

Inspection visit to Kaagvere Special School

After the closing of Puiatu Special School in 2009 there are two schools for children requiring special educational measures due to behavioural problems (i.e. special schools): Tapa Special School for boys and Kaagvere Special School for girls. On 4 November 2010, the Chancellor carried out an unannounced inspection visit to Kaagvere Special School (Inspection visit to Kaagvere Special School, case No 7- 9/102058).

The choice of the inspected institution in case of Kaagvere Special School was based first and foremost on the fact that the Chancellor had received information from various sources about a possible violation of fundamental rights of pupils at the school. The choice was also based on the consideration that more than three years had passed from the Chancellor's previous comprehensive visit to the school. The Chancellor has previously inspected Kaagvere Special School on several occasions, the latest visit took place in 2006 (Inspection visit to Kaagvere Special School, case 7-9/061391).

Kaagvere Special School is a basic school in the area of government of the Ministry of Education and Research for girls aged 10–17 requiring special educational measures due to behavioural problems. The main objectives of the school according to its statute include the following: enable pupils requiring special educational measures due to behavioural problems to comply with the compulsory school attendance duty and acquire basic education; to develop a personality who copes with their life and work and abides by legal as well as social rules; to prevent potential violations of law by pupils.

The languages of instruction at the school are Russian and Estonian. Pupils are referred to the school on the basis of a court ruling. A request to the court is made by the juvenile committee of the child's residence. Minors may also be referred to the school by the court on the basis of a court judgment. The court may refer a pupil to Kaagvere Special School for a period of one or two years.

During the inspection of Kaagvere Special School in 2010, once again a problem was raised that special schools still have to operate in an insufficient legal environment. Kaagvere Special School also operates in the facilities not suitable for a special school. Such an environment inevitably has a negative effect on the activities and effectiveness of the school.

Several shortcomings found during the inspection were indeed due to the insufficiency of the legislation regulating the operation of the school. The Chancellor has pointed out the need to revise the legislation regulating the operation of special schools already in the summaries of his previous inspection visits and the Minister of Education and Research has admitted the problem. Unfortunately, the situation with the legislation has not improved in comparison to the previous year. For example, there is still no functioning system for ensuring follow-up care for pupils who have left the special school. The new Juvenile Sanctions Act has also still not been adopted. The Act would create a new legal basis for bringing back to a school pupils who have departed without permission, and for the use of forced return in case of necessity.

Currently, there is no legal basis for security check of pupils of a special school by school staff. Staff of a special school have the right to inspect a child's belongings in the presence of the child and remove prohibited items if found, but the school staff have no right to search the clothes a child is wearing or carry out a pat-down security check. There is still no analysis to

find out how many pupils with mental retardation or mental problems are currently attending special schools or what the needs of such pupil are.

In conclusion, it could be noted that already more than two years ago the Minister of Education and Research by his order No 1570 of 19 December 2008 approved "The conceptual bases for schools for children with special educational needs due to behavioural problems". However, the legislation regulating the operation of special schools, or the daily practice in special schools, has not yet been brought in line with the principles highlighted in the concept.

The following part contains problems not pointed out above and specifically relating to the activity of Kaagvere Special School.

The inspection revealed that Kaagvere Special School did not have a seclusion room meeting the requirements established by the Minister of Social Affairs Regulation No 33 of 8 February 2002. Thus, it is not possible to apply the measure under § 62 of the Juvenile Sanctions Act to place a child in need of pacification in a seclusion room.

In view of the profile of children referred to the special school and the fact that they spend 24 hours a day on the school territory, the risk of self-injury or violence against other persons is significantly higher in special schools as compared to mainstream schools. In order to help resolve dangerous situations and allow secluding a dangerous pupil from others and pacifying them, the legislator has provided for a possibility to place a child in a safe room meeting all the health protection requirements until their pacification. The absence of a room conforming to the health protection requirements in a special school is dangerous because in case of a situation endangering the health of a child or of others it is not possible to safely isolate the child until the arrival of the ambulance. This endangers the safety of the child as well as the safety of other pupils and school staff.

In order to avoid endangering the health of children and school staff, resources for furnishing a room conforming to health protection requirements in the present building of Kaagvere Special School should be found, or an alternative plan for resolving cases endangering the life and health of children or school staff should be drawn up. It should also be taken into account that in resolving such cases the rights of children posing the danger or the right of other children and school staff to a safe school environment may not be restricted disproportionately.

On this basis, the Chancellor recommended that the Ministry of Education and Research as the operator of the school, in cooperation with the director of the school, should ensure the safety of children and staff in the school. For this, the Chancellor recommended furnishing a seclusion room conforming to all the health protection requirements in Kaagvere Special School or drawing up in writing an alternative plan on how to resolve the cases endangering the life and health of children or school staff without secluding a child who poses the danger.

