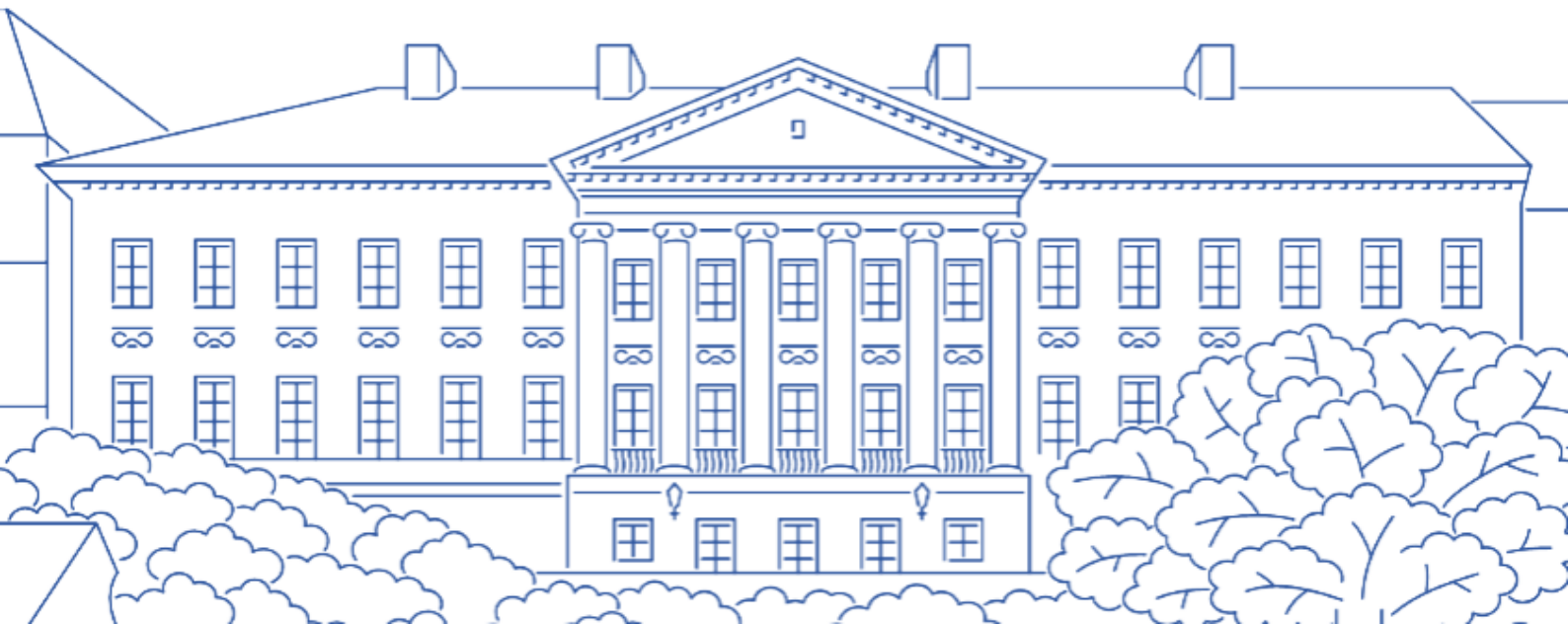




Õiguskantsler

**2019-2020 OVERVIEW OF THE  
CHANCELLOR OF JUSTICE ACTIVITIES:  
NATIONAL PREVENTIVE  
MECHANISM**

Tallinn 2020



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## Introduction

One of the tasks of the Chancellor of Justice is to ensure that people held in places of detention are treated in line with human dignity. To fulfil this task, the Chancellor's advisers carry out mostly unannounced visits to places of detention. The duty of regular inspection of places of detention is laid down by Article 4 of the [Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment](#).

A place of detention as an international concept means a place where a person may be deprived of their liberty and which they cannot leave at will. Under this concept, places of detention include, for example, prisons and expulsion centres for aliens, but also care homes providing 24-hour care and psychiatric hospitals providing involuntary treatment.

The emergency situation established to combat the spread of the coronavirus SARS-CoV-2 also affected organisation of inspection visits. This forced the Chancellor to revise her plans for inspection visits and find possibilities to do the work so as to protect the rights of people held in places of detention while not endangering their life and health. We were successful in this: the Chancellor's supervision of places of detention was not interrupted. During the inspection visits, the Chancellor's advisers used personal protective equipment (masks, face shields, gloves, etc.) – so it was possible to inspect places of detention even when the virus was widespread.

The Annual Report covers the period from 1 September 2019 to 31 August 2020.

