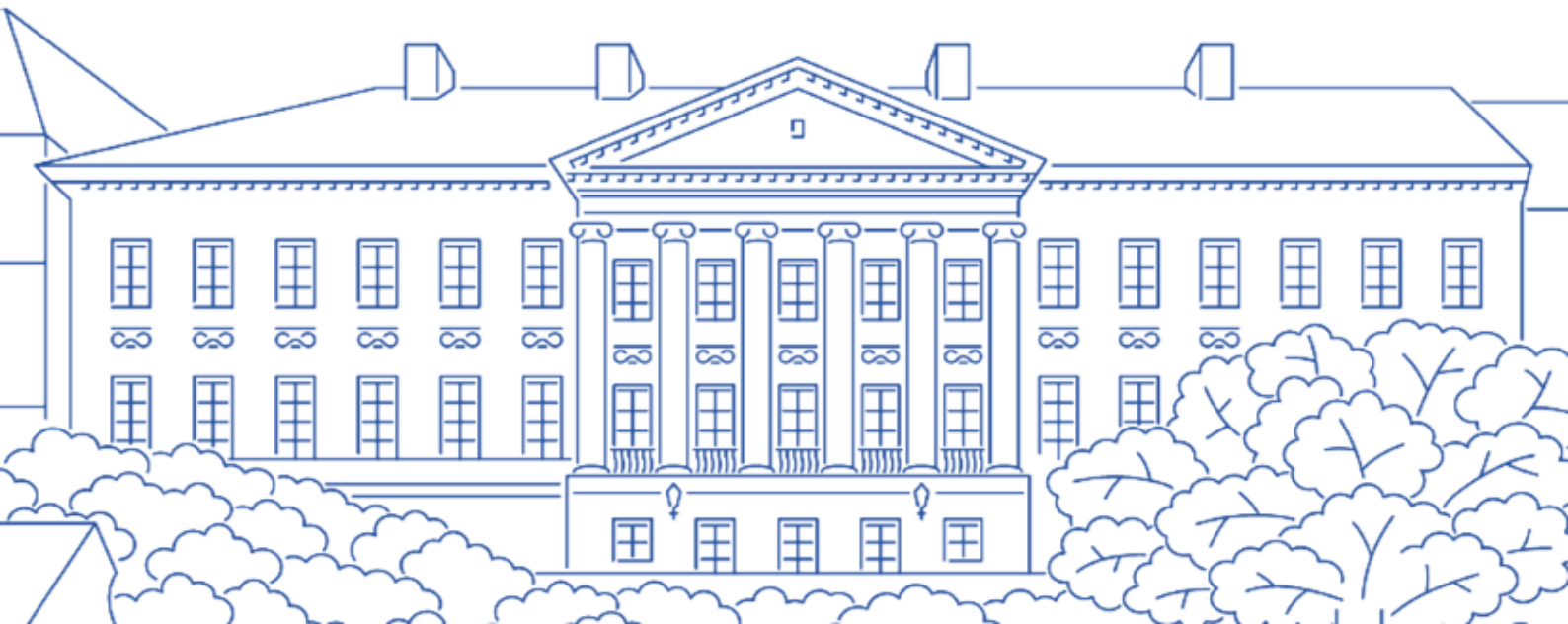
Õiguskantsler

2016-2017 OVERVIEW OF THE CHANCELLOR OF JUSTICE ACTIVITIES:

OMBUDSMAN FOR CHILDREN

Tallinn 2017



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Introduction

Estonia ratified the UN Convention on the Rights of the Child on 26 September 1991. Under Article 4 of the Convention, States Parties must undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the Convention.

In Estonia, the function of the independent ombudsman for children is performed by the Chancellor of Justice. The task of the Ombudsman for Children is to ensure that all the authorities, institutions and persons that pass decisions concerning children respect the rights of children and proceed from the best interests of the child.

1. Children and sport

Parents have started paying increasing attention to issues of safety of children in sport, and are able to set increasingly higher expectations on sports clubs, trainers and competition organisers in this regard. During the reporting period, several petitioners asked the Chancellor for clarification concerning transfer fees involving children's sports clubs and safety in children's sports competitions.

1.1. Transfer fees for changing sports clubs

Based on petitions from parents, the Chancellor initiated a discussion on whether it was justified to ask for a transfer fee when a child changes from one sports club to another. Involved in the discussion were several sports federations, the Ministry of Culture, the Ministry of Education and Research, the Estonian Youth Work Centre, the Estonian Olympic Committee, and Tallinn Sports and Youth Department.

