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

on the combined fifth to seventh periodic reports of the Republic of Estonia

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Foreword

Under the Estonian Constitution, the Chancellor of Justice is an independent constitutional institution. The institution of the Chancellor of Justice is not part of the legislative, executive or judicial power, nor is it 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 has her own independent budget.

The Chancellor exercises control over compliance of legislation of general application with the Constitution and laws. In addition, the Chancellor performs tasks of the ombudsman – i.e. protects the fundamental rights and freedoms of people in relations with public authority. In 2011, the Chancellor of Justice Act was amended and the Chancellor was vested with the competence of ombudsman for children. Accordingly, the Chancellor performs the tasks of protecting and promoting the rights of the child arising from Article 4 of the UN Convention on the Rights of the Child (the CRC). In protecting the rights of children, the Chancellor utilises all the rights conferred on her under the law. The Office of the Chancellor of Justice comprises the Children's and Youth Rights Department which, in 2023, employs five people who advise the Chancellor in fulfilling her tasks as the ombudsman for children.

The Chancellor of Justice is also the national preventive mechanism (NPM). As of 1 January 2019, the Chancellor is tasked with promoting, protecting and monitoring the implementation of the Convention on the Rights of Persons with Disabilities and is the National Human Rights Institution (NHRI). The Chancellor of Justice is a member of the International Ombudsman Institute (IOI), she belongs to the European Network of National Human Rights Institutions (ENNHRI), the European Network of Ombudspersons for Children (ENOC) and the networks of European Ombudsmen (ENO), the International Conference of Ombuds Institutions for the Armed Forces (ICOAF), police ombudsmen (IPCAN) and National Preventive Mechanisms (NPM). In line with the accreditation granted by the Global Alliance of National Human Rights Institutions (GANHRI) and its Sub-Committee on Accreditation (SCA), since December 2020 the Chancellor of Justice has held A-status, i.e. the highest level, indicating that the institution of the Chancellor of Justice fully complies with the Paris Principles.

Once a year, the Chancellor provides an overview of her activities to the Riigikogu. Since 2011, the Chancellor's overview contains a separate chapter on the Chancellor's activities as ombudsman for children. Everyone, including children, may contact the Chancellor. The Chancellor can be contacted by letter, online, as well as by telephone or e-mail (including by sending an audio or video file), and a petition may also be submitted on site in the Chancellor's Office.

This report highlights the most significant shortcomings identified as a result of the Chancellor's work; it relies on surveys and analyses carried out both by the Chancellor and by other institutions concerning child welfare and organisation of child protection. The report does not aim to provide a comprehensive overview of the organisation of the area of the rights of children in Estonia or its deficiencies.

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Ülle Madise
Chancellor of Justice of the Republic of Estonia

A. General measures of implementation of the CRC

1.1. Strategic development documents in the area of children

In recent years, several changes have been introduced in managing the policy affecting the life of children in Estonia. After the end of the "Development Plan of Children and Families 2012−2020" and until completion of the "Welfare Development Plan 2023−2030", the functions of a strategic development document for child welfare were served by the "Programme for Families and Children 2020−2023". One of the objectives of the welfare development plan also concerns children and families. The development plan deals with the birth rate, parental skills, reorganisation of the child protection system, and prevention of children's need for assistance. At the same time, for example, the issues of children's health and education are dealt with in separate sectoral development plans (e.g. the "National Health Plan 2020-2030" and the "Education Strategy 2021−2035").

The well-being of children is supported by a comprehensive and cross-sectorial child policy plan, but to date the issues of well-being of children have been divided between areas of government of several ministries. In 2017, a separate government committee − the child protection council – was established which was supposed to determine and implement national child protection policy objectives, ensure children's well-being and protection of the rights of the child, as well as offer recommendations for cross-sectoral child protection related preventive activities. However, in the Chancellor's opinion the council was unable to start off its activities purposefully and the intended cross-sectoral form of work did not function. By a legislative amendment in 2022, the child protection council was renamed a prevention council combining preventive, criminal, drug and child protection policy. Hopefully, the new council will be able to work purposefully and organise cross-sectoral protection of the rights of the child.

Recommendation to the State (repeated):

- *to ensure effective cooperation between all the ministries responsible for developing child policy and draw up uniform child policy foundations;*
- *to ensure that the prevention council will start off and continue effective work.*

1.2. Financing the area of children's rights

Financing the area of children's rights should be systematic and well-considered. For this, the State must have an overview of how much money is spent on the area of children overall, including a breakdown of spending by ministries. In Estonia, so far no budget analysis on this has been carried out. Although the UN recommended that Estonia should create a system on both the State and local level to analyse and track money allocated for implementing all the provisions of the Convention on the Rights of the Child, as yet this has not been done.

There is no tracking system to help assess the effectiveness of investments in the interests of children and to measure the impact of those investments. Thus, the State has not taken any significant steps to implement the recommendations of the Committee on the Rights of the Child (para 9a, 2017). The practice of participative budgeting on both the State and local levels has also been limited. Although some examples exist of children and young people being able to participate in preparing a local budget, this is an exception rather than the rule.

Recommendation to the State (repeated):

- *to ensure systematic and well-considered financing of the area of children, including analysing the expenditure made for child well-being both on the State and local level in all areas of the Convention.*

1.3. Statistics concerning children

According to the "Welfare Development Plan 2023−2030", obtaining a comprehensive and diverse overview of the well-being of children necessarily involves monitoring the situation of children and families in different fields and cross-sectorally, and to assess the effectiveness and impact of policy measures. Unfortunately, the strategic indicators monitored by State and statistical dashboards of visualised data monitor the situation of children up to 17 years old only to a limited extent. The State itself has also acknowledged that, for example, the current level of digitisation of data on social services and the quality of data is not sufficient for the State and municipalities to manage the social sphere, to develop policies and carry out research and development. An overview of children's data in relation to different subject areas is fragmented. It is difficult to obtain an overview about the age group of children up to 17 years old since statistics are published on other kinds of age groups (e.g. those up to 19 years old, 15-to-19-year-olds, etc). The dataset on children's well-being on the homepage of Statistics Estonia cannot be considered to offer a sufficient overview considering the multifaceted nature of the notion of child well-being.

Although the Office of the Chancellor of Justice has been publishing a selection of statistics and studies related to children on its homepage since 2019, and in 2021 – under the leadership of the Chancellor's Office – a compendium "Lapsed Eesti ühiskonnas" (Children in Estonian Society) was published, the Chancellor cannot take over the duty of knowledge-based national policy development concerning the rights of the child. Preparing such overviews and publishing data concerning children must be part of the State's child and data policy development.

Recommendation to the State:

- *to publish in mainstream statistics both child-centred (i.e. the child as the unit of observation) and child-based (i.e. the child as the data source) data, setting out data in each area about the age group of children up to 17 years old (repeated);*
- *to continue collecting data from children themselves, while these data should also cover issues related to economic and social well-being (repeated);*
- *to create a comprehensive system of indicators of child well-being and publish the relevant indicators annually for the purpose of assessing how the rights of the child are ensured (repeated);*
- *to pay specific attention in national strategies and development plans to the analysis of child well-being and using the relevant indicators;*
- *to publish regular overviews of the situation of the rights of the child in the country.*

1.4. Awareness-raising about the principles of the Convention and the rights of the child

In the area of children's rights, the Chancellor cooperates with the State, local authorities, educational institutions as well as third-sector organisations. The ombudsman for children represents children's interests in the law-making process. The Chancellor's Office contributes to promoting the area of child protection by organising training events dealing with the rights of the child. Training is offered to child protection workers, social and youth workers, judges,

attorneys, paediatricians and family doctors, child psychiatrists and school psychologists, supervisory officials of the Social Insurance Board, etc.

Every year, the Chancellor is contacted with concerns by parents, adults caring about the well-being of a child, as well as children themselves. However, the Chancellor as ombudsman for children does not resolve situations requiring immediate intervention. Besides the police, a round-the-clock channel for seeking assistance in Estonia is the child helpline 116 111 along with the relevant online environment available for use by both children and adults. The Chancellor's contacts with children have affirmed that children are aware of this possibility to seek assistance. The number of people contacting the helpline and the online child assistance environment has grown year by year.

In the frame of information and promotional work related to the rights of the child, the Chancellor's Office has prepared different video and printed materials. The data indicate that great interest exists in information materials about the rights of the child in Russian published on the Chancellor's homepage.

In 2022, under the leadership of the Chancellor's Office, the compendium "Inimõigused" (Human Rights) was published, being the first comprehensive treatment of the field of human rights in Estonian, and also containing a separate chapter on children's rights. To provide information about, and promote, the rights of the child, the Chancellor in cooperation with other organisations carries out roundtables, conferences and seminars.

The advisory committee of the ombudsman for children at the Chancellor's Office comprises representatives from children's and youth organisations who advise the Chancellor in her activities as advocate for children, promoter and supervisor of children's rights, and raise problems important for children. The Chancellor also participates in the project "Let's Talk Young!" of the European Network of Young Advisers (ENYA).

Under the leadership of the Chancellor's Office, in 2022–2023 for the first time Estonian children drew up a report on children's life and problems for the UN Committee on the Rights of the Child. The children's report was prepared by ambassadors for the rights of the child of the Estonian Union for Child Welfare, assisted by advisers from the Children's and Youth Rights Department of the Chancellor's Office and staff of the Union for Child Welfare.

Study results[1] show that people in Estonia could know more than they currently do about the rights of the child. For this reason, it is important that the State should contribute to raising awareness about the principles of the Convention on the Rights of the Child (CRC) both among specialists and in society as a whole.

Recommendation to the State (repeated):

- *to prepare and implement a plan for informing about the rights of the child and to provide the necessary funding for such awareness-raising. For example, it is necessary to organise translation into Estonian of the General Comments of the Committee on the Rights of the Child and the Implementation Handbook for the Convention on the Rights of the Child, and make both translations easily accessible to the public (e.g. online).*

[1] Reinomägi, A. Lapse õiguste ja osalusõigusega seotud teadlikkus, hoiakud ning kogemused laste ja täiskasvanute pilgu läbi. (Awareness, attitudes and experiences related to the rights of the child and the right of participation through the eyes of children and adults) Sotsiaaltöö, 3, 2019, pp 8−15.

B. Definition of the child

Under Estonian legislation, a child is a person under the age of 18, and a person who has turned 18 enjoys full active legal capacity. In 2022, the age of sexual consent was raised in Estonia from the previous 14 years to 16 years of age. An exception is the so-called Romeo and Juliet clause which enables couples with an age difference of up to five years to continue engaging in sexual relationships beginning from 14 years of age. The law was also amended so that persons under 18 years of age can no longer marry.

Under Estonian legislation, a young person at the age of 14 has capacity for guilt. A 16-year-old person may participate in municipal elections. The laws also establish other age thresholds: for example, the consent of a 10-year-old child must be sought to adopt them; the consent of a child of at least 7 years old must be sought for a medical trial; in the case of sufficient ability to reason and decide, a 14-year-old enjoys independent legal standing in a family matter concerning them etc. At the same time, no systematic analysis exists as to whether these established age thresholds are well-considered and justified.

