Õiguskantsler

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Inspection visit to Koeru Care Centre

Dear Mrs Terje Teder,

On 15 September 2021, advisers to the Chancellor of Justice carried out an unannounced visit to inspect the activities of Koeru Care Centre Foundation (hereinafter 'the care centre' or 'the care home').

On the positive side, it can be mentioned that the management of the care home considers staff training to be important and has consistently favoured it. Living rooms and hygiene facilities at the care home have the necessary assistive devices (handrails, patient lifts/hoists, transfer boards and slide sheets, shower trolleys/stretchers, and the like). Care procedures are thoroughly documented. People's health is monitored by nurses. Movement and hobby activities are organised for residents. It deserves acknowledgement that, while complying with the restrictions imposed due to the spread of the coronavirus, people are offered a possibility to visit their loved ones at the care home and alternative communication options via online calls are also favoured.

A problem is staff shortages. The care home should have more staff so as to be able to take care of the residents in line with applicable requirements. People's freedom of movement may not be restricted without a legal basis and lawful measures must be found to ensure safety.

Criticism can be expressed about the fact that residents with profound multiple disability are being dealt with by activity supervisors who have not completed the mandatory in-service training. Nor should untrained assistant carers be left to work alone without the guiding support of a carer. Staff call equipment should be available by each bedside. People's privacy in carrying out hygiene procedures must always be ensured so that they are treated with dignity. Care home residents must be washed at least once a week. The requirements for administering and handling medication must be complied with.

Koeru Care Centre has the capacity to provide the general care service to 129 people. 89 people receive the 24-hour special care service (the care home has 74 places for persons needing the 24-hour special care service and 15 places for people with profound multiple disability needing the 24-hour special care service). People are accommodated in bedrooms located in four wings of the

care home. The care home's large hall and the day centre rooms are used for hobby activities. Medical nurses are at work at the care home.

The Chancellor's advisers together with a healthcare expert carried out a tour of the care home rooms, examined documents and interviewed staff and residents.

1. Freedom of movement

The care home has created a separate department with capacity for 50 people for persons with a dementia diagnosis (on the first floor, building wings IA and IC). The doors of the corridor in the department are locked and residents cannot go outside independently. Doors can be opened with a code and a chip card. The door to the corridor of the IB department is also locked around the clock. This department houses 28 persons receiving the special care service (including 15 people with profound multiple disability). Residents in both departments go outdoors only together with a member of staff. According to explanations by staff, people accommodated in the locked departments are in need of more attention and supervision than normally.

Under § 20 of the Constitution of the Republic of Estonia, the freedom of movement of a person with a mental disorder may be restricted if they pose a danger to themselves or others. However, freedom of movement may only be restricted under specific conditions which have been clearly laid down by law (§ 20(2) Constitution). This may be done only in cases set out in §§ 105–107 of the Social Welfare Act and §§ 11 and 14 of the Mental Health Act. The legal basis for restriction of freedom must be provided by law. Neither of the two laws provides a legal basis, apart from the possibilities mentioned above, to restrict – without a court order – the freedom of movement and security of person of people receiving the 24-hour special care service or the general care service. Thus, a care home resident may not be locked in care home rooms without their consent (except when committing a person receiving the special care service into a seclusion room) so that they cannot leave at will.

Certainly, people with challenging behaviour may end up in a care home – for instance, people with a dementia diagnosis – who may wander off in a state of confusion or who need to be monitored more carefully than other residents because of their problematic behaviour. There may also be people in the care home with a complicated mental disorder who cannot be left without supervision due to their condition. Regardless, a welfare institution must provide a safe environment lawfully and safely for all its residents.

Sometimes a person needs stricter supervision, or their health deteriorates to the extent that the social welfare services provided without a court order no longer guarantee their own safety and that of others. In that case, the service provider must notify the local authority of the person's residence and the person's guardian that the person needs a different kind of service. A person may be placed under special care in a social welfare institution without their consent only by court decision and on the grounds laid down by § 105(1) of the Social Welfare Act.

The Chancellor recommends discussing with the care home staff situations which may occur while caring for residents with challenging behaviour. In any case, people's safety should be guaranteed in a lawful and appropriate manner. Useful measures for this purpose might be staff training, redistribution of work duties, offering additional activities to people, or hiring additional staff.

2. Living conditions and quality of service

The care centre's bedrooms are single- to quadruple-occupancy. Hygiene facilities are modern and equipped with the necessary assistive devices. The building is also accessible to people with challenged mobility: there are adjusted ramps, disabled toilets, and lifts.