### 1.1 Places of detention

#### Prisons

Tartu, Tallinn and Viru Prison are closed cell-based prisons with open prison units. In Estonian prisons, a total of approximately 2400 people are detained, of whom more than 400 people are remand detainees waiting for a court judgment, while the remainder are convicted prisoners serving a sentence. Prisoners include about a hundred women and about ten minors. Also 39 prisoners are serving a life sentence in prison, and about 160 people are in an open prison unit.

During the reporting year, the Chancellor focused attention primarily on open prisons and possibilities of prisoners to be in contact with their family members.

During the reporting year, the Chancellor's advisers inspected three [open prisons](#). The Chancellor noted that, in order to find work and facilitate searching for routes to move

between the place of work and the prison, prisoners in an open prison unit would need to use a computer and the internet. Prisoners outside the prison would also need to use a mobile phone, so as to be able to notify the prison, for example, when their return to the prison is delayed due to an accident or technical failure of a public transport vehicle. Unfortunately, so far prisoners in an open prison still have no possibility to use the internet or a mobile phone, even though the Chancellor already [drew attention](#) to the problem in 2016.

In the female prison section of the open prison unit of Tallinn Prison, the Chancellor's advisers found a hostile atmosphere. Immediately after the visit, the prison was asked to closely monitor the situation and help to alleviate tensions between prisoners. The Chancellor also emphasised that if a prisoner is stripped completely for a search, this must always be based on a risk assessment arising from a particular prisoner's behaviour. It is not justified if all prisoners without exception are searched like this when returning from work. This is demeaning to the dignity of prisoners.

The unit for mothers and children in [Tallinn Prison](#), however, left a good impression. Nevertheless, the prison should make an effort to create an environment which is as home-like as possible and protects the health and well-being of children. For example, the children's play corner in the unit could be made safer, more convenient and contribute more to children's development, and going outdoors could be made easier for mothers and children. The Chancellor stressed that officers and staff must always give primary consideration to the interests of children in the unit. During the inspection visit, there was only one mother with a child in the unit, and her opportunities for contact with other adults were scarce. The prison could create more opportunities for substantive communication for the mother and enable her to participate in social programmes and free-time activities. To do this, it must be possible to leave the child in the care of a suitable person.

The Chancellor paid much attention to opportunities for contact with the family during [short-term](#) and [long-term visits](#) in Tallinn Prison. The prison should not make a prisoner's meetings with the family inconvenient by carrying out unjustified searches and creating obstacles such as glass partitions. Visitors are intimidated by having to fully undress every time for a search. Such a search seriously interferes with everyone's rights, especially the rights of a child, so that it should be justified by specific circumstances. A sound reason might be, for example, that a person has previously tried to smuggle prohibited items into the prison or the prison has obtained information that the person is carrying a prohibited item.

Staff admitting visitors at the first visitor entrance to Tallinn Prison were terse and strict. Communication with children coming for a visit could have been better. Visiting times did not match the public transport schedule, so that visitors had to arrive quite a while

before the visit and parents with small children were forced to wait for a long time in the prison.

The Chancellor has traditionally emphasised the fact that a positive experience gained during visits between a prisoner and their family members strengthens family ties and reduces the risk of committing new criminal offences.

Time and again, the Chancellor has to deal with complaints that a person is forced to wait for a court judgment for a long time in prison. In one [case](#) a petitioner had been held in custody for more than four years. The Chancellor reminded the prison that, in order to reduce the harmful effects of long custody pending trial, the prison must offer meaningful activities outside the cell to these people. That is, detainees should be given an opportunity to work, acquire an education, participate in social programmes, do sports, etc. If possible, a person who has spent a long time in custody pending trial should not be placed in a cell alone.

### **Police and Border Guard Board detention facilities**

Among the detention facilities of the Police and Border Guard Board, the Chancellor inspected four police detention centres during the reporting year: the [detention centres of Valga and Võru police station](#) in the South Prefecture, the [detention centre of Rakvere police station](#) in the East Prefecture, and the [Tallinn police detention centre](#). As usual, the Chancellor checked the living conditions in police detention centres. Although many detention centres have been renovated and refurbished, some police detention centres, such as the detention centre in Valga, are still in a poor state of repair, and the Chancellor has repeatedly drawn attention to the poor living conditions there. Such cells may only be used short-term. No exercise yard meeting requirements exists in Valga police detention centre or in the relatively new Võru police detention centre, while the exercise yard in Rakvere police detention centre has no benches. Forced ventilation in the Võru police detention centre needs to be improved. The Chancellor recommended that, with a view to ensuring better safety, Rakvere police detention centre should consider putting Plexiglass in windows in ordinary cells in order to protect windows from being broken.

