee/sites/default/files/field_document2/kontrollkaigu_kokkuvote_viru_vangla.pdf) and in 2014 (brief summary in English: http://oiguskantsler.ee/sites/default/files/IMCE/inspection_of_viru_prison_2014.pdf).

¹⁴⁷ Estonian version: http://oiguskantsler.ee/sites/default/files/field_document2/6iguskantsleri_ettepanek_nr_24_riigikogule_vahistatu_liikumisvabadus_ja_suhtlemisvoimalus_teiste_vahistatutega.pdf.

¹⁴⁸ Underage detainees were previously placed in maximum-security departments, where they were obliged to stay in the cell 24 hours a day, except for the time of schooling and walks.

¹⁴⁹ The Ministry of Justice agreed with the Chancellor of Justice and promised to come up with legislative solutions with the Ministry of Social Affairs and the Ministry of Education and Research in 2015, which would support placing minors in schools for children requiring special education conditions (Tapa and Kaagvere reform schools) instead of prison.