Most adjustments in the environment have been made in the department for people with dementia. Milieu-therapeutic solutions have been used which take account of the special needs of people with dementia (e.g. use of contrasting colours in interior design, adjusted sanitary rooms, access to a separate garden with a gazebo and places to sit). Several beds have LED strips with movement sensors which light up automatically when a person gets out of bed. The corridors also have lights that switch on automatically and help to reduce the risk of falling. The department has fitted out a therapy room that can also be used for individual guided activities.

A paved lane runs round the building but it is not suitable for walking for people with challenged mobility. A resident using a wheelchair also noted that it was very inconvenient to move in the outdoor area since the ground was uneven and the risk of falling was high. The care centre has plans to improve the lanes.

Spending time in the fresh air is considered important. The care home physiotherapist organises weekly mobility outings. Department staff also assist care home residents with going outdoors. People with challenged mobility have been taken outdoors in a functional bed on wheels as well as in a comfort wheelchair. It was noticeable that some people's daily schedule did not include spending time in the fresh air. Residents requiring greater assistance with moving about also said that it was complicated for them to go outdoors on their own but the staff did not always have time to escort them. Residents in the IB department could be more easily taken for a walk if the department had its own garden area. The Chancellor recommends that the care home should analyse how to create favourable conditions so that people with challenged mobility would also be able to move about independently as much as possible.

Koeru Care Centre has prepared care plans for people receiving the general care service and activity plans for people receiving the 24-hour special care service. It is positive that all parties essential for a resident have been involved in preparing the plan (next of kin, medical staff, activity supervisors, carer, social worker, etc.) Everyday care procedures are systematically documented. Arrangements for provision of services and staff working duties have been carefully planned. An individual daily schedule has been prepared for every resident based on which daily activities are planned.

The day centre operating at the care home has a weekly schedule of hobby activities offering various possibilities for engagement. The day centre has a computer workstation, cooking facilities, a library, and a handloom. Sports and social activities are organised (acting group, a rhythm instruments class, singing group, cooking group, book club, wheelchair dancing group). Three activity supervisors working at the day centre are tasked with offering possibilities for meaningful recreational activities for residents. Organisation of hobby activities left a good impression. Residents participating in hobby activities also praised the possibilities offered by the care home.

There is little activity interesting for men, as well as dynamic activity and activity helping to develop working skills. Men living in the care centre said that they would be more interested in work-like activity. They would also be interested in woodwork.

In the department for people with dementia, various activating activities are organised to ensure psycho-social well-being and cognitive and physical stimulation, such as memory training activities or gymnastic exercises. It is also possible to use therapeutic aids (the department has a communication robot). Once a week, a singing teacher comes to the department and a singing class takes place. During the inspection visit, a reading-out-loud class took place at the department.

Carers are rather burdened with duties, and for this reason no regular physical exercises are done with all bedridden people. The physiotherapist also exercises with residents but since the number of residents is large they are unable to deal with everybody. Regular physical exercise is extremely important for bedridden people: this helps to maintain mobility of joints and muscle strength and prevents complications caused by long-term lying down. To prevent problems caused by lack of movement, more attention should also be paid to activating people with restricted mobility. It is positive that an attempt is also made to find activities for bedridden residents within their abilities. For instance, a therapeutic ring was taken to a bedridden resident to offer them meaningful activity.

Offering activities for residents is also more complicated at the IB department. The department has many residents needing an individual approach and who are not able to participate in group activities. The unit accommodates 28 people (several of whom also have special needs requiring great attention) with only one area at their disposal for joint activities. These people would need a room where they could be undisturbed while dedicating themselves to hobby and therapeutic activities either alone or in a smaller group. In open joint activity rooms this might not always be successful. A crowded environment is not suitable for some residents. Activities requiring an individual approach are also offered in the activity room and in the hall, but in view of residents' special needs this is not sufficient. The healthcare expert participating in the inspection visit pointed out that people with very different needs and behavioural problems were living in the department and it may be complicated to offer high-quality care to all of them simultaneously.

It is good that the care home has installed a staff call system. Unfortunately, call equipment was not available by each bedside and some of the equipment was not in working order (a broken or removed cord). An effective assistance call system helps to ensure that a person's need for help is noticed in time. In the interests of residents' safety, it would be good if the call system were in working order and the call equipment were available in all departments and by every bed.

Documents showed that residents who are unable to wash themselves are washed, as a rule, once a week but on several occasions people had been washed after nine days (IIA department). This is not sufficient. To avoid infections of the skin and dermis, residents must be given a whole-body wash at least once a week in addition to everyday hygiene procedures. According to health protection requirements, bedclothes must be changed with the same frequency.

