

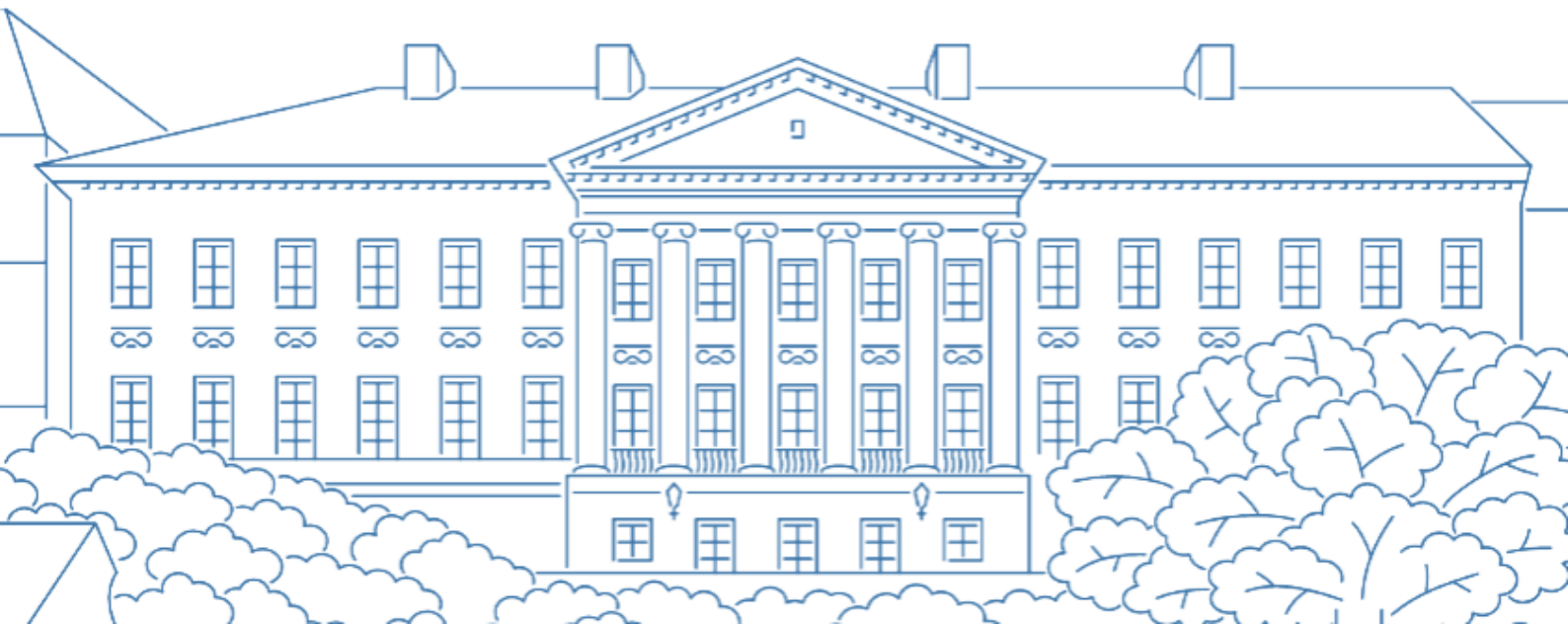


Õiguskantsler

2020/2021 OVERVIEW OF THE CHANCELLOR OF JUSTICE OF ESTONIA ACTIVITIES

**NATIONAL PREVENTIVE MECHANISM
FOR ILL-TREATMENT**

Tallinn 2022



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Content

Foreword.....	4
Special care homes.....	6
Places of detention for foreigners.....	8
Closed childcare institutions.....	10
Psychiatric hospitals.....	11
Prisons.....	12
General care homes.....	14

Foreword

One of the Chancellor of Justice's duties involves regularly visiting places of detention in order to check whether people there are treated with dignity.

Estonia undertook this obligation when acceding to the [Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment](#).

Under the Protocol, a place of detention means a place where persons are or may be deprived of their liberty, either by virtue of an order by a public authority or at its instigation or with its consent or acquiescence. Thus, places of detention comprise not only prisons or police detention centres. They also include hospitals providing involuntary psychiatric care, closed childcare institutions, as well as care homes from where people cannot leave at will. Several hundred places of detention operate in Estonia.