Recommendation to the State:

- to systematically analyse the statutory age thresholds for children and assess their relevance in the light of the principles of the CRC.

C. General principles

3.1. Best interests of the child

The "Rules for Good Legislative Practice and Legislative Drafting" lay down the requirements for drawing up draft legislation. In the case of legislative impact, policy makers are obliged to analyse several areas of impact, including the social impact of law-making. The rules do not require a separate assessment of the effects of legislation on children.

In their everyday work the Chancellor's advisers teach specialists working with children to assess the rights and best interests of the child. Nevertheless, there is still a need for methodological study and supporting materials, based on which it would be possible also to train specialists in other fields who come into contact with children (child protection workers, judges, prosecutors, police officers, doctors, teachers, and others) to assess the child's best interests.

Recommendation to the State (repeated):

- *to make child impact assessment mandatory in decision-making at the State and local level;*
- *to develop methodological guidelines concerning the general principles of the CRC, including assessment of the best interests of the child, and organise systematic training on this.*

3.1.1. Protecting the interests of children in combating the spread of the epidemic

Most restrictions at the time of the COVID-19 pandemic directly or indirectly also affected the children's well-being. For example, a child's school or a hobby school may have been closed, which essentially meant interruption of face-to-face tuition in a classroom. Quarantine restrictions enabled excluding children who were close contacts but lacked symptoms to be temporarily excluded from face-to-face classroom tuition at a school or a hobby school.

No uniform grounds existed for organising distance learning that would have ensured equally good access to education for all children. The negative long-term effect of distance learning on children's education and their mental and physical health remains to be revealed.

Recommendation to the State:

- *to assess the direct and indirect effects of restrictions on children before imposing any measures on combating an epidemic, while giving primary consideration to the child's best interests.*

3.2. The right to express one's views

Study results show that children do not always have a possibility to have a say in issues concerning them. In the opinion of children, even though they always or mostly do have a say, for example, in decisions concerning their home, themselves, their free time and family, this is not so in the case of school life, health and creating and designing places for recreational activities. Awareness needs to be raised of both children and adults about the essence of the rights of the child. Thus, the State must make efforts to ensure the child's right to participate in all decisions concerning them both at home and outside the home: for instance, in the education system, child protection, health protection, in local and national decision-making etc.

Recommendation to the State (repeated):

- *to create possibilities for participation of children in deciding issues concerning them in all areas of life and to introduce to the public best practices concerning participation of children.*

D. Civil rights

4.1. Citizenship of children. Grounds for the stay of aliens in the country

4.1.1. Citizenship of children

The number of stateless children in Estonia has decreased. A positive role in this has been played by amendments to the Citizenship Act entering into force in 2016. However, problems still exist with the applications for citizenship for children and young people. According to information from the Police and Border Guard Board (PBGB), as of 25 May 2023 the number of stateless children in Estonia was as follows: under 1 year old – 1 (recipient of temporary protection), 1-14-year-olds – 51, 15-to-17-year-olds – 28.

Amendments to the Citizenship Act entering into force on 1 January 2016 facilitated the grant of citizenship to children whose parents hold no citizenship. Under § 13(4) of the Citizenship Act, a minor under 15 years of age who was born in Estonia or who immediately after birth takes up permanent residence in Estonia together with their parent or parents is granted Estonian citizenship by naturalisation as of the moment of their birth, provided their parents or single parent whom no State recognises under valid laws as its citizen have or has lawfully resided in Estonia for at least five years by the moment of the child's birth. However, a child does not acquire Estonian citizenship if the parents apply to renounce citizenship before the child attains one year of age (§ 13(5) Citizenship Act).

Although as a result of this legislative amendment the number of stateless children has significantly decreased, in some instances children may still remain without citizenship. For

example, the Chancellor was contacted by a person whose child was left without citizenship because even though the child was born in Estonia and the child's parents hold no citizenship of any country and one of the parents was born in Estonia, the other parent had lived in Estonia less than five years before the birth of the child. The law does not enable an application for citizenship for such a child even if their parent subsequently fulfils the five-year residency requirement, so that citizenship for the child can only be applied for in accordance with the general procedure. A child may also remain without citizenship if the parents renounce Estonian citizenship of the child but do not apply for any other country's citizenship for the child either (in practice however, according to PBGB information, very few people renounced citizenship after the law entered into force). Nor does the relevant legislative amendment extend to 15-to-17-year-old stateless young people, who can only apply for citizenship on general grounds.

In Estonia, no procedure has been established to ascertain statelessness (or acquisition of foreign citizenship). Although data about a child's citizenship must be entered in the population register, this does not mean that it has been legally established whether and which citizenship the child has acquired by birth. The State verifies this more thoroughly when an application for an ID card or a residence permit card is made for a child. According to the law, this must be applied for at the latest when a minor has attained 15 years of age.

On 17 February 2020, an amendment to the Citizenship Act entered into force laying down an additional possibility to apply for Estonian citizenship for children if one of the child's parents is a stateless person but the other parent holds foreign citizenship. However, acquiring Estonian citizenship on this basis is hindered by a restriction under which the decision on granting Estonian citizenship on this ground does not enter into effect before it is proved that the child has been released from the citizenship of another country. Most children belonging to this target group cannot be released from their foreign citizenship before attaining the age of majority.

Section 13(4^1) of the Citizenship Act reads as follows: "A minor who was born in Estonia or who, immediately after birth, takes up permanent residence in Estonia together with their parent or parents who are permanent residents of Estonia and hold a long-term residence permit or the right of permanent residence, and of whom, on the basis of valid laws, one is not recognised by any State as its citizen, and whose other parent is a citizen of another country, is granted Estonian citizenship at the request of their statutory representative, provided a parent or grandparent of the minor was a resident of Estonia as at 20 August 1991." However, as an additional condition a restriction was imposed that if that minor already holds the citizenship of another country then the decision on granting Estonian citizenship will take effect only after release from the second citizenship (§ 13(4^2) Citizenship Act).

In the explanatory memorandum to the Draft Act, it was pointed out that as of 12 August 2019 the Estonian population register included 1523 children under 18 years of age in whose case the conditions for applying for citizenship on this basis had been fulfilled. These included 1393 children with citizenship of the Russian Federation (Draft Act 58 SE on Amending the Citizenship Act, explanatory memorandum, pp 2–3). According to explanations by the PBGB, minors cannot renounce citizenship of the Russian Federation before attaining the age of majority (except if the parent also renounces their foreign citizenship). According to information from the PBGB, as of 25 May 2023 Estonian citizenship on this basis had been applied for in respect of 51 children but only 15 decisions had entered into force.

At the same time, the Citizenship Act lays down an exception under which minors may hold several citizenships. Under § 3(1) of the Citizenship Act, a person who as a minor acquires

Estonian citizenship as well as the citizenship of another State must renounce either their Estonian citizenship or their citizenship of the other State within three years after attaining the age of 18 years.

Thus, in the event of applying for citizenship on this basis, in actuality a child may acquire Estonian citizenship only after a number of years. In principle, a minor may actually acquire Estonian citizenship quicker on general grounds since in the event of applying for citizenship this way the prohibition of multiple citizenships does not apply to them. Thus, it is doubtful whether this restriction is compatible with the principle of equal treatment because, as a rule, minors may also hold another country's citizenship besides Estonian citizenship.

Recommendation to the State:

- *To establish in the law a basis to apply for Estonian citizenship under simplified procedure for those stateless children who do not acquire the citizenship of any other country by birth, after their parents have fulfilled the five-year residence requirement.*
- *When shaping legal regulatory provisions concerning the acquisition of citizenship by children, the State must observe the principle of equal treatment.*

4.1.2. Legal grounds for the stay of aliens in the country

One problem in defining the legal status of aliens is that the Aliens Act does not establish a legal basis to apply for a residence permit for an alien whose minor child lives in Estonia on the basis of a residence permit or who is an Estonian citizen.

The UN Committee on the Rights of the Child has recommended that the Estonian State should provide for a legal basis in the Aliens Act for foreigners to apply for a residence permit on the basis of their child living in Estonia with a residence permit or as an Estonian citizen (the Committee's recommendations to Estonia 2017, paras 34−35).

The same problem has been pointed out by the Supreme Court (Supreme Court Administrative Law Chamber judgment of 9 November 2009, No 3-3-1-61-09, para. 34). In 2014, the Chancellor also sent a memorandum on this issue to the Minister of the Interior. Unfortunately, no relevant legal basis has been established to date.

The problem is also that the law does not regulate the legal status of a child born in Estonia whose parents reside and work in Estonia on the basis of a visa. The Chancellor has been contacted by a couple of persons whom the PBGB officials told that a child born in Estonia to a parent residing in Estonia on the basis of a visa is an illegal immigrant. The officials had told the parents that it is only possible to apply for a visa for the child in a foreign country.

The Chancellor has found that, in order to ensure legal clarity and fundamental rights, it is necessary to lay down clearly in the Aliens Act that a child born in Estonia to parents staying in Estonia on the basis of a visa is staying in the country legally directly on the basis of the law (the Chancellor's letter of 19 May 2023 to the Riigikogu Constitutional Committee, No 16-4/230694/2302716). It should also be possible to issue a visa to the child in Estonia (a recommendation to the Police and Border Guard Board, 19.06.2023, No 7-4/220755/2303296). The PBGB has confirmed that they will follow this recommendation.

Recommendation to the State:

- *to establish a legal basis to apply for a residence permit for a parent whose minor child is an Estonian citizen or lives in Estonia on the basis of a residence permit (repeated);*
- *to establish by law that a child born in Estonia to parents staying in Estonia on the basis of a visa is staying in the country legally directly on the basis of the law.*

E. Violence against children

5.1. Attitudes related to corporal punishment, sexual abuse of children

Although corporal punishment of children is prohibited in Estonia, the results of studies show that both children and adults in Estonia still need to be reminded of this. One-sixth of Estonian children are still punished physically at home. One-sixth of adults have admitted that they apply physical punishment and one-third of adults have said that they have threatened a child with this. For this reason, it is still necessary to raise public awareness about how violence affects a child's development and who can be asked for advice about preventing it.

According to information from the Ministry of Justice, in 2022 the number of sexual offences against children decreased but sexual offences against children still make up 86% of all registered sexual offences. Studies show that some kind of sexual harassment during their lifetime has been experienced by 27% and sexual abuse by 32% of 16-to-19-year-old young people. According to young people's assessment, issues of sexual abuse are too little discussed with them and they do not know exactly where to seek help.