Problems also exist with ensuring privacy. The doors of some toilets (in IIIA department) and showers (in IIB department) could not be locked. Dignified living conditions are not ensured if a person is forced to tolerate a lack of privacy in carrying out intimate procedures. In particular, this is the case if the same sanitary facilities are used by both men and women. The importance of ensuring privacy has also been stressed in the special care service quality guidelines. The doors to toilets and showers should be lockable from the inside (for example, with a thumb turn lock) but so that the staff could quickly open them from the outside if necessary.

Care centre residents did not complain about the quality of service. Some residents mentioned that the staff are very busy but communicate in a friendly manner and are ready to help.

In order to ensure a service complying with the requirements, a care home must have enough staff. If the special care service is provided to people with profound multiple disability suffering from a mental disorder, the service provider must ensure that at least one activity supervisor is available to deal with every 15 service recipients (§ 104(2) Social Welfare Act). For other people receiving the 24-hour special care service, the presence of one activity supervisor for every 30 care home residents must be ensured (§ 104(1) Social Welfare Act). Under the law, depending on people's needs, at least one more activity supervisor must be on duty outside night hours. However, the law only lays down the minimum requirement; when planning staff numbers, a service provider must proceed from people's actual need for supervision and guidance.

During the daytime, more than the minimum statutorily required staff are present in the special care department at the care home. In view of the care home working arrangements and the specific nature of residents with an enhanced need for attention and constant intense supervision, a suspicion still remained whether the existing staffing levels at Koeru Care Centre are sufficient to ensure the security of residents and take account of their needs. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) is of the opinion[1] that low staffing levels mean that staff suffer from excessive tension, which may endanger their health as well as affect the well-being of people under their care. Information collected during the inspection visit showed that tense situations at the care home often occurred, requiring rapid intervention by the staff in order to ensure security of residents, in particular in the BI department. Residents need a great deal of attention and an individual approach and may manifest unpredictable behaviour. For this reason, the staff have a heavy workload.

In the evenings and at nights (as of 19.00), sometimes only one activity supervisor remains on duty at the BI department. This means that 28 residents (including 15 people with profound multiple disability) are left under the care of only one activity supervisor, so that the requirement on staffing levels laid down by § 104(2) of the Social Welfare Act is not complied with.

The law does not lay down the minimum staff number for institutions providing the general care service, but it must be considered that carers should be able to carry out all the care procedures set out in the care plan and provide other necessary assistance to care home residents. Determination of sufficient staff numbers must take into account the number of residents in a care home, their need for assistance, as well as the specific nature of the buildings, the grounds, and other specifics of the institution. Staff numbers must be sufficient so that no resident is left without assistance and so that care procedures and guided activities can be carried out in line with residents' needs. The staff noted that shortage of staff can be felt at moments when it is necessary to escort someone from the department to the day centre or elsewhere, as well as when residents were being washed. Cleaning also requires much time because many people are unable to tidy up their bedroom.

A large number of residents in the general care department need assistance with washing and other hygiene procedures. Many of the residents use diapers. The staff would need additional help in departments with many bedridden people whom it is easier for two persons to lift. For this reason, the IIA department could also have at least two care workers on duty in the evenings and at nights. It is also difficult for a carer in the department for people with dementia to cope with all the residents when the carer is alone in their wing.

Special training requirements for care home staff have been established in view of the interests of care home residents and the specific nature of care and assistance needed by people suffering from mental disorders. According to the data in the register of economic activities, not all activity

[1] See the CPT opinion, para. 186.

supervisors at the IB department of Koeru Care Centre held qualifications complying with the requirements laid down by § 86 of the Social Welfare Act because only five activity supervisors had completed the training required for work with people with profound multiple disability (§ 86(6) Social Welfare Act). Yet, on occasion in the evenings and at nights, activity supervisors who have not received the required in-service training worked alone at the department (e.g. the shifts on 11 September 2021, 19 September 2021, 25 September 2021).

Care workers at the care centre comply with the professional training requirements laid down by § 22(4) of the Social Welfare Act. It is in the interests of care home residents and staff that all workers have the appropriate training as this significantly facilitates offering a high-quality care service. On several occasions, an assistant care worker without the necessary training had been burdened with more responsibility in fulfilling working duties than allowed by law. An assistant care worker must be supervised by a care worker (§ 22(3) Social Welfare Act). However, based on duty rotas, it could be concluded that sometimes an assistant care worker was alone in their department in the evening and at night (e.g. in September 2021 in one wing of the department for people with dementia and in the IIIB, IVB and IIA departments). This should not be so because a care worker should always directly supervise an assistant care worker in carrying out working duties. The Riigikogu has also seen the duties of an assistant care worker in the same way. An assistant care worker's professional training does not meet the requirements laid down for a care worker. Therefore, such working arrangements also affect the quality of the care service.