As already mentioned above, Kaagvere Special School does not have a seclusion room conforming to health protection requirements. Thus, seclusion of pupils under § 62(1) of the Juvenile Sanctions Act should not be applied in the school. At the same time, during the interviews several pupils claimed that for violations or attempts of escape they had been punished by seclusion to the stairway between the first and second floor of the school. Pupils claimed that they had spent from a few hours to several days in the stairway behind locked

doors. One pupil claimed that she had stayed overnight under the stairs. For this, she had been brought a bed from her room.

The director of the school admitted that in exceptional cases pupils had been secluded in the stairway. The director justified this with the absence of a seclusion room and the need to seclude for some time a pupil who had violated the rules from the others.

Interviews with pupils revealed that locking in the stairway was used rather as a punishment for an attempt of escape or violation of order, and not as a measure for avoiding an immediate threat of self-injury or violence against others.

The legislator has not granted the special schools the right of secluding a child for purposes of punishment.

Even if Kaagvere Special School had a seclusion room meeting the health protection requirements, secluding of children in it to punish for escape attempts or violation of order would not be lawful.

Even more objectionable is seclusion of children for purposes of punishment in a room which is not intended for seclusion and which does not meet the health protection requirements.

On this basis, the Chancellor proposed to the director of Kaagvere Special School to stop the practice of secluding children in the stairway regardless of the purpose of such seclusion and ensure that no degrading punishments or sanctions are applied to children at the school.

The inspection also revealed that children in Kaagvere Special School were given the possibility to communicate with their close friends and relatives three times a week ten minutes at a time. The children used personal mobile phones to communicate with persons close to them. According to the girls who were interviewed, pupils who did not have a personal mobile phone could communicate with persons close to them by using the mobile phones of personal counsellors or social pedagogy teachers, but not regularly and less frequently than three times a week and less than ten minutes at a time.

The use of the telephone at the school was organised in a way that two to three children were in the same room at the time of calling and they had to make the calls in the presence of other children and sometimes also the school staff. The interviewed children were clearly disturbed by the presence of other children and staff during the phone calls and complained that they could not speak confidentially and talk about problems they had with other pupils or school staff.

In addition to the interviewed children, the director of the school also affirmed the existence of such an arrangement for phone calls. The director justified it by the fact that there were 19 children at school and they all had to be found a time slot for calling. At the same time, it was necessary to ensure that the daily schedule of the school was maintained and necessary activities carried out.

The Chancellor noted that he understood the director's wish to ensure that the daily schedule and the activities prescribed in it were implemented but such an arrangement of calling was unacceptable as it violated the right of children to the inviolability of private life and confidentiality of messages.

Moreover, the presence of school staff within the hearing distance was contrary to the principle established under § 61(4) of the Juvenile Sanctions Act, according to which the director or other staff of a school for pupils with special needs do not have the right to examine the contents of a pupil's messages forwarded by telephone.

Therefore, in the future making of phone calls should be arranged in a way as to guarantee that children can talk to their close ones in privacy without the presence of other pupils and staff.

On this basis, the Chancellor proposed to the director of Kaagvere Special School to arrange children's communication with their parents and persons close to them in a way as to guarantee the right of children to the confidentiality of messages and inviolability of private life. The Chancellor recommended establishing the relevant changes also in the internal rules of the school.

The Chancellor also recommended that the director of Kaagvere Special School, in cooperation with the operator of the school, find the necessary resources to ensure that the children who do not have a personal mobile phone can regularly communicate with their parents and persons close to them. The Chancellor recommended establishing in the internal rules of the school how exactly and how often children not having a personal mobile phone can communicate with their parents and persons close to them.

The inspection also revealed that upon return from a visit to home or unauthorised departure from school, supervisory staff of Kaagvere Special School searched the personal belongings that the pupils had with them as well as the pupils themselves. The school director also admitted the search of pupils by supervisory staff and justified it with the need to ensure that prohibited items and substances are not brought to the school territory. No legal basis for the use of this measure by school staff exists.

The search of pupils and their belongings took place in the lobby by the front door of the school. In addition to the front door, four more doors open to the lobby: the door of the room of supervisory staff, the door of the cloakroom, the door of the first floor corridor, and the door of an office used by the school staff. The office also included a workplace of a male staff member. During the inspection, all the doors to the lobby, except the door of the first floor corridor, were open. According to the pupils, during the searches the door of the room used by the school staff was also often open. The pupils claimed that during the search several of them had been asked to take off the sweatshirt and the shirt, leaving them only in underwear above waist. One pupil claimed that she had been feeling particularly awkward during the search as a male staff member had been present in the office with an open door. The director of the school did not affirm the claims of the presence of a male staff member in the office with an open door during the search, but admitted that she had not been present during all the searches.