The European Court of Human Rights (ECtHR) in its judgment of 22 June 2021 in the case of *R. B. v. Estonia* (case No 22597/16) found that the Estonian State had violated Articles 3 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms since it had failed to ensure protection in criminal proceedings of the rights of a child who had allegedly been the victim of a crime. The Court noted that in line with international standards it is essential to safeguard children's testimony during both the pre-trial investigation and the trial. The ECtHR noted in this connection that less strict rules on giving evidence or other child-friendly measures should not diminish the value given to a child's testimony or evidence, without prejudice to the rights of the defence.

In Estonia, no exceptions or adjustments with regard to warning witnesses have been laid down for children. In the case at issue, the child's testimony was found to be inadmissible primarily on account of strict application of procedural law which does not distinguish adults from children.

The ECtHR found that there were significant flaws in the authorities' response to the applicant's allegations since the authorities failed to sufficiently take into account the applicant's particular vulnerability and needs as a young child so as to afford her effective protection as the alleged victim of sexual crimes.

Recommendation to the State:

- *to make training for parents on violence-free parenting practices better accessible (repeated);*
- *to organise nationwide campaigns to inform adults and children of the prohibition of corporal punishment and its harmful effects (repeated);*

- *to ensure systematic sexual education at schools. In the frame of this education, deal with problems of violence in relationships and sexual abuse and inform children about possibilities to receive help;*
- *to analyse whether the rights of children who have become victims of crime are sufficiently protected in criminal proceedings and whether exceptions or adjustments for children should be provided with regard to warning witnesses.*

5.2. Safe relationships at kindergarten, school, and in hobby activities

Children's safety is not always ensured at kindergartens, schools or in hobby activities.

According to Ministry of Education and Research supervision data (overviews of external evaluation of the education system 2020/2021 and 2019/2020), parents of kindergarten children have complained that teachers have either punished or shaken their children at a kindergarten or treated children insultingly and spitefully.

The Chancellor has received complaints from parents about their children being forced to take a midday nap in a kindergarten. Although under the regulation on health protection requirements in kindergartens, a kindergarten must offer children at the age of four and older a possibility to choose whether they wish to sleep or engage in quiet activities (e.g. drawing, browsing a book etc) during the rest period, kindergartens do not always comply with this requirement. In some cases, a child is allowed to take up a quiet activity only after they have lain in bed for half of the rest period. There have also been instances where children are not allowed to get out of the bed during napping time, not even to go to the toilet.

The Chancellor has emphasised (the Chancellor's 2021, 2020 and 2019 overviews) that a parent and kindergarten must reach an agreement as to rest period arrangements and find solutions taking account of the well-being of all children.

More careful State supervision over kindergartens would help to better protect children's rights. Administrative supervision over local government kindergartens and State supervision over private kindergartens must be carried out by the Ministry of Education and Research. However, supervisors only reach a few kindergartens (see the Ministry's supervision statements) and no broader, systematic control is exercised over kindergarten activities. The summaries of annual supervision by the Health Board show that even though the Health Board monitors compliance with health protection requirements by a kindergarten, in general compliance with the requirements for mental security is not checked.

Both kindergartens and schools must ensure children's security. A pupil who becomes a victim of ill-treatment is entitled to protection and support by the school. According to study data, bullying at schools has decreased but, despite this, one-third of pupils have experienced it at least once at school, and one child in five has had to experience cyberbullying during the past couple of months. Survey results show that most frequently bullying has been experienced by fourth-grade pupils and least frequently by eleventh-grade pupils.

The Chancellor is also contacted by parents who are concerned about possible ill-treatment experienced by their child during training or in a hobby group. According to sport experts, not all sports federations individually, or also collectively, have established rules to determine what constitutes ill-treatment or other unethical activity in sports. Many sports federations lack guidelines for investigating violations of these rules and applying sanctions outside the criminal

proceedings and a trainer's professional ethics. There is a need to raise awareness among children, parents, coaches, and sports organizations about how to prevent and recognize abuse in sports and what to do in the case of suspected abuse (see also the information material of the Chancellor of Justice for raising awareness among children and parents).

Recommendation to the State:

- *to check systematically that kindergartens and schools ensure a secure mental and physical environment;*
- *to help sports organisations establish clear rules of behaviour to prevent ill-treatment of children in sport and adequate procedural rules for investigating violations and implementing consequences, and raise awareness among children, parents, coaches and sports organizations about abuse in sports.*

5.3. Notifying about a child in need of assistance

According to study results, one in eight children (12%) feel lonely every day and they have no one with whom they could talk about their concern. The number of calls on the child helpline (116 111) has grown year by year. According to data from the Social Insurance Board, more calls are made during the academic year and the number of callers increased during distance learning caused by the COVID-19 pandemic.

According to assessment by child protection workers, child protection incidents reach the attention of child protection specialists too late – only when the problems of a child and family have accumulated and become so serious as to require intervention and services which are not quickly available. In the opinion of child protection specialists, parents do not dare to ask for assistance for fear of stigmatisation. Nor do neighbours and relatives contact child protection authorities to seek assistance. According to child protection workers, family doctors as well as schools and kindergartens could report more about children in need of assistance.

Based on studies, it may be said that child protection work in local authorities is of varying quality because no nationwide uniform and structured approach exists for case management and assessing child well-being and the situation around the child. Ascertaining the needs of a child and family and assessing the need for assistance depends considerably on the competence of the particular specialist, including their knowledge, activism and skills to use the appropriate assessment instruments.

Recommendation to the State (repeated):

- *to inform the public about how to notice a child in need and whom to inform about this;*
- *to create uniform underlying principles for case management and provide primary training to all specialists working with children (child protection workers, doctors, teachers, police officers, judges, etc) on how to assess a child's need for assistance.*

F. Family environment and alternative care

6.1. Family environment and parental support

6.1.1. Custody and right of access disputes

Based on petitions received by the Chancellor, it may be concluded that there is still a major problem that parents living separately are unable to agree on matters of child custody or access to the child (see also the Chancellor's 2015 report on implementation of the CRC, para. 6.1.2).

A positive development is undoubtedly the State-Funded Family Mediation Services Act, the necessity for which was pointed out by the Chancellor years ago. Important amendments have also entered into force to ensure better compliance with court rulings laying down access arrangements in respect of the child. According to amendments entering into force on 1 September 2022, the court was enabled to fix compulsory measures already in the court order regulating access to the child, as well as to impose a fine or, in the event of a repeated violation, a short-term custodial sentence, against a parent who obstructs enforcement of access arrangements (see § 562[1] Code of Civil Procedure and § 179 Code of Enforcement Procedure).

Recommendation to the State (repeated):

- *to offer parents information and advice about custody and right of access, to raise awareness of the possibilities offered by state-funded family mediation services and counselling as well as legal aid options (e.g. by sharing relevant information on the Internet);*
- *to draw up an annotated edition of the Family Law Act and organise training on this topic.*

6.1.2. Ensuring child maintenance, maintenance support

Important changes in the maintenance system entered into force in 2022. While so far the minimum amount of maintenance support was half of the minimum monthly wage established by the Government of the Republic, the amendments introduced a new formula for calculating minimum maintenance support (see § 101 Family Law Act). One of the aims of the amendments was to create a formula for minimum maintenance support corresponding to the living standard in Estonia and taking account of fairer criteria than previously.

When the amendments were being considered, the Chancellor drew attention to the fact that it is not possible to automatically change all maintenance support amounts which the courts have set prior to entry into force of the amendments. According to the Chancellor's assessment, such an implementing provision fails to take account of essential circumstances ascertained by the court or the child's actual needs. The Chancellor's remark was taken into account.

The minimum maintenance support reform included resolution of the issue of procedural expenses in a maintenance claim court case, to which the Chancellor had drawn attention. In 2019, the Chancellor made a proposal to the Minister of Justice to amend the Code of Civil Procedure so that procedural expenses in maintenance support cases could not be claimed from children since these are contrary to the rights and interests of children as well as the objectives of awarding maintenance. Minors themselves have no right or possibility to file or refrain from filing a court claim (a claim is filed by a parent on behalf of the child), nor can minors use other procedural rights since these rights are exercised by the parent. The legislative amendment invalidated the rule that in child maintenance cases each party bears their own procedural expenses. A separate provision was inserted in the law enabling the court to leave the procedural expenses to be borne by the child's representative if the representative had not exercised their rights in good faith (see § 164(1); (1^2) Code of Civil Procedure).

Recommendation to the State:

- *to analyse the effects of the new maintenance support system, including the effect on the ability to cope by the child receiving maintenance.*

6.1.3. Unlawfully taking a child abroad

The Chancellor's assistance was sought in a situation where a child is in another country without the consent of one of the parents. Determining a child's habitual residence is part of a parent's right of physical custody and parents enjoying the joint right of custody must decide on it together. Neither of the parents enjoying the joint right of custody can decide that they will permanently move abroad with the child. If parents fail to reach agreement on determining a child's residence, both parents may ask the court to decide.

However, if a parent still takes a child to live abroad without the other parent's consent then the other parent may, under the Hague Convention, request the child's return by reference to the child's illegal removal.

Recommendation to the State (repeated):

- *to explain to the public the rules for resolving cross-border custody and right of access disputes, including the principles of the Hague Convention on International Child Abduction (e.g. whom to contact, which country's law is applicable etc).*

6.2. Children deprived of family

6.2.1. Separation of a child from family

According to the Chancellor's assessment, problems still exist with separation of children from the family. The Chancellor is aware of cases where local authorities had applied to the court for separation of a child from the family but had failed to apply for interim protection to resolve the issue of the right of custody while the court dispute was pending. Conversely, there have also been cases where a local authority applied to the court for interim protection for separation of a child from the family and assigning temporary guardianship but failed to file the main application for resolving the issue of parental custody (see the Chancellor's opinion).

Parents have also contacted the Chancellor when their child was taken from them abroad. Often, parents in such a situation expect more assistance from the Chancellor of Justice and the Estonian state. Unfortunately, neither the Chancellor nor other officials in Estonia can intervene in the work of foreign authorities and courts. Estonian officials can only give advice and clarify the situation. Similarly, officials from other countries cannot intervene in cases adjudicated by an Estonian court.

Everyone who has set up residence in a foreign country must observe all the laws of that country and keep in mind that disputes are resolved in line with the procedure applicable in that country A person's country of origin cannot intervene in the activities of foreign officials or administration of justice there.

Recommendation to the State (repeated):

- *to improve the knowledge of local government child protection workers and lawyers about family law and civil procedure (including the principles to apply for interim protection);*
- *the State should inform parents that, while in a foreign country, they must take into account all that country's laws and that the Estonian authorities cannot intervene in the work of foreign authorities and courts.*

6.2.2. Safe House (in previous report called shelter)

A child separated from their birth family may first end up in a safe house. The Chancellor has found that a child should stay in a safe house as briefly as possible and infants should not be placed in a safe house at all.

Unfortunately, it still happens that children, including small children, are forced to live in a safe house for a long time. According to information from the Ministry of Social Affairs, of 141 children who had to stay in a safe house longer than one month, 49 were under seven years old. Two infants lived in a safe house for longer than six months.[2] The Chancellor is aware of a case where a child had been brought to a safe house at the age of one month and lived there as long as one year and seven months. The Chancellor notified the Social Insurance Board about this and the Board found several shortcomings in the work of the local authority which had been responsible for the child.