At the conclusion of each inspection visit, it had to be underlined that if a cell is under 24-hour video surveillance its justifiability needs to be assessed on a case-by-case basis. Activities in the hygiene corner of a cell may not be visible to others, and even police officers must have a compelling need to see the hygiene corner. In Tallinn police detention centre it was found that when a detainee is searched in the admission room and is undressed for this purpose, those activities may be caught in the range of vision of a video camera and of a male officer. That activity must be justified and may not be done in a manner demeaning of a detainee's dignity.

In Tallinn police detention centre, detainees cannot speak on the phone so that they are not overheard. In the Chancellor's opinion, it would be good if detainees could also make their essential family or work calls without a one-day advance notice and exceptionally also on another day in addition to the days of week designated for this. A possibility should also be found that those detainees whose next of kin cannot send them a call card to the detention centre could also acquire a call card with their own money with assistance from the Police and Border Guard Board. In some police detention centres, detainees cannot read national daily papers even though the law entitles them to this.

On several occasions, the Chancellor also had to check the arrangement of provision of medical care in the detention facilities of the Police and Border Guard Board. Applications for a doctor's appointment submitted by detainees should not be seen by any other staff apart from medical professionals. An appointment with a medical professional should always take place outside the hearing range of third parties and, as a rule, should also not be observed by a police officer. A medical professional must have an overview of medication given to a detainee by a guard upon instruction by the medical professional. When investigating a complaint, the Chancellor reached the [conclusion](#) that access to medical care may be impeded in Tallinn police detention centre. No effective information exchange took place between the staff of the detention centre and medical professionals, so that information about a detainee with health problems admitted to the detention centre did not move sufficiently quickly.

Under § 3(3) of the Government Regulation No 40 of 6 December 2013, in procuring medication prescribed for an applicant for international protection or a person subject to expulsion, the needs of the person and reasonable use of money are observed. The Chancellor was asked to [verify](#) the constitutionality of that provision. She concluded that the provision could be interpreted in a constitutionally compliant manner. When procuring medication, the primary consideration should be an assessment by a medical professional as to whether the specific medication is necessary, i.e. whether a medical indication for it exists. The principle of reasonable use of money can be interpreted so that from medicines containing active substance(s) prescribed to an alien by a medical professional the medicine which is best in terms of price and availability is procured. An alien may not be deprived of medication with active substance(s) prescribed by a medical professional if that medication is necessary for provision of a service on the [list of healthcare services of the Health Insurance Fund](#).

## 1.2 Healthcare services

During the reporting period, the Chancellor inspected four healthcare institutions: [the department of child psychiatry of the psychiatric clinic of Viljandi Hospital](#); [the psychiatric clinic of Pärnu Hospital](#); [Wismari Hospital](#); and [the psychiatric department of the South Estonian Hospital](#). Problems were to a large extent the same as had been

noted in previous years: the treatment environment needs to be improved, use of means of restraint should be better documented, and the necessity for video surveillance should be weighed more carefully. Several hospitals also needed to be reminded that if a person does not agree to stay in hospital they can be held against their will only in compliance with the rules for involuntary psychiatric care.

The Chancellor asked Viljandi Hospital to properly record all instances of restraint in the department of child psychiatry and enter them in a separate register. The psychiatric clinic of Pärnu Hospital was recommended to justify the need for use of means of restraint clearly and with the required regularity.

The Chancellor also asked all the hospitals inspected to improve the treatment environment. Viljandi Hospital must offer young people in the department of child psychiatry more opportunities for sports outdoors in the yard and acquire play facilities for children in the yard. The psychiatric clinic of Pärnu Hospital should change the furnishings in the acute treatment unit and the unit for patients with unstable remission, so as to be able to offer a therapeutic environment to the patients. The Chancellor asked Wismari Hospital to offer patients more diverse opportunities for spending free time and for therapeutic activities. The psychiatric department of the South Estonian Hospital was reminded that it should be possible to lock the toilet doors and that letter boxes for patients' proposals and complaints should be placed in the department. Portable devices that can be used to call assistance should be acquired for staff in the South Estonian Hospital.

Wismari Hospital and the South Estonian Hospital had to be reminded that if a doctor does not allow a patient to leave the hospital at will, a decision on involuntary treatment must always be drawn up on this. A patient receiving treatment voluntarily must be able to leave a hospital at will. In the recommendations sent to Viljandi Hospital, the Chancellor emphasised that if a patient who is a minor does not agree to treatment or if means of restraint need to be used because of their illness, a decision on involuntary treatment must be drawn up on this.