The Chancellor found that applying transfer fees should proceed from the best interests of the child. To this end, the Chancellor made the following recommendations to sports federations and clubs:

- to ascertain the best interests of the child concerning decisions and activities affecting children and young people, and keep these interests in mind as a primary consideration in decision-making;
- 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;

- when entering into a contract between the sports club and a parent, explain to parents the rights and duties arising from such a contract, including the principles concerning transfer fees;
- to advise parents in the process of developing practical pursuit of sports corresponding to the needs and abilities of children and young persons;
- to develop best practices for protecting the interests of the child in sports federations and to update them as necessary.

Parents must also proceed from the best interests of the child and set aside their own ambitions when guiding a child in practising sports and choosing training courses for a child. The same principle applies when entering into a contract on behalf of a child and a young person (including a professional contract). A parent must explain the rights and duties arising from the contract in a manner understood by the child.

Meetings organised on the initiative of the Chancellor's Office also considered whether to set a minimum age limit in line with general good practice, below which no transfer fees would be imposed on children. However, in the opinion of sports federations, no minimum age limit can be set since each sport is unique. In order to become a professional athlete, children should take up sports such as rhythmic gymnastics and competitive ballroom dancing as early as the age of four. Thus, a ten-year-old child has already been practicing these sports for six or seven years.

The Chancellor invited the federations to critically assess the age limits set in their regulations, so that the system of transfer fees would also take into account the time children have contributed to training. Children must retain the right to change their sports, club and trainer without excessively formal hurdles.

1.2. Safety in sports competitions

Several letters asked the Chancellor about the safety of sports competitions for juveniles and the liability of organisers.

In her reply, the Chancellor explained that safety at children's sports competitions can be guaranteed, first and foremost, by complying with the requirements for organising sports events, ensuring access to appropriate first aid, and the skills of trainers and instructors. Authorisation from the local authority is needed to organise a public sports event, and issuing the authorisation is regulated by local authority regulations. If necessary, a local authority may request information on how provision of first aid and reporting accidents is organised at the competition. If a competition is not public, no authorisation for a public event needs to be applied for, but this does not mean that the competition organiser has no

responsibility at all. When organising competitions, sports federations proceed from their regulations/rulebooks for competitions, and if a federation is also a member of their respective international federation, the international rules for competitions applicable for the particular sport apply to organising the competition.

Safety of children in sport can be improved through availability of relevant information, awareness of parents and trainers and competence of sports federations. An important role is played by parents, who could ask for information about the professional competence of their child's trainer, as well as about safety and first aid during competitions. In addition, safety in sport should be ensured by applying good practice. For example, an initiative of the Ministry of Education and Research led to preparation of good practice in protecting the interests of minors in sports and on transfers, based on which guidelines on better protection of children and young people in sports have been drawn up for organisers of sports activities and parents.

1.3. Competence of trainers

In a petition to the Chancellor, one parent expressed concern about the professional skills and competence of children's trainers. In her reply, the Chancellor explained to the petitioner that the credibility and competence of all persons dealing with children is important but under the Constitution not all specialists dealing with children need have the same level of education and preparation. The law requires that trainers should have a trainer's qualification, but statutes do not prescribe the level of professional qualification for trainers and the skills required to obtain their qualification. This is decided by the professional council when setting professional standards for trainers.

If experts in a sport or the public do not find the current requirements to be sufficient, a proposal could be made to the professional council, either directly or through representative organisations, that the requirements should be revised. The Chancellor also stressed the need to keep parents better informed, so that they would show an interest in the professional skills of their child's trainer.

1.4. Financial support to sports activities

Tallinn Sports Association 'Kalev' asked the Chancellor for an explanation concerning financial support for sports activities. The Association does not consider it right that children attending sports clubs in Tallinn, as well as their parents, are treated unequally depending on whether they are residents of Tallinn or another local authority. If the local authority for the place where a child resides

does not financially support the child's sports activity or pays support to a lesser extent than Tallinn, sports clubs are forced to ask families from those local authorities to pay a higher tuition fee than families who are residents of Tallinn.

The Chancellor replied to the Sports Association that the decision of a local authority to pay support only for its own residents and within its budgetary means is in line with the Constitution. The Chancellor added that the duties of a local authority do not extend beyond its borders. A local authority must not use its money to pay support for children and young people from other local authorities.