There are very few crisis families. The work of five crisis families is supported by the Social Insurance Board. Only some local authorities have themselves created the possibility of a crisis family in their administrative area. This is one of the reasons why children are staying in a safe house for a long time.

Moreover, there is still widespread understanding among local authorities that, while a court dispute over parental rights of custody is pending, it is not possible to seek a more permanent alternative care option for a child besides a safe house, even though the law allows this.[3]

The safe house service is not equally available in different local authorities. Safe houses only exist in larger cities. The surrounding local authorities also use the safe houses in those cities. However, in some counties there is not a single safe house.

The safe house service is regulated very sparsely. The law still does not contain a child-staff ratio requirement. In the opinion of some safe houses, the health protection requirements for rooms have become outdated (for example, it is required to have a reception room, an ironing room, etc.). The law fails to offer guidance that, when providing crisis assistance, local authorities should prefer a crisis family to a safe house (as is the case with alternative care).

Recommendation to the State:

- *to elaborate legislation concerning the safe house service and, inter alia, lay down the child-staff ratio requirement for safe houses;*
- *to improve the readiness of local authorities to find crisis families within their area and inform the local authorities that children (especially children under three years old) can be taken to a crisis family instead of a safe house, or they can be referred to family-based alternative care even while the court dispute on parental right of custody is pending.*

[2] Online aggregation of social welfare statistical reports (H-veeb). Turvakoduteenus 2022 (Safe house service 2022), Table 2a.

[3] Sotsiaalhoolekande seaduse ja teiste seaduste muutmise seaduse eelnõu väljatöötamise kavatsus perepõhise asendushoolduse edendamiseks (Intention to draw up a Draft Act amending the Social Welfare Act and other Acts with a view to promoting family-based alternative care), p 5.

6.2.3. Alternative care

Forms of alternative care include adoption, guardianship, and alternative care service (in a foster family, family house, and substitute home). After having been in alternative care, a young person entering independent life is entitled to support in order to cope independently and continue their education. This assistance is called continuing care.

Under the law, the local authority is required, first of all, to look for a suitable substitute family for a child. In the case of alternative care service, a foster family should be preferred, and living in a family house or a substitute home should only be a temporary solution. A suitable natural person guardian should also be sought for a child. Nevertheless, local authorities send almost two-thirds of children separated from their family to live in a substitute home or a family house, and only one-third to a foster family or guardianship family.[4]

The number of children growing up in foster families has not increased in the last five years. The number of children under guardianship and those adopted has decreased (see the data). The Social Insurance Board trains and evaluates suitable substitute families, maintains a register of suitable substitute families, and organises awareness-raising to find new substitute families. This work is vital. However, because of this centralised activity, local authorities themselves are less prepared to seek suitable substitute families.

Finding suitable guardians may also be hampered by the fact that the State supports guardianship families less than foster families. A child growing up under guardianship or in a foster family enjoys an equal right to receive at least 240 euros support for personal expenses. However, funding is different for support to guardians and foster parents, as well as for continuing care of children raised in a guardianship or foster family. As a rule, guardianship is performed free of charge. Support to a foster family parent for each child is at least one-fourth of the minimum wage. A young person entering independent life from a foster family and continuing their education must be supported by the local authority by way of continuing care, while supporting a young person entering independent life from guardianship family is voluntary. The Chancellor's Office has drawn the attention of the Ministry of Social Affairs to the fact that guardianship families need more support from the State.

Recommendation to the State:

- *to improve the readiness of local authorities to seek potential foster families, guardians and adoptive parents in their area;*
- *to ensure through supervision and counselling that local authorities fulfil the statutory requirement to send children in need of alternative care to live in a family and not in an institution.*
- *where possible, to support guardianship families financially and with services in the same way as foster families.*

6.3. Children of imprisoned parents and their treatment

When furnishing waiting rooms, prisons increasingly take account of the needs of children coming to meet parents. At the same time, the Chancellor has long been concerned about the

[4] Social welfare related statistical reports (S-veeb). Lastekaitse kohaliku omavalitsuse üksuses 2021 (Child protection in local authorities 2021), Table 1.

procedures that children must undergo before meeting a parent in prison: more specifically, how searching children is conducted in prison.

The Chancellor has repeatedly explained to prisons that children coming for a visit may not be forced to undergo a strip search. Tallinn Court of Appeal agreed with the Chancellor, holding in February 2022 (in case No 3-21-161) that this procedure was unlawful. Regrettably, Tallinn Prison continued this practice even after the entry into force of the court ruling, but subsequently promised the Chancellor that the procedure for searching children would be changed. According to information available to the Chancellor, these children are no longer strip-searched.

For several years, the Chancellor has drawn the attention of prisons to the fact that those participating in a visit should not be separated from each other by a glass partition since this is not an appropriate environment for meeting children − in particular small children (except special instances where a child's safety is at risk). A child and their imprisoned parent must be able to establish physical contact. The same has been concluded by the Supreme Court (in case No 3-19-1416). Although prisons allow children and imprisoned parents to also meet directly more often than previously, these situations are an exception rather than the rule. Moreover, prison officers arranging visits lack the necessary knowledge and skills in terms of how to communicate with children coming to a prison and how to treat them.

Still no information is collected about children whose parents are in prison. For this reason, it is not known precisely how many such children are in Estonia. Their number is estimated to be about 3000. Contact by these children with their parents is rather limited: for example, no possibility has been created for them to communicate with their parents via video call. Meetings between child and parent may also be hampered by a fee set for long-term visits, which might not be affordable for all families (§ 25(4) Imprisonment Act). The frequency of meetings between a child and parent is also affected by a disciplinary confinement punishment imposed on the parent because all visits are automatically banned for a prisoner during disciplinary confinement (Imprisonment Act § 24(4); § 25(3)). Thus, during this period a child cannot regularly meet or be in contact with their parent (CRC Art 9 para 3; § 43(1) Family Law Act).

Recommendation to the State:

- *to acknowledge that children of imprisoned parents need to be seen and protected by the State;*
- *to support relationships between children and their imprisoned parents. Additionally,*
    - *to collect systematic information about children of imprisoned persons (repeated);*
    - *to create an environment for meetings between a child and their imprisoned parent which supports the relationship between the child and the parent, while, as a rule, allowing the child and the parent to meet without being separated by a glass partition (repeated);*
    - *to enable a child and their imprisoned parent also to communicate via video call (repeated);*
    - *to abolish the automatic ban on meetings with the child during disciplinary confinement (repeated);*
    - *to train officers dealing with children coming for a visit with their parent in prison (repeated).*

G. Children with disabilities

In line with the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities, disabled children must be guaranteed the same rights and opportunities as other children. However, this is not always so in Estonia.

The Chancellor has drawn attention to the fact that state agencies must check whether local authorities fulfil their tasks and organise assistance to children as required by law. It is the duty of the legislative power to ensure respect for the Constitution and realisation of fundamental rights (see Supreme Court judgment). To be able to provide assistance, the necessary rules must be established in legislation, sufficient money must be allocated for fulfilling the task, and supervision must be carried out over compliance therewith. Persons entitled must be ensured effective possibilities to protect their rights.

Particularly vulnerable are children in social welfare institutions. It is the State's duty to ensure an all-round suitable and safe environment for the growth and development of these children. Unfortunately, current legal norms and institutional internal control systems do not always sufficiently protect children. For instance, it happened that the rights of disabled children staying in a state social welfare institution were flagrantly violated. For this reason, the Chancellor recommended that the Riigikogu should consider establishing new rules in order to protect people in a vulnerable or helpless situation against ill-treatment or against degradation of their human dignity. The Chancellor asked the Riigikogu to also consider adding a provision to the Code of Criminal Procedure to enable provision of mandatory state legal aid to a broader range of victims with restricted active legal capacity. The Chancellor also asked that the Child Protection Act should expand the scope of application of a ban on working with children.

The system of assisting disabled children is fragmented. Both for a child and their parent it is important that the need for assistance is assessed at a single place and assistance is available close to where the person lives. The current arrangement where a child's need is assessed by several agencies who do not cooperate is burdensome on the child and their family, and fails to create a complete picture of how best to assist the child. For example, the services of a speech therapist can be obtained from an education institution, a healthcare institution, or a rehabilitation institution. If a child does not attend kindergarten, they should get assistance from a healthcare or rehabilitation institution. However, the healthcare system does not offer assistance, for example, to dyslectics, while rehabilitation is not always accessible to all children with special needs. For instance, sometimes a service to a child with special needs cannot be provided before the level of severity of their disability has been established although obtaining the service would help the child even without having the severity of their disability established.

The Ministry of Social Affairs initiated a reform of assessment of children with special needs with the aim of assessment of a child's need for assistance in a single institution and only once, but the reform has currently bogged down. There are also still children whose need for assistance and possible disability is not even noticed before school.

Although local authorities are also obliged to assist children who have no established disability, the motivation and capacity of local authorities to assist children depends on whether it has been established that the child has a disability since, as affirmed by the Ministry of Social Affairs, allocation of money to local authorities is indeed based on the number of disabled children.

In autumn 2019, the Social Insurance Board changed the practice of establishing disability, so that in the case of some disabled children no disability was established even though previously they had been found to have a disability. Since some services and benefits that children needed were linked to having their disability officially established, some children were also deprived of the assistance they needed. Although based on a legislative amendment entering into force in 2020, benefit may be paid to the family of a child with a rare disease, there are still children with several diagnoses in whose case a less serious disability – or no disability at all – is established, so that this child is not entitled to benefits or services which they actually need.

Some disabled children need special footwear. To a large extent, the state pays for this special footwear but a child is eligible for only three pairs of such footwear a year. Although based on an application more pairs can exceptionally be allocated, and this request has always been granted, applying for the footwear places an additional burden on a parent. A child obviously needs indoor and outdoor footwear, winter and summer footwear, festive and sportive footwear. A child's shoe size may also change several times a year. For this reason, it is not proportionate to require that parents of all children in need of special footwear should apply for compensation of exceptional expenses incurred in buying footwear. The Chancellor asked the Minister of Social Protection to consider increasing the eligible limit for children's footwear.