The data of not all the care workers at Koeru Care Centre had been recorded in the register of economic activities (the data of at least five care workers were missing). A service provider must ensure that the register reflects correct data (§ 30(5) General Part of the Economic Activities Code Act) and that the data are submitted to the registrar at the first opportunity and on time.

The Chancellor asks that it be ensured that the care centre has a sufficient number of carers and activity supervisors on duty at all times, so that procedures meeting the needs of all residents can be carried out and timely assistance provided. The Chancellor acknowledges support provided for training of care workers and activity supervisors and recommends that training opportunities should also be provided in the future.

3. Handling and administration of medicines

Prescription medicines at the care centre are distributed by nurses into drug dispensers, based on the treatment scheme. Assistance to residents in taking medicines is provided by activity supervisors and carers who monitor that people take medication according to the treatment scheme. Sometimes they must also decide on administering a prescription drug prescribed to a restless resident to be administered if necessity arises. For instance, in the department for people with dementia the drug dispenser compartment marked "for administration in case of need" contained a medicine that carers can give to a person who does not fall asleep. Administration of medication to be given in case of need is not always documented, so that it is not clear who decided that giving the medication was justified.

The right to protection of life and health under §§ 16 and 28 of the Constitution also means that a decision on administering prescription medicines must be made by a properly trained specialist. Medicines – especially prescription medicines – if used ineptly (including due to their combined and side effects) may endanger a person's life and health. Therefore, administration of prescription medicines must be decided by a specially trained healthcare professional (e.g. a nurse) who is also responsible for ensuring that taking the medicine is justified.

If a person does not have to take a medicine regularly but a doctor has prescribed it only in case of necessity (e.g. in case of deterioration of an illness), two factors need to be taken into account. First, it must be possible to check whether administering the medicine was justified. A healthcare provider (e.g. nurse) must ensure that the doctor could also retrospectively check the administration of the medicine if necessary (e.g. to verify the circumstances due to which the medicine had to be administered). Proper documentation helps to prevent the risk that a person is administered medication without medical necessity for another (inadmissible) purpose (such as restraint). Second, only a healthcare professional (e.g. a nurse), but not a carer, may decide on administering prescription medication. A carer may distribute medication included in the treatment scheme prescribed by a doctor and where distribution does not require assessing the need for administering the medication every time.

The Chancellor asks the care centre to ensure that records are kept about medicines to be administered 'in case of need', so that it is clear according to what treatment scheme the medicine was given to a person and who decided to do so and for what reason. A decision on the need to administer prescription medication must be made by a specially trained healthcare professional and the decision must be documented so that it is possible to retrospectively check the activities of a healthcare professional who is not a doctor.

Medicines at the care centre are kept in the medical nurses' room and the working rooms of carers and activity supervisors. Although the rooms for keeping medicines are usually locked, and additionally medicine compartments with which drug dispensers that are filled weekly are taken to departments are also locked, an impression remained that in some cases prescription drugs may still have been within reach of residents. For example, during the inspection visit the door to the staff room in the IIA department was unlocked. No staff was present in the staff room or nearby, and the medicines kept there were accessible to unauthorised persons.

Since misuse of medicines may damage a person's health, the Riigikogu has provided that storing of medicines must prevent them from falling into the hands of unauthorised persons (§ 34(1) Medicinal Products Act). Due to their health condition, some care home residents might not understand the consequences of misuse of medicines. Access by unauthorised persons to medicines may lead to lack of an overview of how many and what kinds of medicines the care home has, and an issue may arise whether people have been given medicines lawfully. The life and health of care home residents may be endangered if a sudden need for a medicine arises but stocks of it have run out without the care home being aware of it. For this reason, it is essential that medicines be stored so that they do not fall into the hands of people for whom they are not intended.