As a rule, payment of other types of support and provision of services from a local authority budget follows the same principle, for example as concerns social welfare benefits and services. Since by law local authorities pay sports support from their own budget, the amount of support need not be the same in every city and rural municipality but depends on the resources and preferences of each local authority.

2. Children and health

2.1. Healthcare professionals in kindergartens

The Chancellor was asked whether a kindergarten must hire a healthcare professional. The Chancellor explained to the parent that even though the Pre-school Childcare Institutions Act establishes the position and sets out the tasks of a healthcare professional in a kindergarten, under the ministerial regulations issued on the basis of the Act the existence of a healthcare professional in a kindergarten is not mandatory.

The Ministry of Social Affairs explained that a healthcare professional in a kindergarten is not necessary because the development and health of children is monitored by a general practitioner. Kindergarten staff deal with promoting health in general, provide first aid if necessary, and notify the parent if a child falls ill.

In a memorandum, the Chancellor drew the attention of the Minister of Health and Labour and the Minister of Education and Research and the Riigikogu committees to the need to bring the Pre-school Childcare Institutions Act and the regulations issued on that basis into line with each other. The healthcare system should also be compatible with the Act. It should be unequivocally clear to parents as to who is responsible for monitoring a child's health in a kindergarten.

2.2. Health protection requirements for daily school schedules and organisation of study

Issues concerning the study load of pupils and arranging tests at school still continue to be topical. Similarly to previous years, during this reporting year the Chancellor was repeatedly asked about implementation of the Minister of Social Affairs Regulation No 36 of 27 March 2001 "Health protection requirements for daily school schedules and organisation of study". In order to obtain an overview of the situation, the Chancellor asked schools to describe how tests are planned and what problems implementation of the regulation entails for schools.

It was found that schools were not against the requirements for arranging tests as defined in the regulation. Under the regulation, a test is defined as a written paper to check study results at the end of a quarter of a school year or upon completion of a course. In actuality, such comprehensive tests are rarely arranged.

Unfortunately, this does not allow the conclusion that the rules for protecting pupils are flawless and the practices of schools impeccable. The definition of a test in the regulation does not cover the majority of forms used for testing knowledge at schools. If a large number of smaller tests and other work requiring independent preparation fall on the same day, the load might be excessive for some pupils.

As the Ministry of Social Affairs also plans to review the regulation in the course of preparing the consolidated text of the Public Health Act, the Chancellor sent a memorandum to the Minister of Health and Labour with a summary of opinions expressed by schools with regard to test planning within the proceedings carried out by the Chancellor.

The Minister of Health and Labour convened a working group to discuss how to update the health protection requirements laid down in the regulation. Representatives of the Chancellor also participated in the working group. As a result of input by the working group, a proposal for amendments to the regulation will be presented to the Minister.

2.3. Assessment of childcare service provider activities

The Chancellor reviewed the legality of activities by the Health Board based on a petition by a childcare service provider. The Chancellor found that the Health Board violated the requirements of the Administrative Procedure Act as it failed to provide explanations to the childcare service provider within supervisory

proceedings, failed to forward information received from the petitioner to the county government, and delayed the conduct of proceedings without justification.

For over four months the Health Board had been unable to assess whether the petitioner's childcare centre complied with health protection requirements, whereas the procedure required was a standard procedure carried out by the Health Board. The Health Board also violated the principle of equal treatment since it measured the floor temperature at the petitioner's childcare centre differently than at the premises of all other providers of the same service.

The Chancellor recommended that the Health Board should carry out the pending proceedings in respect of the petitioner without further delay and in a manner that treats the petitioner equally with all other childcare service providers.

3. Education

The Chancellor regularly receives petitions from parents of children with special educational needs and facing different problems at school. The issue is implementation of the principle of inclusive education. Sometimes a school does not have enough qualified specialists, sometimes a child with special needs experiences a reluctant attitude from the school while the school puts pressure on parents to put the child in another school or on home schooling.

3.1. Assigning a school of residence for children with special educational needs

During the reporting year, the Chancellor assessed the constitutionality of § 3(2) of Kuressaare Town Government Regulation No 2 of 9 February 2016 "The conditions and procedure for assigning a school based on residence". Under this provision, the school of residence for the town's pupils with special educational needs is Saaremaa Ühisgümnaasium, to which pupils are referred on the recommendation of the counselling committee.