Recommendation to the State:

- *to ensure assistance to all children with special needs regardless of whether their disability has been officially established or not;*
- *to organise assessment of children's disability and need for assistance at a single place (one-stop-shop);*
- *to ensure accessibility of necessary services and assistance regardless of a child's place of residence (repeated);*
- *to integrate educational, healthcare and social welfare services for children into a single and functional whole (repeated);*
- *to carry out more effective State supervision over how local authorities offer the necessary assistance to disabled children.*

H. Health protection and welfare

8.1. Health and healthcare services

8.1.1. A child patient's rights and confidentiality of health data

Under the Law of Obligations Act (§ 766(4)), a child enjoys patient rights stipulated in subsections 1 and 3 of § 766 (the right to receive information and the right to give or refuse consent) insofar as the child is able to consider responsibly all the arguments for and against (hereinafter "ability to reason"). This means that if a child comes to a doctor's appointment and does not wish to entrust the parents with the concerns the child has, and if the doctor concludes that the child is capable of considering responsibly the details of resolving a specific health problem then the doctor must proceed from the child's decision. At the same time, for instance, the Mental Health Act in force to 2021 did not enable provision of psychiatric care to a young person under 18 years of age even if they were sufficiently mature and had the ability to reason unless the legal representative consented to this. On the proposal by the Chancellor (2019), the Riigikogu amended the Mental Health Act so that since 2021 a young person under 18 years of age with the ability to reason can themselves give consent for receiving psychiatric care.

However, petitions received by the Chancellor and the results of studies indicate that not all healthcare professionals are familiar with the legal norms regulating a child patient's rights and do not know that a child may participate in making every decision concerning them, and in some cases a child may even themselves decide about their health. The issue related to children's right of participation arose, for instance, during the corona pandemic in connection with vaccination if a parent refused consent for a child's vaccination. Under § 766(4) of the Law of Obligations Act, a family doctor may assess the child's ability to reason and, on this basis, decide whether to vaccinate the child or not. Under the law, the healthcare service provider must explain to the patient the results of the examination of the patient and the state of their health, any possible illnesses and the development thereof, the availability, nature and purpose of the healthcare services required, the risks and consequences associated with the provision of such healthcare services, and other available healthcare services (§ 766(1) Law of Obligations Act). If a child is capable of responsibly considering arguments for and against vaccination, then the family doctor must take the will of the minor patient into account (§ 766(4) Law of Obligations Act).

Healthcare professionals must be informed about these provisions in the frame of higher educational and vocational training programmes as well as during further training.

A child with the ability to reason is entitled to keep their health data to themselves. This means that they may even protect their data from their parents or legal representative. Currently the e-health system lacks a technical solution to enable the doctor to seal the data describing a patient's health problem as confidential if a young person so wishes. The Chancellor's advisers have informed the Ministry of Social Affairs about this.

Recommendation to the State:

- *to inform parents and the public about the rights of a child patient (repeated);*
- *to ensure that specialists working with children are aware of a minor's right of self-determination. A child patient's rights should be dealt with in programmes of higher educational and vocational training institutions and in further training;*
- *to prepare a technical solution enabling a healthcare professional to guarantee the confidentiality of a child's health data in the e-health system if the healthcare professional concludes that the child has the ability to reason in respect of the specific health issue (§ 766(4) Law of Obligations Act).*

8.1.2. Vaccination of children

Vaccination coverage of children has been on decline for more than ten years in Estonia. Vaccination also continued to decline during the COVID-19 pandemic. This may have been partly affected by temporary suspension and postponement of planned preventive activities as well as by the fact that schools temporarily applied distance learning.

The Chancellor received a petition impelling her to offer a general explanation as to why school nurses do not vaccinate a child with the ability to reason if the child themselves wishes to be vaccinated. As a rule, school nurses ask for a written parental consent for vaccinating a pupil, and the majority of parents consent to the child's vaccination. A problem arises when a parent does not give consent or does not respond to the request for consent but the child themselves wishes to be vaccinated. These situations are rather an exception since mostly the child shares the opinion of the parents as regards vaccination.

Vaccination of children at school is regulated by the Minister of Social Affairs regulations No 94 and No 54, which, however, are not unequivocally clear on this matter. The regulations stipulate that prior to vaccinating a child a school nurse must in any case notify the parent and vaccination is allowed with written parental consent. Most school nurses understand the regulations so that if a parent has not consented to vaccinating the child then the child cannot be vaccinated at school. This interpretation has been prevalent for years in the work of school nurses.

At the same time, the regulations also contain relevant references to the Law of Obligations Act under which a healthcare service provider may vaccinate a child with the ability to reason even if no parental consent is given but the child wishes to be vaccinated. Apparently, school nurses have nevertheless sometimes vaccinated schoolchildren at the child's own request and, according to nurses, no significant obstacles exist to assess a child's ability to reason for this purpose. In sum, it may be concluded that it is not unequivocally clear to school nurses under what conditions they may vaccinate a minor pupil at school.

A minor with the ability to reason may in any case ask themselves to be vaccinated by their family doctor, so that they are not entirely deprived of the possibility to vaccinate. Yet, vaccination at school is mostly more convenient for a child and more accessible than vaccination at a family medicine centre. Better accessibility of the service is also a reason why vaccination prescribed by the national immunisation plan is done at school. In some areas the family medicine centre may be located relatively far from the child's residence, so that the family medicine service might not be sufficiently accessible.

Information given to pupils and parents about vaccination may not offer an exhaustive explanation of the necessity of vaccination or risks involved in vaccination (or failure to vaccinate). Involving a child in making decisions concerning their health (this also concerns vaccination) and giving them sufficient and age-appropriate information is also stipulated in the Family Law Act and the Law of Obligations Act.

School nurses notify parents about the child's vaccination mostly through an information sheet printed on paper, and parental consent for vaccination is sought in the same way. This kind of arrangement does not enable being convinced whether a parent actually received the information about the child's planned vaccination or whether their expression of intention reached the school nurse. It is also a problem that this way no complete or easily accessible record of implementation of the immunisation plan is left for the child: for example, about vaccinations which are still needed and can still be undertaken. This information is essential first and foremost when the child has eventually developed the ability to reason and can independently decide on vaccination.

Recommendation to the State:

- *to further specify the provisions in the Minister of Social Affairs regulations, so that it would be unequivocally clear for everyone on what conditions a school nurse may vaccinate a minor pupil at school;*
- *to organise distribution of electronic or printed study and information materials intended for parents and pupils and also explain the topic of vaccination to pupils in the classroom;*
- *to give school nurses the possibility to submit notices about a pupil's vaccination via the electronic Patient Portal and enable parents to submit their consent for the child's vaccination also via the Patient Portal.*

8.1.3. Monitoring the health of children, disease prevention and early detection, and accessibility of healthcare services

It is vital that children see the doctor in time − so that it is still possible to prevent health problems and detect them at an early stage. The health of pre-school-aged children is checked by a family doctor or family nurse. The health of school-aged children is checked by family doctors and family nurses, as well as school nurses.

In line with the legislative amendment entering into force in 2017, every child born in Estonia is automatically registered in the practice list of the family doctor of the child's mother (§ 8(3[1]) Health Services Organisation Act). If the mother has no family doctor and she does not know in which family doctor's practice list she would like to have her child registered, the matter is dealt with by a hospital social worker together with the Health Insurance Fund; they will help the mother find the best solution (§ 8(3[2]) Health Services Organisation Act).

The fact that every new-born has a family doctor makes it possible for a child to come to the attention of a healthcare professional already at an early age. This enables drawing the attention of a parent to the fact that children's health must be monitored regularly as required by the treatment guidelines, which compile the best evidence-based knowledge for monitoring children's health. To carry out children's preventive health check, a family doctor or a family nurse cooperates with a child protection or social worker if necessary.

However, children's health concerns may remain unnoticed because a large number of children do not get to the health check (see the data from the National Audit Office). While among children up to two years old, 88–96% underwent a regular health check, among 3-to-6-year-olds only 6% underwent a regular check. However, 43% of 3-to-6-year-old children escaped a healthcare professional's attention for years because no one checked the health of these children even once.

The Chancellor has been asked what happens if a parent forgoes a child's health check at a family doctor. Although the legislation does not explicitly stipulate that a parent must take a child to a family doctor for a preventive health check, such monitoring of a child's health is in the child's best interests (§ 5 clause 3, § 6, § 21(1) Child Protection Act). If the parent refuses from the child's preventive health check, the family doctor must ask the parent the reason for refusal, try to convince the parent of the necessity of the health check and find a solution to the situation together with the parent. If this is unsuccessful, involvement of a child protection worker may be considered. In this situation, family doctors could be supported by appropriate digital solutions, so that doctors could easily send the necessary information to parents and explain the purpose of the health check.

The accessibility of the healthcare service is affected by whether patients can get to a doctor's appointment within a reasonable time. This means that people should have a possibility to obtain primary healthcare services close to their home. The Estonian healthcare system suffers from a serious shortage of family doctors. This also affects the accessibility of family medicine. Already in its 2011 report on the "Organisation of the family doctor service" the National Audit Office pointed out the main obstacles due to which there are not enough family doctors in smaller settlements. These problems have not disappeared.

The Chancellor has drawn attention to the fact (paras 13-14) that accessibility of family medicine may significantly deteriorate in the nearest years unless the State starts systematically

looking for solutions to remedy the situation. Although in 2022 legislative amendments were passed to improve the accessibility of primary healthcare, one of the central problems in Estonian healthcare is the shortage of healthcare professionals. There is also a serious shortage of nurses (including school nurses), psychiatrists and emergency medicine doctors (see the data from the National Audit Office).

During the reporting period, the number of problems related to mental health of children has grown and the number of suicides among children has increased. According to data from the National Audit Office, only 18 of the 222 psychiatrists operating in Estonia are specialised to treatment of mental disorders among children and young people. There is also a shortage of clinical psychologists, school psychologists and mental health nurses.

The shortage of nurses may prevent early detection of health problems among schoolchildren. Not all schools are able to comply with the established requirement – i.e. one school nurse for 600 pupils. According to data from the National Audit Office, in 2021, in 55 out of 90 schools with more than 600 pupils the service was provided only by one school nurse. In 2016, the number of such schools was 42.

Dental care for all children and young people up to 19 years old is free of charge. Nevertheless, accessibility of some specific services may be difficult in certain cases due to long waiting lists. Sometimes this may concern, for example, children whose teeth can only be treated under anaesthesia.

Parents of children with special needs should easily receive information about specific treatment possibilities both via the Health Insurance Fund and healthcare institutions. It is also essential to monitor that medical institutions comply with the requirement of maintaining a treatment waiting list. All children in need of anaesthesia for dental treatment should have the possibility to register for a doctor's appointment.

It is vital that children do come to a dentist's appointment for a prophylactic check and the system of referral for treatment does function. Undoubtedly, a large role in this is played by parents but, alongside this, promoting children's oral health could also be supported in the frame of healthcare services provided at school. According to the 2018 study "Mapping the dental health situation of 3-, 6- and 12-year-old children", by the age of three 57% of Estonian children had been to a dentist. The study showed that, according to parents, 32% of six-year-olds go to a dentist at least twice a year and 48% at least once a year. 40% of 12-year-old children – according to themselves – go to a dentist twice a year and 36% once a year.

The Chancellor has also been contacted by some parents of children with rare diseases. According to parents, their children often need medicines without marketing authorisation; people rarely need to undergo the process of applying for and receiving these medicines, so that the process is difficult for parents to understand. In an extraordinary or otherwise uncommon situation, it cannot be presumed that parents themselves should know and be familiar with the specifics of the system regulating the import of medicines.