Medicine cupboards in the nurses' working room contained medicines (e.g. Haloperidol) on which no person's name had been marked and which were intended to be administered only in case of need (e.g. in the event of deterioration of an illness). To ensure safety, it is advisable to make a note on each medicine pack indicating for whom it is intended. In the case of each prescription medicine, it must be possible to identify for whom it was prescribed. Handling of medicines at the welfare centre must also comply with the requirements laid down by the Minister of Social Affairs Regulation No 20 of 17 February 2005 on "The rules for keeping records of medicinal products in the provision of healthcare or veterinary services and in social welfare institutions". A medicine prescribed by a doctor may only be administered to the person for whom it was prescribed. Medicines without a marking indicating the person's name may cause a risk of misuse of medicines. Separate records must be maintained about narcotic and psychotropic medicines

acquired by the welfare centre for general use. No such records were kept about medicines not marked with a name.

The medicine cupboard also contained medicines where a person's name on the package had been crossed out. Unnecessary medication (e.g. medicines for a resident who has left the care centre or leftover medicines due to a change in the treatment scheme) must be properly destroyed. Accumulating leftover medicines is not justified as this may also lead to a risk of misuse of medicines.

On the staff room table in the department for people with dementia stood an open cup containing pills whose origin and purpose the carers were unable to explain. To ensure pharmacovigilance, medicines must be stored in the producer packaging.

To some residents of the care centre, carers administer medicines in crushed form. Pills are crushed into powder in a pill crusher on which signs of dried medication were visible (e.g. in the department for people with dementia). If several medicines have been prescribed to a person under the treatment scheme then they are crushed together at the care centre. No information about crushing could be found in treatment schemes.

The Chancellor has recommended that prior to crushing a medicine it should be assessed whether the specific medicine may be handled this way, and whether mixing several medicines is allowed. If a person does not want or cannot take medicines, the reason for this should be ascertained and then a suitable form of medication (mixtures, injections, etc.) be found for them. In the event of difficulty with swallowing, the attending doctor must be consulted. Pills may be crushed only in the case of exceptional need, immediately prior to administration, and the doctor's instructions to this effect should be recorded in the treatment scheme. Medicine containers must be cleaned of any residues.

The Chancellor asks the care centre to ensure that records are kept about medicines to be administered 'in case of need', so that it is clear according to what treatment scheme the medicine was given to a person and who decided to do so and for what reason. A decision on the need to administer prescription medication must be made by a specially trained healthcare professional and the decision must be documented so that it is possible to retrospectively check the activities of a healthcare professional who is not a doctor. Medicines must be properly handled.

4. Combating the spread of the coronavirus

The care home has discussed the possible risks in combating the spread of infectious diseases, and guidelines for action have been prepared and a risk analysis updated. The precautionary measures for combating the spread of the coronavirus SARS-CoV-2 have been analysed with an infection counsellor. The care home also has experience obtained from combating an outbreak of infection. Many employees and most residents are vaccinated.

Employees have been trained to use personal protective equipment. The building structure has multiple divisions and several exits which easily enables creation of several zones in case of risk of infection. The care home had stocks of personal protective equipment. As a preventive measure, unvaccinated staff are tested to detect the spread of coronavirus.

In order to combat the spread of the coronavirus, visiting possibilities have been restricted. In order to visit a resident, the visit must be registered and the visiting time is 30 minutes. Meeting next of

kin is allowed in the outdoor areas as well as the care centre cafe, and personal protective equipment must be used during the visit. A health declaration must also be filled out. It is good that information on visiting arrangements can easily be found on the care home website.

Parcels may be sent to residents. To communicate with next of kin, residents use a telephone in the department and several people also have a phone of their own. Each department has a laptop, so that contact with next of kin can also be maintained via online calls.

Although visits to a social welfare institution by next of kin may somewhat increase the risk of spread of the coronavirus (for instance, problems have occurred with next of kin ignoring the duty to wear a mask), care home residents consider the possibility of communicating with their loved ones extremely important. This is particularly important in a situation where visiting opportunities are restricted for a longer period and it is not known when the situation might significantly improve. In this situation, a care home has a greater responsibility than before to create possibilities for residents to communicate with next of kin. The longer the restrictions on meetings with next of kin are maintained, the more alternative possibilities for communication should be offered (see also the summary of an inspection visit to the Viljandi Hospital Welfare Centre, section 8). It is positive that Koeru Care centre has paid attention to this and, by observing precautionary measures, people are enabled to meet with their next of kin.

5. Assessment by the healthcare expert

A copy of the assessment by the healthcare expert involved in the inspection visit is appended to this letter. I ask the care home to form a position regarding the observations and recommendations contained in the healthcare expert's opinion and send it to the Chancellor of Justice together with replies to the observations in the letter.

I expect your opinion by 18 April 2022 at the latest.

Ülle Madise

Appendix: Healthcare expert's opinion on 4 pages

Copy: Ministry of Social Affairs, the Social Insurance Board, the State Agency of Medicines

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