As the Chancellor understood the town's motives for laying down this procedure, she first addressed the Riigikogu cultural affairs committee and the Minister of Education and Research with a request to consider whether it would be necessary to amend the Basic Schools and Upper Secondary Schools Act, so that deviation from the rules on assigning a school of residence would be possible in the case of justified need. The Riigikogu cultural affairs committee did not support the proposal to amend the procedure.

In the Chancellor's opinion, the Act does not allow a school of residence to be assigned in the manner laid down in § 3(2) of the regulation adopted by

Kuressaare town. Since the provision of the regulation contravenes § 10(1) of the Basic Schools and Upper Secondary Schools Act and thus also the principle of legality under § 3(1) and § 145(1) of the Constitution, the Chancellor made a proposal to Kuressaare to eliminate the unconstitutional situation and either amend or repeal § 3(2) of the regulation.

Since Kuressaare did not comply with the Chancellor's proposal, the Chancellor filed an application with the Supreme Court. The Supreme Court did not grant the Chancellor's application, finding that under § 49(3) (first sentence) of the Basic and Upper Secondary Schools Act a decision should be made on a case-by-case basis in respect of each pupil with special educational needs on whether it is possible to organise a pupil's study in their school of residence. That decision can be made after a school of residence has been assigned to the pupil and the counselling committee has made a recommendation concerning organisation of the pupil's studies. However, in the court's opinion this does not allow the conclusion that a local authority may not lay down in a legislative act which of the measures recommended by the counselling committee would be implemented in which schools within its administrative boundaries.

3.2. Home schooling of pupils with special needs

During the reporting year, the Chancellor was contacted by several parents who were dissatisfied that, when problems at school arose, they were pressured to put their child on home schooling.

In the case of one school, the Chancellor also found a specific violation with regard to referral of the pupil to home schooling. In her recommendation, the Chancellor drew the attention of the school to the fact that home schooling is an educational model operating completely on the initiative and at the discretion of a parent, where the parent bears the main responsibility for organising tuition (including financing tuition taking place outside the school) as well as for the learning outcome. A school may not pressure a parent or other legal representative of a pupil to apply for home schooling.

Home schooling must not be used to drive a pupil with behavioural problems away from school. Different support measures and sanctions can be applied with regard to pupils with behavioural problems, as set out in § 58 of the Basic Schools and Upper Secondary Schools Act. For example, a support person may be assigned to a pupil or an individual curriculum applied. If the school believes that statutory support measures and sanctions are not enough to resolve a pupil's problems, recourse may be had to the county counselling committee, a child protection

official, or the child protection unit of the Social Insurance Board, who advise local authorities in resolving more complicated cases.

Home schooling should always proceed from the best interests of each child. Under § 21(1) of the Child Protection Act, the best interests of the child must be ascertained and relied on as the primary consideration in all decision-making concerning the child.

3.3. Religious activities in educational institutions

The Chancellor's opinion was asked with regard to events organised in a kindergarten and allegedly proselytising one specific religion, during which religious books were distributed to children.

The Chancellor repeated her earlier opinion that educational institutions should be neutral with regard to issues of church and religion. Besides, under § 2(2) of the Republic of Estonia Education Act, the fundamental principles of education are based on recognition of universal and national values, freedom of the individual, religion and conscience.

This does not mean that an educational institution should not introduce religions and their history to children. However, it is important to avoid proselytising a specific religion – it is essential to distribute knowledge and not reinforce beliefs. Educational institutions are not barred from organising religious events and carrying out religious rites, but authorisation to do so must be obtained from the owner or head of the educational institution as well as consent from parents.

Under Article 14 para. 1 of the Convention on the Rights of the Child, the right of the child to freedom of thought, conscience and religion must be respected. At the same time, the state must respect the rights and duties of parents to provide direction to the child in the exercise of his or her rights (including to freedom of religion) in a manner consistent with the evolving capacities of the child. This does not mean that a child should automatically share the religious views of the parents until reaching the age of majority; however, in view of the age and level of development of kindergarten children the decision is mostly made by a child's parents.

3.4. Restriction on use of smart devices in boarding school facilities

If previously the Chancellor has expressed an opinion on the requirement to deposit smart phones at school and in a children's camp, during this reporting period the Chancellor was asked to check whether the rights of children at a

boarding school facility had been violated by asking them to deposit their mobile phones and computers at night. The school explained that only those pupils who have used their smart devices at a time not designated for this or whose parents have asked that their smart devices be deposited are required to deposit them with the attendant overnight.