According to the Chancellor's assessment, people should have easy access to an overview of the necessary bureaucratic steps to obtain a medicine, and those in need should also be informed of the progress of the procedure.

Recommendation to the State:
- *to inform parents about the importance of a regular health check for a child;*
- *to create an electronic solution supporting the work of healthcare professionals by enabling them to notify parents of the child's regular health check and explain its importance;*
- *to consider making children's health checks mandatory (repeated) and stipulate that if a parent consistently ignores notifications then a child protection specialist will be involved in ascertaining the reasons and resolving the problem;*
- *to ensure accessibility of healthcare services, including mental health services;*
- *to ensure accessibility of healthcare services that take account of the interests of a child with special needs, as well as relevant counselling or easily accessible guidelines for parents of a child requiring uncommon treatment due to a special need;*
- *to offer doctors and other medical practitioners training on how to notice and assess a child's need for assistance (repeated);*
- *to support promotion of oral health at school.*

8.2. Standard of living, poverty

According to data from Statistics Estonia, in 2021 there were 14 000 children living in deprivation, 13.6% (i.e. 35 400 children) were in relative poverty, and 1.3% (i.e. 3300 children) in absolute poverty. According to the data of the 2021 census, more than 15 000 children lived in housing with no water supply system, the housing of more than 8800 children lacked washing facilities, and 17 000 children lived in housing without a toilet. Unlike the data presented in the State report, the data from Statistics Estonia indicate that the rate of relative poverty among couples with three and more children had not significantly dropped in 2021 but reached 14%.

The data affirm that children's poverty increased during the corona pandemic (in 2021 by comparison to 2019). Although increasingly more children grow up in families whose living standard exceeds the estimated subsistence minimum laid down by the State (i.e. the absolute poverty threshold) and, on average, the rate of relative poverty among children has also dropped, there is still a large number of children at risk of poverty. Poverty endangers families where the number of providers is smaller than the number of dependants: these include, for example, single-parent families and families with many children. According to the census data, in 2021 there were a total of 36 939 children living in single-parent families, i.e. 14% of all the children living in families. Poverty risk is also caused by parents being excluded from the labour market due to caring for a disabled child. Households with disabled children assess their financial ability to cope worse than other households with children in Estonia on average. Many families with disabled children must incur additional expenses due to their child's special need, while unfortunately this expenditure often does not even cover the child's actual needs. Nor do the benefits paid to a family with a disabled child often cover these additional expenses. Estonia contributes 13% of the GDP for social protection costs, which is approximately six percentage points less than European Union average and, according to analysis data, this fails to sufficiently cover the actual needs. The standard of living of Estonian children and families is also strongly affected by the price increase, which, according to the data from the Bank of Estonia, has been one of the quickest in the euro area.

According to assessment by families, most of all they need support in paying for children's hobby groups and camps, kindergarten or childcare fees, buying clothes or footwear appropriate for different weather conditions, participation in cultural events, and buying nutritious food.

Poverty reduction measures must proceed from a child's needs and support the child's development, regardless of the family's possibilities. When providing State assistance, it must be observed that it is not discriminatory, alienating or stigmatising. Assistance should be channelled directly to children (e.g. free-of-charge services or opportunities for children).

Recommendation to the State (repeated):
- *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 example, guaranteeing kindergarten places for all children, improving the accessibility and quality of services and benefits offered by local authorities.*

8.2.1. Subsistence level and the conditions for paying subsistence benefit

The State has changed the conditions for receiving subsistence benefit and the amount of benefit; the subsistence level for each child of the family is 120% (240 euros) of the subsistence level of the first family member. To a limited extent, housing loan payments may also be taken into account as housing expense. Sums withheld in enforcement proceedings are deducted from a person's income. Family income is not considered to include work-related income received by a child without secondary education and enrolled at a basic school, upper secondary school or in full-time vocational training until attaining 19 years of age, or after attaining 19 years of age up to the end of the current academic year or until exclusion of the pupil from the school list.

All these changes have been essential to improve the ability to cope of people living in poverty. At the same time, local authorities pay subsistence benefit differently (see the assessment by the National Audit Office), which means that people in similar circumstances receive a different amount of benefit and the benefit is often not sufficient to ensure coping.

Recommendation to the State (repeated):
- *to develop a transparent, consistent and justified methodology for calculating the subsistence level and uniform grounds for paying the benefit, so that families in deprivation are ensured subsistence benefit that enables their dignified subsistence.*

8.2.2. Uneven accessibility and quality of social services in local authorities

In Estonia, social services are mostly organised by local authorities. The Chancellor receives most complaints from parents of children with special needs attending a kindergarten or school, who believe that their children cannot obtain high-quality social services (see also section G). One example is the absence or change of a support person. A support person helps a child to develop, guides the child in developmental activities and assists the child in learning to cope independently. This means that a support person accompanies a child not only in a kindergarten and school, but also, for example, in a hobby school or at a camp. The Chancellor's practice shows that there are many problems with organising support services for children: no support persons are found or they quickly abandon their work, which, in turn, means that a child fails to receive the necessary assistance in a kindergarten or school, or conversely, is deprived of the necessary support outside the educational institution (see also section 9.1.2).

According to the Chancellor's assessment, the current practice of provision of the support person service is not consistent, nor is it in the child's best interests, because in case of change of support persons the child is forced once again to start getting used to the new support person and establish an extensive relationship. In some areas – for example in Tallinn – the problem of absence of a support person is particularly acute, so that it interferes with acquisition of education by children. On this basis, the Chancellor asked that Tallinn city should resolve the problems of provision of the support person service to ensure that children actually do receive the service. The Chancellor found that if the reason for the shortage of support persons is the form and conditions of contract entered into with them, as well as remuneration, then these should be reviewed. Solutions can also be found in cooperation between the educational and social sphere: for instance, a support person – or, instead, an assistant teacher – may be hired by the educational institution.

Alongside the support person service, in the Chancellor's opinion, the State should also consider offering the services of a personal assistant for under-18-year-olds needing external assistance with moving around, household chores and other activities. Currently, both services – the support person service and the personal assistant service – are available for adults. Although children and young people are ensured the support person service, in the frame of which children and young people are also assisted with personal care procedures, the support person service was nevertheless created as a service intended to support a child's development. A support person is not required to assist someone with moving around, household chores and other activities, so that external assistance offered in the frame of the support person service might not always be sufficient for a child. Provision of the support person service need not be justified for a child or a young person who does not need empowerment but only physical external assistance, for example, with getting dressed and moving around.

Recommendation to the State:

- *to harmonise the accessibility of social services in regions by using State-provided social services and implementing innovative approaches if necessary (repeated):*
- *to improve supervision over the quality of social services provided by local authorities (repeated);*
- *to ensure the accessibility of the personal assistant service also for children and young people.*

I. Education, leisure and cultural activities

9.1. Education

9.1.1. Preschool education

A child at the age of one-and-a-half to seven years is entitled to receive preschool education at a kindergarten; a local authority may not replace a kindergarten place with a place in childcare without parental consent (see the Chancellor's circular to local authorities, Tallinn Administrative Court judgment No 3-19-1822, para. 20).

Long-standing practice of the Chancellor and the courts shows that there are not enough kindergarten places for all children. There is a particularly acute shortage of kindergarten places intended for children up to three years old (see, e.g. the Chancellor's 2022, 2021 and 2020 annual overview, Tallinn Court of Appeal judgment No 3-17-449 as well as judgments cited in para. 9 therein). The same is confirmed by the preschool education and childcare survey

commissioned by the Ministry of Social Affairs. Despite almost ten years of case-law, not solution to the systemic problem has been found to date.

The Chancellor in her opinions (see the Chancellor's opinion and the Chancellor's 2020 annual overview) has emphasised that a kindergarten place offered by a local authority must be accessible to the family in terms of location. The court has also found that in a situation where the service district is very large or transport connections limited the local authority must assess whether a child has a reasonable possibility to use the kindergarten place.

The Chancellor has also ascertained problems with granting a kindergarten place in local authority legislation. A local authority by its regulation may not restrict access to a kindergarten place more extensively than stipulated by law (see the Chancellor's opinion).

The State should understand that even though the law requires a local authority to ensure a kindergarten place, eventually the shortage of kindergarten places is not just the problem of occasional families or merely local authorities. Under the Constitution, education falls under State supervision. If a local authority is unable to comply with the law and regularly leaves parents in trouble, the State must initiate supervision (see also the Chancellor's reply to a member of the Riigikogu about ensuring the kindergarten service).

Recommendation to the State:

- *to resolve the problem of accessibility of preschool education, if necessary, by amending legislation and current supervision practice.*

9.1.2. The capacity of kindergartens and schools to offer support to pupils

A kindergarten must notice a child's special need and, if necessary, adjust the educational activities accordingly, as well as organise support services for a child if the child needs them.

Based on petitions received by the Chancellor, it may be said that parents are primarily concerned about the absence of services of speech therapists and support persons. In several recommendations, the Chancellor has explained that the law does not allow refraining from organising a speech therapist's services merely because a kindergarten does not have (enough) support specialists (see the recommendation to a rural municipality and a city).

In order for a child with special needs to be able to cope in an ordinary kindergarten group, the child often needs additional support: either a support person assigned as a social service or a person working at a kindergarten. The kindergarten owner or local authority is responsible for such consistent availability of additional support (see the recommendation issued to a rural municipality and Tallinn Education Department, see also section 8.2.2 and G). A child must be offered the necessary support in an environment suitable for the child. If, according to assessment by specialists, an ordinary group is appropriate for a child then it is not in the child's best interests to place the child in a special group (see the Chancellor's recommendation and opinion).

Under the Basic Schools and Upper Secondary Schools Act, as a rule, children in need of support must be able study in an ordinary class at a school in the area of their residence, and they must be ensured the necessary services of a support specialist. At school, a pupil must receive free assistance at least from a special educator, speech therapist, psychologist and social pedagogue.

According to the 2020 audit report by the National Audit Office, the necessary support services are mostly provided to children by 64% of municipal kindergartens and 74% of municipal basic schools. First and foremost, the reason is the shortage of specialists, but accessibility of assistance may also depend on the attitude of the school and parent.

It deserves recognition that year by year schools are increasingly better informed of these requirements and some local authorities have created support services centres for all their educational institutions. Despite this, considering the poor availability of the service it may be concluded that the work of support specialists is not sufficiently valued.

Problems with ensuring the support person service, as well as disputes over whether support to a child should be offered by the social or the educational system, hamper the implementation of the principle of inclusive education. Assessing a child's need for assistance by several establishments is resource-intensive and, since the need for assistance is assessed by several establishments, it may happen that these establishments provide the same kind of assistance to the child. The need for support is assessed separately in education and in deciding whether to provide the support person service, rehabilitation service and services offered by local authorities (e.g. social transport). The result is that assessing a child takes time and once the assessment is complete this does not yet mean that the child will indeed receive the necessary support. Such a fragmented system unreasonably burdens both the parent and child and further exacerbates the accessibility of services.