Pärnu, Wismari and the South Estonian Hospital had problems with use of excessive video surveillance and notification of video surveillance. In general rooms and all wards of the psychiatric clinic of Pärnu Hospital, video surveillance with image recording is used. In Wismari Hospital and the psychiatric department of the South Estonian Hospital, some wards are under video surveillance. Constant video monitoring of a patient may excessively interfere with their privacy. Therefore, video surveillance in a ward may only be used if this is unavoidably necessary in view of a patient's health condition. Patients must also be properly notified of video surveillance.



## 1.3 Care homes

### General care homes

During her whole term in office, the Chancellor has helped to make sure that a decent life and the opportunity to receive competent care and assistance is ensured to people who are no longer able to cope on their own at home, due either to poor health or an unsuitable living environment. This kind of assistance is offered in [general care homes](#). Most residents in general care homes are elderly people, but also younger people may end up in a care home as a result of illness or injury. According to [data](#) from the Ministry of Social Affairs, 13 048 people used the general care service in 2019. Estonia has approximately 180 general care homes with over 9000 places. At the end of 2019, 8878 people were living in general care homes.

In October 2019, the Chancellor organised a [conference](#) on the well-being and rights of elderly people. The debates at the conference dealt with problems of organisation of care, issues of care of patients with a dementia diagnosis, and information was offered on modern technological solutions that could be used in care homes.

During the reporting year the Chancellor's advisers inspected the activities of three care homes providing the general care service: [OÜ Häcke Kohtla-Järve Care Home](#), [Tammiste Home](#) and [Taheva Sanatorium](#). In connection with the spread of the SARS-CoV-2 virus, the previous plan for inspection visits had to be changed. Inspection visits also focused on compliance with precautionary measures for combating the spread of the infectious disease.

The year 2020 brought several changes to general care. Since 1 January 2020, all general care homes must have an operating licence, and the requirement of education for care workers also became applicable. As of 2020, the [nursing care service in general care homes](#) is financed by the Health Insurance Fund. Two years ago the Chancellor expressed concern that healthcare services were not sufficiently accessible to residents of care homes. The nursing care service financed by the Health Insurance Fund brings healthcare services closer to care home residents and helps to ensure consistent monitoring of the health of these people. A medical nurse was employed by all the care homes inspected during the reporting year.

Heads of the care homes inspected considered staff training and compliance with preparation requirements for carers to be important issues. Following the example of management, acquiring new knowledge and skills is also valued by staff. This helps to develop values that respect the residents of care homes and to improve service quality. Good cooperation exists between care homes and educational institutions, and training in the workplace is also offered.

The main problems in care homes relate to ensuring decent living conditions and privacy, the number of staff, proper preparation of care plans, unlawful restriction of people's freedom of movement, and scarcity of opportunities for spending free time. Many of these problems have already been known in [previous years](#).

Residents in general care homes are sometimes locked in their living room or another room not suitable for seclusion. The law does not allow this and, moreover, this poses a risk to the health of those secluded. A general care home service is voluntary, it is provided at a person's own request and a person may not be held in a general care home against their will.

A major problem in all the care homes inspected is shortage of staff, which can in particular be felt in the evening and at night. Although the [Social Welfare Act](#) does not say how many carers must be at work when providing the general care service, the law requires that an operator of a care home must ensure sufficient staff numbers, so that in view of staff preparation and workload it is possible to offer people the necessary care and assistance. When planning staff numbers, it is necessary to assess how much assistance and attention the residents of a care home need, and also consider other circumstances (particular features of buildings, the existence of an assistance call system, etc.). Care home residents are in a vulnerable situation due to their poor health and/or advanced age. Therefore, in a [judgment](#) delivered in 2019, the Supreme Court emphasised that the operator of a care home has an elevated duty of care in respect of residents. If staff are overburdened they do not have sufficient attention for all care home residents (for example, to empty bedpans and change diapers without delay), which may lead to inhumane treatment.

A general problem is that care plans are not properly filled out. A care plan is an effective tool for staff in their day-to-day work, but for this the plan must be filled out clearly, thoroughly and with careful consideration. A care plan must offer easy access to information about a resident's ability to cope, as well as activities planned for preserving or improving a person's health. A care plan should also describe what activities could be offered to a person with a view to making their days more meaningful. The Chancellor recommended that, inter alia, the [explanatory memorandum to the Social Welfare Act](#), explaining the principles of drawing up a care plan, could be consulted while preparing and assessing a care plan.

### **Special care homes**

The twenty-four-hour special care service is intended for people with mental disorders or severe or profound disability who are in need of daily guidance, counselling, assistance, and supervision due to their mental health disorders.