Under the Basic Schools and Upper Secondary Schools Act, a boarding school facility must guarantee for all children and young people the learning, living and education conditions corresponding to their needs and interests. As the school and staff of a boarding school facility are responsible for the security and protection of health of the children there, the organisation of life and other rules are laid down in the internal rules of the facility. The staff must monitor that all children can have sufficient rest during the 'lights out' period as set out in the internal rules. If some pupils use smart devices during rest time, the requirement to deposit smart devices overnight can be considered justified.

The Chancellor concluded that if smart devices are deposited during 'lights out' in a boarding school with the aim of providing sufficient time for children to rest, and if parents are notified of this, if in exceptional cases children are also allowed to call their parents during 'lights out', and if smart devices are deposited securely, this does not amount to a violation of pupils' rights.

3.5. Payment of operating support between local authorities

During the reporting year, the Supreme Court Constitutional Review Chamber discussed the constitutionality of payment of school operating support between local authorities as laid down in § 83(1) of the Basic Schools and Upper Secondary Schools Act.

In an opinion sent to the Supreme Court, the Chancellor found that the obligation under § 83(1) of the Basic Schools and Upper Secondary Schools Act for a rural municipality or a city to participate in covering the operating expenses of a municipal school in another local authority if a pupil residing in that particular rural municipality or city attends a school operated by another local authority is a state-level duty imposed on local authorities.

Under § 154(2) of the Constitution, funds to cover expenditure related to state-level duties imposed by law on local authorities should be provided from the national budget. The state has failed to cover this expenditure from the national budget, so that the absence of a legal arrangement concerning allocation of funds to local authorities for performing the duty set out in § 83(1) of the same Act should be declared unconstitutional.

The Supreme Court decisions are available on the Court website.

3.6. Language of instruction in a kindergarten

A concerned parent enquired from the Chancellor whether a kindergarten where Estonian is used as the language of instruction may prohibit their child from speaking in their mother tongue during free-time activities.

The Chancellor explained that, just as legislation does not entitle a school where the language of instruction is Estonian to prohibit pupils from speaking in their mother tongue (other than Estonian) outside educational activities, nor may a kindergarten do so either. Regardless of where the borderline runs between educational and free-time activities, kindergarten staff must respect a child's cultural background and their ethnic belonging at all times. A child in a kindergarten should never get the feeling that their identity and mother tongue are belittled or suppressed.

Under § 49 of the Constitution, everyone has the right to preserve their ethnic identity and mother tongue. Article 8 of the UN Convention on the Rights of the Child also obliges States Parties to respect the right of the child to preserve his or her identity, including nationality and family relations.

At the same time, the Chancellor concluded that playfully and positively motivating children to speak more in Estonian in a group where the language of instruction is Estonian cannot be considered a violation of these principles if a child's mother tongue and identity are respected. Thus, the main focus in a kindergarten group where the language of instruction is Estonian should be on how to guide and motivate children with a different mother tongue to speak in Estonian, while at the same time respecting the child's cultural identity and their mother tongue.

4. Reception of migrant unaccompanied minors

In connection with the migration crisis facing Europe in recent years, the Chancellor analysed how Estonia has organised reception of unaccompanied minors. The problem was not acute in 2017 because, as far as known, no minor refugees without parents or without a responsible accompanying adult arrived in Estonia. However, the responsible authorities need guidelines on how to lawfully resolve these situations.

Significant progress has occurred with regard to several issues in recent years and readiness to deal with these children has considerably improved. The Chancellor

sent her conclusions and recommendations to the responsible ministries, boards, local authorities, and the Estonian SOS Children's Village Association.

Most problems have occurred with regard to representation of unaccompanied minors. So far, the duties of guardian have been performed by local authorities, and thus the guardian changes depending on which local authority the child is currently staying in. Representatives of local authorities have been present at initial interviews and interrogations, but their further contacts with young people have been scarce. Sometimes young people did not even know who their legal representative was.

The Chancellor pointed out that a local authority should perform the duties of guardian independently and effectively. This covers, for example, communication with minors, representing them in procedural steps, observing the principle of the best interests of the child, and applying for legal aid. It would be reasonable for the Ministry of the Interior and the Ministry of Social Affairs to inform local authorities performing the duties of guardian of unaccompanied minors about the legal status of unaccompanied minors and about the distinctions regarding their guardianship in comparison to local children.

Persons arriving in the country illegally often lack documents, so that it may be necessary to arrange an expert age assessment for them. In the event of a suspicion that a person might be a minor, the presumption should be that they are a minor.