A child may be deprived of the necessary service because teachers have neither knowledge nor skills how to support a child with special educational needs in their studies. The reason may also be teachers' heavy workload, large classes and lack of study materials adjusted for pupils with special needs.

Effective assistance to a child can be offered if the school and parent cooperate. Yet, this cooperation may be hampered by a school's negative attitude and the fact that a parent hides the child's special need (see the Chancellor's explanation provided in 2017). Although the school must proceed from the child's best interests, a parent's reluctant attitude may be an obstacle to this (information exchange, school preparedness card etc).

Denying attitude by a local authority and schools, which is further amplified by the lack of support specialists, may make a school at the child's place of residence inaccessible for the child. Schools may also put pressure on a parent to home school the child (an incident in 2017 concerning a pupil with behavioural problems) or change schools. An opportunity to attend another school may be offered to a child only if no suitable conditions for study exist at the school of the child's place of residence (recommendations given to schools in 2018 and 2019).

More extensive and effective supervision by the State can also contribute to children with special needs receiving support in kindergartens and schools to which they have a statutory entitlement.

Recommendation to the State:

- *to ensure that social and educational specialists cooperate with each other in assessing a child's special need and offering the necessary support to a child;*

- *to empower local authorities, schools and kindergartens so that children with special needs are able to access support services corresponding to their actual needs;*
- *to strengthen State supervision to ensure that a child with special needs indeed receives the necessary assistance at a kindergarten and school.*

9.1.3. Basic education

In various places in Estonia there are children whose school route is unreasonably long or whose parents have had to take upon themselves the task of taking children to school and back home, even though under the law school transport must be organised by a local authority.

Where a child is unable to reach school by public transport, the local authority must offer another suitable option, for instance arrange a school bus. Transport must be safe and the child's age must be taken into account in organising it. The child must be able to reach the school on time while not being forced to hurry too much or spend excessive time on public transport. The child must also be able reach back home within a reasonable time after the school day.

When planning a child's school route, consideration should be given to how long they have to walk, whether the route is safe and whether the bus stop has a shelter offering cover from inclement weather. Where necessary, a local authority must seek solutions suitable for a particular child,

A pupils' study load must correspond to their age and capabilities. The Chancellor has had to explain repeatedly that in planning tests teachers must also keep in mind the statutory requirements. Rules on organising tests have been established with a view to leaving pupils sufficient time for rest and hobbies. Pupils must also be enabled to acquire the necessary knowledge and skills in the best possible way. If the study load exceeds the admissible threshold, then a child may start lagging behind and it may also have a negative effect on their mental health. According to a study, a large proportion of children (70%) feel at least once a week or more often that they have too much to study. Pupils must be left enough time for rest and hobbies.

Classes in Estonian basic schools are still relatively large, often comprising up to 30 pupils, because the owner of the school may, exceptionally, on the proposal by the director and with consent of board of trustees, increase the number of pupils above the statutory size limit (24 pupils in a class) for one academic year. In practice, however, such temporary increase of the number of pupils means a permanently higher number of pupils in the class. In larger local authorities, especially in Tallinn, unfortunately increasing the number of pupils in a class is widespread practice. Pupils with very different needs studying in the same class are taught by one teacher who does not have sufficient time to deal with all the pupils with different needs. Schools still use very few assistant teachers who should help a teacher in carrying out a lesson, especially in classes where the number of pupils exceeds the statutory size limit.

Recommendation to the State:

- *to ensure a safe school route for every child, regardless of their residence;*
- *to supervise compliance with the upper limit of the class size laid down by law (repeated);*

- *to ensure that children's study load at schools corresponds to their age and capabilities so that pupils are also left time for rest and participation in hobby groups.*

9.2. Informal education. Playing, leisure and hobby activities

Opportunities for children to participate in hobby activities and access to hobby education vary from region to region and depend on a family's economic possibilities, availability of hobby activities and hobby education in the particular area, local transport arrangements, and many other factors. Under the Local Government Organisation Act, youth work, including children's hobby education, is organised by local authorities. The possibilities of local authorities to support children's hobby education and hobby activities are different and local authorities have a broad margin of appreciation to decide whether and on what conditions to pay support (Supreme Court Constitutional Review Chamber judgment of 8 March 2011, 3-4-1-11-10, para 62). For instance, some local authorities cover hobby education expenses of school-aged children as well as expenses of hobby activities of pre-school-aged children.

According to a study of children's rights and parenthood (2018), most Estonian children attend some training, hobby group or a private class. At the same time, almost one-fifth of children (18%) found that they had not had a possibility to participate in desired training or hobby activities. The main reasons for not attending a training or hobby group are lack of time (50%), inconvenient schedule of hobby groups (32%), lack of money (31%) and non-availability of a training or hobby group which would be of interest to the child (30%).

The Chancellor has been contacted by several parents in connection with a child's sports activity. For example, based on petitions from parents, the Chancellor initiated a debate about whether, in the event of a child changing a sports club, it is justified to ask payment of a so-called educator fee or transfer fee, and drew up recommendations, which federations, clubs and parents could take into account, so as to ensure that primary consideration is given to children's best interests. Inter alia, the Chancellor recommended that, in case of all decisions, procedures and activities affecting a child, the child's interests should be ascertained and given overriding importance in making decisions; to ensure that children and young people also have opportunities to train and compete while a transfer dispute between clubs is pending; not to use the rights of the child as a contractual guarantee or means of pressure in resolving contractual disputes. The Chancellor also recommended that, with regard to decisions concerning a child's sports activities and training, parents should give priority to the child's best interests.

However, it is worrying that, according to the study, one-fifth of children (21%) feel at least once a week that they have too many training sessions, hobbies and groups. 41% of children feel daily fatigue and one child in ten (10%) concedes that they have never enough free time.

Recommendation to the State:
- *to create the conditions for every child to be able to engage in at least one hobby;*
- *to make parents and people active in sports organisations aware of the principle of observing a child's best interests;*
- *to explain to parents and children the importance of giving children enough time for rest, so as to avoid overload.*

J. Special child protection measures

10.1. Children outside their homecountry

The Chancellor has analysed the issues of reception of unaccompanied minors and issued recommendations on this in 2017.

A positive change that could be highlighted is that, as a rule, minors arriving in Estonia are no longer detained in the detention centre for foreigners. Unfortunately, it should be noted that occasionally there have still been cases where minors have been detained together with the parent or an unaccompanied minor was detained.

Legal bases for detention have not been changed. The Police and Border Guard Board (PBGB) may detain a foreigner for up to 48 hours, but court authorisation is required for longer detention. In recent years, the courts have changed their practice and, as a rule, refuse to authorise detention of minors. In some cases, the court has authorised detention of the father while mother together with children was placed in the accommodation centre for applicants for international protection.

This means that laws do not prohibit detaining minors or families with children. Where the PBGB seeks authorisation to detain a foreigner, the court must assess whether granting authorisation is justified.

Families with children are mostly placed in the accommodation centre for applicants for international protection (see § 32 et seq. Act on Granting International Protection to Aliens). Unaccompanied minors are usually accommodated in substitute homes or foster families. Unfortunately, this rule is not always followed when accommodating unaccompanied minors. In 2022, two unaccompanied minors were placed for approximately half a year in the accommodation centre for applicants for international protection where they had to independently arrange their everyday life.

Under the law, in exceptional cases, the PBGB may arrange accommodation for foreigners staying in Estonia without a legal basis if the foreigner does not have money for accommodation and if accommodation is necessary for humanitarian considerations or for protection of a vulnerable person and if the foreigner cannot use accommodation elsewhere (§ 13^2 Obligation to Leave and Prohibition on Entry Act).

The Chancellor has drawn attention to the fact that in the event of doubt as to whether a young person arriving in Estonia is indeed a minor, the requirement of presumption of being a minor must be observed. This means that if a person's age is unknown and there is reason to believe that they may be under 18 years of age then they would be treated as a child until proven otherwise. This principle does not have to be observed when it is clearly evident that a person is an adult (the Chancellor's analysis "Reception of migrant unaccompanied minors", 2017, page 4, paras 4−6).

As a positive development, it may be noted that the PBGB has promised to observe the requirement of presumption of someone being a minor, except if it is obvious that a person is not a minor.

The UN Committee on the Rights of the Child has recommended that the Estonian State should ensure that unaccompanied minors are assigned a free and qualified lawyer immediately upon

their arrival in the country (including in proceedings carried out at the border). The State must also ensure that best interests assessment is carried out at all stages of the asylum procedure (CRC Recommendations to the Estonian State 2017, para 47(b)).

The Estonian legislation does not lay down grounds for provision of state legal aid in international protection proceedings or to a person illegally arriving at the border or illegally staying in the country before a decision has been reached on the person's status.

An applicant for international protection and an applicant for residence permit on the basis of temporary protection are entitled to state legal aid in administrative court proceedings for contesting the decision the of the PBGB on the application for international protection (§ 10(2) clause 9 Act on Granting International Protection to Aliens). Since 1 May 2016, it is not possible to apply for state legal aid for representation in asylum proceedings.

A foreigner who has arrived or stayed in the country without a legal basis is entitled to receive legal aid from the state for contesting the decision on the precept to leave, the decision on expulsion or prohibition on entry applied by the precept to leave if the foreigner has no sufficient funds to cover legal expenses (§ 6^6(1) Obligation to Leave and Prohibition on Entry Act). This means that, under the law, it is not possible to apply for state legal aid to represent a minor in proceedings on assessing whether they have the right of entry to the country and whether it is allowed to issue a decision to expel them.

The State in its report has pointed out that free legal counselling is provided to people in proceedings for international protection. The PBGB employs so-called advisers. However, these people are not legal advisers but offer people general explanation about different proceedings. Since they are PBGB employees, they are not independent. Nor do they represent or counsel people in different proceedings, they do not observe the confidentiality requirement, etc. This kind of activity does not constitute provision of legal aid or legal counselling.

Recommendation to the State:

- *to ensure protection of the best interests of unaccompanied minors in all asylum application proceedings;*
- *to accommodate unaccompanied minors in a substitute home or a foster family where age-appropriate guidance and supervision is ensured to them.*

10.2. Inspection of the working conditions of minors

In Estonia, working by minors is regulated by the Employment Contracts Act. To facilitate work by minors, an employer no longer has to apply for authorisation from the Labour Inspectorate to hire a young person under 13 years old, but prior to the start of work by a 7-to-12-year-old child the employer must make a relevant entry in the register of employment. If after ten days an inspector has not contacted the employer and notified them of a decision on refusal then existence of an inspector's consent may be presumed and the child may be allowed to work.

Although in the case of hiring a minor their employment should be officially recorded, a survey carried out by the Ministry of Social Affairs revealed that for one-third of minors with a working experience their first working experience had been unofficial (i.e. no contract was entered into). This means that these children had no statutory protection against potential risks arising from the working environment.