The 24-hour special care service is provided to 2241 people in 47 locations. During the reporting year, the Chancellor's advisers carried out an inspection visit to [Vääna-Viti Home](#) operated by AS Hoolekandeteenused, and also inspected the activities of the [non-profit association South-Estonian Special Care Services Centre](#), which provides a 24-hour special care service, inter alia, to people with a severe, profound or permanent mental disorder with unstable remission. An inspection visit was also carried out to [Taheva Sanatorium](#) which provides a special care service as well as a general care home service.

There is an increasing wish to offer people with mental health disorders more of a home-like living environment, and many special care homes have moved to smaller family-house types of buildings. For example, Vääna-Viti Home operates in this kind of building. New family homes were also built for 43 residents of the South-Estonian Special Care Services Centre. These houses built in Võru town have home-like living conditions, and people with challenged mobility can move around more easily in these houses.

One of the main problems in special care homes [in recent years](#) is shortage of staff. It is not rare that even though a care home has the statutorily required number of activity supervisors this is not sufficient to take care of people with an increased need for care and assistance and people with complicated mental disorders or to offer an individual approach and ensure a safe living environment. Activity supervisors who spend most time dealing with residents must also cook and clean the rooms in addition to caring for people. In several care homes, in the evenings and at night the staff member on duty must move between different units of the care home, so that some residents are temporarily left without supervision.

In line with the requirements entering into force at the beginning of 2020, to work as an activity supervisor providing special care it is no longer merely sufficient that the person has registered for training. The necessary training must in any case be completed. Unfortunately, several activity supervisors in the institutions inspected had not completed the training required by law. Untrained staff might not know how to guide and support the development of people in their care or how to cope with agitated people. The Chancellor recommended that the necessary training be quickly arranged.

The freedom of movement of a person receiving the 24-hour special care service under a court ruling may only be restricted in a situation of danger (see the [Social Welfare Act](#)). That person may be placed in a proper seclusion room for up to three hours until arrival of the ambulance or the police. However, not all care homes comply with this requirement, and the freedom of movement of residents is restricted inadmissibly. Due to absence of a proper seclusion room, agitated people have been taken to calm down in their own room or another room not adjusted for seclusion. This is not safe. When

documenting a person's placement in a seclusion room, some care homes have failed to record the required data based on which it is later possible to verify whether placement in the seclusion room was justified. The Chancellor reminded the care homes that the freedom of movement of a person receiving the 24-hour special care service under a court ruling may only be restricted for a brief period by placement in a seclusion room compatible with the requirements, and also explained once again the requirements for documentation.

In care homes providing the special care service, patients are sometimes given medication not mentioned in the treatment scheme prescribed by a doctor. The Chancellor's advisers have also found in care homes medication of patients who had already left the care home, or medication left over due to a change in the treatment scheme, even though such medication should have been properly destroyed. The Chancellor explained to the care homes that strict rules for handling medication have to be complied with. Care homes must also ensure nursing care to the extent required by law, and activities carried out while providing nursing care must be properly documented.

To end on a positive note: observations made during inspection visits allow for the conclusion that special care institutions increasingly think how care home residents could spend their time meaningfully and so that it is contributing to their development. More opportunities for activities are offered (such as hobby groups, plots for gardening, work-related activities), as well as enabling residents to actively participate in community life. Care homes should make even more effort to involve people in dynamic activities and activities contributing to development of work skills, which would help residents spend time by engaging in their preferred activities.

## **1.4 Childcare institutions**

The Chancellor inspected one family house in Tallinn Children's Home. The inspection revealed that some children often did not stay in the family house. Resolving such situations is extremely complicated. Family parents need knowledge to be able to effectively support each child with a crisis or traumatic experience. The Chancellor recommended that family parents should actively participate in training events. Apart from notifying the police, family parents themselves should also try to seek contact with a child who has left the family house and to show that people at the house are worried about the child. The Chancellor also recommended that the family house, in cooperation with the city government as guardian of the children, should offer children the necessary counselling and therapy. This, too, could help children better adapt to life in the family house and stay at the house.

The inspection revealed that some children had asked the family parent to lock them in their room so as not to be disturbed by other children at night. Children could not

lock or unlock the door of their room from the inside. The Chancellor found that the wish of the staff to ensure the safety of all children could be understood but locking the door of a room without the child being able to unlock it from the inside is not a suitable way to resolve this problem. In a locked room a child's life and health may be at risk, for example if a fire breaks out or the child has a sudden fit of illness. Rather, if necessary, the family house could install a type of lock which a child can lock themselves while in the room (for example, a thumb turn lock) but which the family parent can open from the outside.