The Chancellor considered that a minor's consent to age assessment should be sought and that consent be recorded. The aim of assessment and the steps taken to this end should be explained to a minor in accessible language. The legal representative should be present when consent is asked for and expert assessment carried out. Detention of a minor should be avoided during expert assessment.

In proceedings relating to the legal status of a minor's presence in the country, the Police and Border Guard Board should observe the general principles of administrative procedure. The aim is to ascertain all the important circumstances and to involve participants in the proceedings. Interviews with unaccompanied minors revealed that the majority were not aware of their situation or their legal options.

The Chancellor pointed out that the Police and Border Guard Board should always inform unaccompanied minors and their guardians about a minor's status and legal options. To establish the legal status of an unaccompanied minor arriving in

the country illegally, all the material facts relating to their arrival in the country should be ascertained. An order to leave the country should not be issued without thoroughly considering the child's interests.

Clarification is needed as to distribution of the duties of representation and welfare of unaccompanied minors between the Social Insurance Board and local authorities. In line with the Social Welfare Act and the Child Protection Act, the Social Insurance Board must ascertain the need for assistance by unaccompanied minors and, on that basis, arrange their welfare and exchange of information.

Children at the age of compulsory school attendance should be given an immediate opportunity to be enrolled in education. Teaching Estonian to them should also start immediately, so as to facilitate their integration and education.

5. Children and the police

In recent years, the Chancellor has received a large number of petitions from parents and young people asking about their rights and duties in communicating with the police. For this reason, the Chancellor decided to analyse the norms regulating this interaction, and to draw up guidelines for children and young people and parents.

As a result of the analysis, the Chancellor concluded that more clarification is needed in rules concerning notification of parents and their involvement in cases where proceedings have been initiated in respect of their child. Currently, it is not unequivocally clear what the role of parents in different proceedings is and at what stage they are involved in the proceedings. This depends on the decision of the specific person conducting the proceedings, and the approach in similar cases is not always the same.

Secondly, the procedure for detention of minors needs to be revised. In view of the risks to the mental health of minors entailed in detention, detaining them should be an exception and last as briefly as possible. Minors should not be detained for more than 24 hours without court authorisation.

Thirdly, more attention than before should be paid to minors whose parents are subject to pending proceedings. Those conducting the proceedings should be aware of the consequences of their actions for the child, and should always ensure the safety of the child. The interests of the child should also be taken into account in proceedings concerning parents and procedural steps should be carried out in a manner least damaging to the relationship between the child and the parent and

least traumatising to the child. These issues are topical, for example, in the case of detention of a parent or a home search.

The Chancellor submitted her observations to the Ministry of Justice, the Ministry of Social Affairs, the Prosecutor General's Office, and the Police and Border Guard Board, and expressed the readiness of her staff to help resolve these issues.

The guidance materials prepared after analysis are intended to raise the awareness of children, parents and law enforcement officers about the rights of children and parents in initial contact with the police.

According to the guidelines, a child is entitled to information about the proceedings in a manner they can understand; the child should cooperate with the police and speak the truth. The guidelines also explain the rights and duties of the child when checking intoxication and the right to receive assistance from a lawyer and a specialist working with children.

Officials from the Ministry of Justice and the Police and Border Guard Board, representatives from the Estonian Union for Child Welfare, and members of the advisory body to the Ombudsman for Children set up at the Chancellor's Office helped to prepare the guidelines.

6. Work by minors

During the reporting period, the Employment Contracts Act was amended, so as to expand opportunities for minors to work and make hiring them easier for employers.

Making the procedure for work by minors more flexible is a welcome step. This way, more young people can earn their own pocket money, gain valuable work experience and later be more competitive in the labour market. However, in the context of work by minors it is important to keep in mind that studying and acquiring a basic education is the main 'work' for children at the age of compulsory school attendance. The main duty of secondary school pupils is also study. An important role here is played by parents who, before giving consent to employment of their child, should ensure that the work is within the child's capabilities and safe, and does not interfere with studying.

The Chancellor also analysed the amendments to the working conditions of minors. In her opinion on the Draft Act amending the Employment Contracts Act, the Chancellor criticised the intention to abolish extended annual leave for minors. This amendment would have reduced the rest time of hundreds of minors working

throughout the year. In comparison to adults, minors need more rest, and they should also have sufficient time for self-development and acquiring social skills. The UN Convention on the Rights of the Child underlines the importance of rest for the development of minors.