With regard to contracts that were concluded, a problem is a large number of contracts under the law of obligations: one-fifth of all the contracts entered into were of this kind. The results of supervision by the Labour Inspectorate show that in substance these cases involved employment contract relationships. Since an employer, when entering into a contract with a person under 18 years of age, must ask for consent of their legal representative, then the parent or the child's legal representative themselves must also understand the essence of the minor's work and, prior to giving consent, assess the appropriateness of the contract and work proceeding from the child's best interests. In the frame of supervisory or misdemeanour proceedings, a labour inspector may also reassess the nature of the contract if parties have entered into another type of contract under the law of obligations.

The results of supervision over employment of minors have shown that problems occur with working and rest time since in setting the times people either do not know or forget the special requirements arising from age.

Recommendation to the State:

- *to inform children and young people about the rights and risks involved in working;*
- *to raise awareness of parents and employers about legislation concerning work by children.*

10.3. Closed childcare institutions

In comparison to the time of submission of the previous report, the system created for dealing with children with challenging behaviour has significantly changed. Legislative amendments entering into force in 2018 introduced a closed childcare institution service instead of the previous schools for children requiring special educational measures and special welfare services aimed at children. By creating the new service, legal norms regulating the restriction of fundamental rights of children in these institutions were also further elaborated and updated.

A child is placed in a closed childcare institution by a court order if the child's behaviour endangers their own life, health or development or the life or health of others, and this danger cannot be eliminated by any less restrictive measure. The court refers a child to a closed childcare institution for up to one year; after this the court once again reviews the justifications and, if necessary, extends the stay in the childcare institution.

A closed childcare institution ensures a supportive, caring and meaningfully organised environment for children and young people. The regime of sleep and being awake is regulated, as well as the time for being in a group or on one's own, the time for studying or working and screen time. Such institutions employ teams of specialists supporting the development of a child. Educational staff of a group ensure round-the-clock security and developmental activities for a child. Educational staff as well as support specialists (therapists, psychologists, social pedagogues, and others) are all involved in supporting children and families. Children are also offered educational support.

The Chancellor has repeatedly visited larger providers of the closed childcare institution service: two study centres of Maarjamaa Education College – Emajõe Centre and Valgejõe Centre. Emajõe Study Centre has at its disposal new buildings created specifically for the centre, and Valgejõe Study Centre operates in a thoroughly reconstructed and modernised

building. Nevertheless, the Chancellor found that some rooms in the centres should be made cosier and more child-friendly.

The Chancellor emphasised that immediately after arrival at the study centre a young person must be provided with access to necessary therapy, treatment, and support from a psychologist.

Staff in both centres were dedicated and demonstrated concern and responsibility in caring for children entrusted to their care. Nevertheless, the Chancellor had reason to underline that, with the aim of influencing children, the staff may not reduce the minimum time allowed for phone calls to children or restrict their home visits, and collective punishment is also prohibited. The Chancellor appealed to the staff of the centres that, if necessary, instances of bullying must be dealt with, and offered guidance on how to use the seclusion room and document its use.

The Chancellor has visited several psychiatric hospitals where involuntary treatment is also provided to children: the department of child psychiatry of the psychiatric clinic of Viljandi Hospital, the department for children and young people at the psychiatric clinic of the North Estonia Medical Centre, the Children's Mental Health Centre of Tallinn Children's Hospital Foundation and the mental health centre for children and young people at the Psychiatric Clinic of Tartu University Hospital Foundation.

The Chancellor found that a child in a psychiatric hospital must be able to lock the toilet door. Children must also be able to communicate with their parents and guardians in privacy. Telephone conversations should not take place in the presence of the staff.

The Chancellor asked the hospitals to pay more attention to recreational opportunities for children. For example, better sporting opportunities for them could be created or use of the internet within a limited period could be allowed (e.g. in a study class with computers). Where necessary, access to inappropriate websites and those that might disturb young people could be blocked, or access only to selected websites allowed.

Recommendation to the State:

- *to organise training courses on the topic of the rights of the child for staff of the institutions offering the closed childcare institution service, focusing on the right of the child to have sufficient and undisturbed contact with their next of kin;*
- *to find more possibilities to offer children arriving at a closed childcare institution the assistance of a psychologist, necessary treatment and diverse therapy immediately after their arrival;*
- *to offer children under psychiatric treatment better recreational opportunities.*

10.4. Detention conditions of juvenile detainees

The Chancellor has emphasised that separate institutions need to be created for detaining children who have committed offences, offering an environment and conditions taking account of children's needs and contributing to their rehabilitation.

At the time of submission of the Chancellor's previous report (in 2015), there were 24 minors in Estonian prisons. Currently, there is one minor in prison.[5] This positive change has been significantly contributed to by the system of special treatment of juvenile offenders, entering

[5] See https://www.vangla.ee/et/uudised-ja-arvud/nadala-ulevaade-0805-14052023.

into effect in 2018, under which the authority conducting proceedings must first of all consider educational sanctions in line with the child's development. The objective is that at an early age – important in terms of a child's development – the child is not exposed to prison culture or deprivation of liberty. Instead of prison, a child who has committed an offence may be placed in a closed childcare institution or more lenient sanctions may be applied in respect of the child (§ 87 Penal Code). Remanding a minor in custody can also be replaced with a closed childcare institution (§ 131(3^2) Code of Criminal Procedure).

Minors convicted by the court as well as minors remanded in custody are placed either in Viru Prison (boys) or Tallinn Prison (girls). Viru Prison has a separate unit for minors. In 2022, the Chancellor praised Viru Prison, noting that it was commendable that in the work with minors prison staff try to establish a good contact with them and, instead of punishment, preference is given to motivational measures.

Minors highly appreciated the possibility of being enabled home visits for the purpose of motivation. An attempt has been made to introduce design elements (e.g. a cork board) in the cells of minors, enabling them to make their cells more personalised. In Tallinn Prison women have free access to essential hygiene articles (e.g. sanitary pads). This has been a commendable step forward.

However, the furnishings and state of repair of the communal rooms of minors had not significantly changed in Viru Prison during the Chancellor of Justice's inspection visit in 2021 as compared to 2018. Minors were not sufficiently involved in decisions concerning them. Methods based on restorative justice were not widely used.

In 2022, the Chancellor recommended that Viru Prison should make communal rooms of minors cosier and more appealing. By the time this report was completed, the prison had improved the living conditions of minors – sofas, youth-friendly furniture (e.g. bean-bag chairs), wall paintings, etc. had been added to the dayrooms.

In the Chancellor's opinion, children in prison should be more involved in decisions concerning them (including their everyday life) and methods based on restorative justice should be integrated in the work with minors. To this effect, possibilities should be sought to train prison officers and specialists working with minors.

Situations where only a few or even only one minor are in prison have proved to be complicated. If the prison strictly follows the principle of segregation of juvenile and adult convicted prisoners (including young people, i.e. those aged through 21 years), then it may happen that during the entire stay in prison, a child is essentially in solitary confinement.

The Chancellor has drawn the attention of prisons to the fact that a safe detention environment must be created for a minor but they must also be enabled to maintain contact with others. The Chancellor has said that an exception from the principle of segregation can be made in the child's best interests. In case of sufficient supervision being ensured by the prison, minors and suitable adults – in particular young people – may also be together when cell doors are open or when prisoners have a walk outdoors. They may also use a sports hall or participate in social programmes together.

Estonian children must attend school until completion of basic education or until attaining 17 years of age (§ 9(2) Basic Schools and Upper Secondary Schools Act). This requirement must

also be observed in prison. At the same time, provision of required education in prisons (Imprisonment Act § 34) may be hampered by the restriction on the use of the Internet (Imprisonment Act § 31[1]). The Chancellor has drawn the attention of the Ministry of Justice and prisons to the fact that the restriction on the use of the Internet does not enable learners in prison to acquire the digital competence laid down in the national curricula (see the Government of the Republic Regulation of 6 January 2011 No 1 on "The basic school national curriculum" § 4(4) clause 8, and Regulation No 2 on "The upper secondary school national curriculum" § 4(3) clause 8).

Unfortunately, many prisoners (including minors) have discontinued their education, they have behavioural and learning problems and consequently a low level of motivation. Thus, they need a special approach because traditional teaching based on books is not sufficient to involve them in the learning process. To attract the interest of minors and arouse a desire for aspiration in them, it would be reasonable to modernise teaching and learning offered in prison and perhaps also make it more attractive and interactive.

Nor does the restriction on the use of the Internet promote contact of minors with their family and loved ones. The Chancellor has repeatedly emphasised that prisoners should be created a possibility to communicate with next of kin via video calls. Otherwise disruption would occur to relationships outside the prison that would help a minor to lead a law-abiding life upon release.

The question on the right to use information and communication technology in prison was also addressed in the Chancellor of Justice's opinion, submitted at the request of the Supreme Court. In judgment no. 3-18-477 of 15.02.2023 (p. 93), the Supreme Court indicated that the issue of the right of access to the Internet of prisoners would require a systematic and comprehensive solution. In 2023, the draft Act updating the Imprisonment Act was prepared by the Ministry of Justice.

Several other conditions also need to be reviewed (e.g. the fee charged for long-term visits (§ 25(4) Imprisonment Act), which do not contribute to contact of minors in prison with their family and loved ones. The automatic ban on visits with family and next of kin during disciplinary confinement must be abolished (Imprisonment Act § 24(4); § 25(3)).

Under current law, a convicted juvenile prisoner in Estonian prisons may be punished with 20 days and a juvenile remand prisoner with 15 days of disciplinary confinement (Imprisonment Act § 63(2) and § 100(2)). Already in 2016 the Chancellor reached the opinion – and has also repeated it later – that prisons should impose disciplinary confinement only in most serious cases (e.g. in response to a violent assault), as a measure of last resort, and for as shortly as possible.

Disciplinary confinement punishment imposed on a minor should not be longer than three days. Although information collected during the Chancellor's inspection visits indicates that disciplinary confinement is imposed on minors only exceptionally, the provisions of the Imprisonment Act cited above still create a favourable situation for potential ill-treatment of minors.

Recommendation to the State:

- *to ensure an environment and treatment for minors in prison that proceeds from children's best interests, takes account of the needs of children and serves rehabilitative aims;*
- *to create the conditions for young people for acquiring requisite education;*
- *to enable minors in prison to also maintain contact with their next of kin via video calls (repeated);*
- *to abolish the automatic ban on meetings with the family and next of kin during disciplinary confinement (repeated);*
- *to bring the provisions regulating the duration of disciplinary confinement into line with international detention standards and opinions of experts.*

M. Ratification of the third Optional Protocol to the Convention

The Republic of Estonia has not acceded to the third Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure. In the report on the situation of human rights submitted to the UN Human Rights Council in 2020 (Universal Periodic Review, UPR) the Chancellor reiterated her recommendation that the State should ratify the third Optional Protocol.

Recommendation to the State (repeated):

- *to ratify the third Optional Protocol to the CRC.*