On this basis, the Chancellor proposed to the director of Kaagvere Special School to discontinue searching of pupils without a legal basis. In case of a reasonable suspicion that a pupil is trying to bring prohibited items or substances to the school territory, the Chancellor recommended asking the assistance of the police.

The Chancellor recommended to the Minister of Education and Research to consider amendment of the Juvenile Sanctions Act, so as to give certain staff members of special schools the right to search, under certain conditions, pupils and their belongings.

During the inspection it was found that in 2009 Kaagvere Special School had drawn up the school development plan for 2009–2013. The development plan has been approved by the school staff meeting as well as the school's governing council. However, the operator of the school (i.e. the Ministry of Education and Research) had not established the procedure for approval of development plans of special schools and had not provided its assessment of the development plan drawn up by Kaagvere Special School.

Kaagvere Special School also lacked an approved development plan at the time of the inspection visit on 29 November 2006. Already then the Chancellor of Justice drew the attention of the school management and the Minister of Education and Research to this.

On this basis, the Chancellor recommended to the Minister of Education and Research to establish a procedure for approval of development plans of special schools and, in line with the procedure, provide an assessment of Kaagvere Special School development plan for 2009–2013.

The inspection also revealed that in organising the daily life of the school, the internal rules made available on the school's website were not observed. Instead, the organisation of school life was based on the new internal rules which were being drawn up but which had not yet been approved by the school's board of trustees or the school director. Children at the school were also explained the internal rules which had not yet been approved in line with the requirements of the law. At the same time, on the school's homepage, the internal rules approved by the order No 1-4/57 of the school director on 9 November 2007 had been made available for parents and other interested persons, although these rules were not used as the basis for the organisation of the school life. Such a situation did not enable pupils, staff and parents to foresee with sufficient certainty the rules to which the life in Kaagvere Special School is subjected in practice. This, in turn, could result in different solutions to similar situations and, thus, unequal treatment of persons.

According to the interviewed pupils, such a situation caused confusion both among pupils and parents, as parents had access to the approved internal rules on the school homepage while pupils were already being familiarised with the new draft rules. The absence of clear and uniform school rules also caused difficulties in the daily work of the staff. Many of the interviewed children noted that different staff members reacted differently to similar situations. According to the children, due to such different reactions they often felt that they were being treated unequally. In addition, the pupils with Russian as their mother tongue also pointed out that the new draft internal rules were available only in Estonian.

On this basis, the Chancellor recommended to the director of Kaagvere Special School to observe the currently valid internal rules in organising school life and post the valid rules for pupils in a visible place both in Estonian and Russian.

The Chancellor also recommended to the director of the school to observe the requirements of the law in establishing the new internal rules, i.e. consult with the school's board of trustees as well as the pupils' representative board prior to the adoption of the rules. In disclosing the new internal rules after their adoption the Chancellor recommended to the director to observe

the requirements under § 69 of the Basic Schools and Upper Secondary Schools Act. The Chancellor also recommended to the director to make the new internal rules available in Russian.

As a result of the inspection, the Chancellor made recommendations and proposals to the director of Kaagvere Special School and the Minister of Education and Research, and also sent the summary of the inspection visit to the Minister of Justice and the Riigikogu cultural affairs committee for taking note of.

The director of Kaagvere Special School thanked the Chancellor of Justice for the recommendations and proposals and said that the Chancellor's opinions had been introduced to all the school staff and pupils, and together the best solutions for complying with the recommendations were discussed.

According to the director, a written alternative plan would be drawn up on how to resolve the incidents endangering the life and health of the children or staff without secluding the child who poses the danger. The director explained that in the future making of telephone calls would be organised according to a schedule, so that each pupil is ensured 20 minutes private time twice a week for communicating by phone with their parents and persons close to them. The children who do not have a personal mobile phone would be able to use regularly the school mobile phone for this. The relevant specifications on the organisation of telephone communication would be introduced as amendments to the internal rules of the school. The director of the school agreed with the Chancellor that the current legislation does not establish the right of the staff of special schools to search pupils. According to the director, in the future the assistance of the police would be asked in case of a reasonable suspicion that a pupil is trying to bring prohibited substances or items to the school.

The Minister of Education and Research also thanked the Chancellor of Justice for the recommendations and proposals and provided an overview of the Ministry's different steps for improving the organisation of activities of special schools. Inter alia, the Minister promised that in 2011 the new draft Juvenile Sanctions Act would be drawn up.