The Ministry of Social Affairs agreed with the Chancellor and removed the amendment reducing the annual leave of minors from the Draft Act.

7. Lowering the age of voting, and political campaigning in schools

At the municipal council elections in October 2017, young people at the age of 16 and 17 have been for the first time given the right to vote. To date, only a handful of European countries have applied such an exceptional extension of the right to vote. This change helps better involve minors in the life of society, even though lowering the voting age also entails some risks.

School-age children and young people spend most of their day at school. During that time, they depend to a large extent on school staff, their beliefs and the role-model they offer. Considering that the heads and staff of many educational institutions are members of political parties or election coalitions and run in elections, it is essential to observe that all school staff respect the principle of neutrality at school.

School staff may not impose their own political views on young people. However, this does not mean that there is no place at all for politics at school. School is a place that should offer a balanced picture of different ideologies and political views.

It is welcome that, prior to elections, school pupils are told about issues relating to elections, and that discussions, information days and debates are organised. In doing so, it is important not to give preference to any ideology, political party or candidate, but to introduce different approaches. Active management of events organised at school is required, and these should be open to different parties, election coalitions, and independent candidates. It is equally important that the focus of these discussions should be on substantive issues, platforms and ideological differences. The school bears responsibility for the events it organises, so that it is also possible to restrict political campaigning, distribution of paraphernalia, hiring of new members, and other similar activities, at school.

In order to formulate these principles and provide guidance to heads of educational institutions in organising election activities and ensuring impartiality,

the Chancellor helped the Ministry of Education and Research draw up guidelines. In a situation where legislation is absent or a generally recognised custom has developed, such guidelines help heads of schools more confidently deal with election-related issues. Pupils, school staff and parents can also use the guidelines in cases of doubt whether a school has failed to observe the principle of political neutrality.

The Chancellor initiated a project for young election monitors together with the Estonian National Youth Council, the Estonian School Student Councils' Union, and the Network of Estonian Non-profit Organisations. The aim is to educate young people politically, offer them a participatory experience, and contribute to ensuring neutrality in schools. In the frame of the project, several hundred young people received an overview of organising elections and explanations were given concerning election campaigning.

In pre-election weeks, young election monitors who have received the training check that schools comply with the principle of neutrality and, if necessary, notify violations to local authorities, the Ministry of Education and Research, the National Electoral Committee, and the Chancellor of Justice. Young people can also participate in organising elections as observers and as members of polling division committees. In this regard, recognition should be given to local authorities that are prepared to include minors in polling division committees. This helps to increase the trust of young people in government and, hopefully, will also raise their interest in developments in society.

8. Parental disputes, right of custody, right of access

Similarly to previous years, during this reporting period parents often asked the Chancellor about the right of custody and access to children, and payment of maintenance support. The Chancellor cannot interfere in disputes under private law, and with regard to such issues the Chancellor's advisers provide explanations to parents.

The large number of parental disputes and the fact that parents are unable to reach agreement with each other on issues concerning children is worrying. Recourse to the court for assigning the right of custody of a child should be the option of last resort when no solution can otherwise be found. The Chancellor believes that conciliation and intermediation should be made more accessible for parents, and they should be made aware of the existence of these services.

8.1. Enforcement proceedings in connection with children

To enforce the right of access to a child, the Code of Enforcement Procedure allows a penalty payment of 192–767 euros to be imposed on a parent who obstructs access and a penalty payment of up to 1917 euros if the penalty needs to be imposed repeatedly. However, if it appears that even ten or twenty penalty payment warnings have had no effect and the parent has been unable to gain access to the child, and the total amount of penalty is approximately 30 000 euros, the suspicion arises whether such action is reasonable and serves its purpose.

When imposing a penalty payment, it should be ascertained whether the parent obstructed access between the other parent and the child during the period set in the penalty warning, and the decision should not be based on the mere fact that no access took place between the child and the parent at the time, the place and in the manner set out in the court ruling. Each instance of enforcement of the right of access should take account of the circumstances arising from the child, the parent's intentional obstructive action or inaction, and whether imposing the penalty payment would help to ensure that a visit between the child and the other parent takes place. Therefore, a penalty payment should serve its purpose. Meaningless proceedings are prohibited and unlawful as they disproportionately interfere in the rights of individuals.

The Chancellor found that the amount of the penalty payment that has been rigidly fixed in the law is not in line with the best interests of the child, and proposed that bailiffs be given the discretion to find the most appropriate solution in each specific case. Moreover, the actual solution to a problem might not lie in imposing a penalty payment but in conciliating the parents.

A petitioner complained to the Chancellor that legislation favours the situation where, upon separation, the parent living with the child begins to hold back the other parent and abuse parental rights. This is not how it should be and is also not the idea of any laws.

Both parents have equal rights and duties in respect of their common child, and their actions must proceed from the best interests of the child. The best solution for the child can be found in agreement between the parents and not through judicial or enforcement proceedings. Clearly, a situation where one parent lives with the child and the other is only obliged to pay maintenance support cannot satisfy both parties. However, the attitude "the children are mine, not ours", as described in the petition, is developed only by parents who abuse their rights.

The Chancellor received a case where several separate enforcement proceedings were initiated to enforce a court decision concerning maintenance support, where maintenance was ordered for several children of the same debtor. This also leads to double fees in enforcement proceedings. The practice by bailiffs where one bailiff initiates enforcement proceedings (along with imposition of a new enforcement fee) to claim debts of enforcement costs for another bailiff's proceedings is questionable. A solution of this kind also results in additional costs. Similarly unreasonable seems the situation where in maintenance support enforcement proceedings, payment of enforcement costs is sought from the child receiving maintenance as the claimant.

The Chancellor is concerned about the high number of maintenance support debtors in Estonia. A large number of parents (approximately 8900 debtors) do not pay maintenance for their child (over 11 000 children), and the total amount of maintenance debts is up to 52 million euros. On that basis, the Chancellor considers as understandable the plan by the Ministry of Justice to harshen measures imposed on maintenance support debtors. Even though the measures planned in the Draft Act have an unusually strong impact on maintenance debtors as well as third parties, the move is understandable in view of the current extent of the problem. Maintenance support is intended to contribute to a child's daily life and subsistence, so that it is indeed important that the child should receive prompt maintenance support.

9. Prevention in the field of rights of children and young people

The Chancellor's tasks also include raising awareness of the rights of children and strengthening the position of children in society as active participants and contributors. As Ombudsman for Children, the Chancellor organises analytical studies and surveys concerning children's rights, and on that basis makes recommendations and proposals for improving the situation of children. The Ombudsman for Children represents the rights of children in the law-making process and organises a variety of training events and seminars on the rights of the child.

In order to encourage and support children's active participation in analysing and interpreting their rights and duties, an advisory body to the Ombudsman for Children has been established at the Chancellor's Office, comprising representatives of children's and youth organisations. During the reporting period, the advisory body to the Ombudsman for Children convened once to discuss the rights and duties of children in interactions with the police. The Chancellor's advisers presented an overview of the rules regulating the field, and young people shared their ideas and experiences. A joint discussion took place on issues that

could be explained in the guidance material being prepared by the Chancellor. The young people also helped to make the text of the guidelines more accessible for children.

During the reporting period, the Chancellor's advisers carried out several training events on the rights of the child and delivered lectures in kindergartens and schools. For child protection and social welfare workers, the advisers explained rights of custody and access, as well as rules and international recommendations regulating separation of children from their family. In order to improve the awareness of the Russian-speaking community about issues relating to the rights of children, the Chancellor's advisers met with local Russian-speaking journalists and representatives of educational institutions and youth organisations.

Also during this reporting period, the children's and youth film festival 'Just Film' held as part of the PÖFF Film Festival included a special programme on the rights of the child, prepared in cooperation between Just Film, the Chancellor of Justice, the Ministry of Justice, the Ministry of Social Affairs, and the Estonian Union for Child Welfare. A special programme on the rights of the child has become a tradition and this year featured for the sixth time.

Screening of selected films was followed by debates with experts and well-known personalities analysing the films together with viewers. The films and debates focused on topics such as ill-treatment, sexual offences, stereotypes, gender roles, exclusion driven by special needs, development of the sexual self-concept, loneliness, poverty, and humiliation.

The Ombudsman for Children can further contribute to making society more child-friendly by recognising good people who have done something remarkable either together with children or for children. The merit awards event "Lastega ja lastele" (With and For Children), which was brought to life by organisations championing the interests of children, was held for the fourth time in 2017. The Office of the President of the Republic also joined the organising team. On the International Day for the Protection of Children, the President of the Republic, the Chancellor of Justice and the Minister of Social Affairs recognised those who have significantly contributed to the well-being of children through their new initiatives or long-term activities.