The aim of an inspection visit is to collect information about how people at the place of detention are treated. Inspecting rooms, talking with people and examining documents offers the Chancellor a possibility to assess whether people are provided enough and regular food, whether they have clean clothes, a bed to sleep in, whether living rooms are warm and clean and whether people are offered meaningful recreational activities. When providing these assessments, during inspection visits the Chancellor's advisers proceed from the requirements defined in Estonian legislation and international conventions accepted by Estonia.

The Chancellor has inspected places of detention for as long as 15 years. Living conditions in places of detention have greatly improved over the years. A number of new and renovated care homes and hospitals have been opened. There are not many countries in the world whose oldest prison facilities currently in use date back only 20 years.

However, some problems have remained unresolved over the years. Similarly to many other areas of life, places of detention are permanently plagued by shortage of professional staff. Both prisons and care homes are confronted with shortage of labour. This work requires dedication and proper training from people. The issue lies primarily in resources: money and people. As long as no additional resources are found, for example, the quality of service in care homes cannot improve substantially.

The Chancellor's inspection visits and recommendations help both people staying in places of detention as well as the staff, so that everyone there could enjoy a quality and dignified living and working environment. Summaries of inspection visits also help to let those entitled to allocate resources and generally organise the sphere know about problems – the addressees include local authorities, government agencies, the Government, and the parliament.

Special care homes

During the reporting year, the Chancellor inspected [Kodijärve Home](#), [Sillamäe Home](#) and [Merimetsa unit](#) operated by AS Hoolekandeteenused. The Chancellor also inspected [Koeru Care Centre Foundation](#) and [Care Home Saaremaa Valss Foundation](#), providing both the general care service as well as the 24-hour special care service. 24-hour special care is intended for people with mental disorders in need of guidance, counselling, assistance and supervision in their everyday life.

Fortunately, in 24-hour special care the era of large Soviet-period care homes in a poor state of repair is coming to an end in Estonia. Kodijärve Home and Merimetsa unit are new, modern, purpose-built care homes offering good living conditions and living arrangements similar to family life. Nevertheless, for instance in Sillamäe Home, buildings in need of repair stand side-by-side with new ones.

Other concerns are mostly the same as in previous years. The most important staff in such care homes are activity supervisors who, however, are forced to deal with various matters and whose numbers are small. This means that it is not possible to take into account the individual needs of all care home residents, offer them sufficient rehabilitative activities or create an environment which is safe for all.

Sometimes the minimum statutorily required staff numbers are not sufficient to enable activity supervisors to carry out all the tasks entrusted to them and also feel safe while doing so. A staff feeling of safety is especially important in Sillamäe Home and Merimetsa unit whose residents may pose a danger to the well-being of themselves or others and who have been referred to the care home under a court order.

Not all staff have completed the training needed for working with people entrusted to their care. Shortage of staff often also means that it is difficult to offer meaningful activities for residents every day.

The law allows that an agitated resident may be placed in a seclusion room for a short time in a care home offering 24-hour special care. The Chancellor emphasises that a seclusion room must be secure, safe, lit, at the required temperature and with appropriate furnishings. A person placed in a seclusion room must be able to use the toilet and they must be under constant direct observation.

One worry was a violation by the state-owned company AS Hoolekandeteenused. Despite the Chancellor's repeated criticism, an unlawful situation has persisted for years without any significant change. The Social Welfare Act lays down specific requirements for the scope of nursing care services to be provided to care home residents. AS Hoolekandeteenused as a state-owned company should be particularly heedful about complying with statutory requirements. Unfortunately, AS Hoolekandeteenused has for years failed to ensure nursing care to the extent required by law. This is not an isolated violation but conscious and deliberate behaviour. It is rather common that contracts for provision of nursing care are concluded for the extent of service not corresponding to the minimum statutory requirements.

Such systematic and conscious violation harms other care homes that comply with requirements and thus incur greater expense. This violation distorts the market of already scarce service providers suffering from a severe shortage of care home places. It would be time for the Ministry of Social Affairs to stop this violation and critically assess the management of the company.

Places of detention for foreigners

Among the places of detention for foreigners, the Chancellor [inspected](#) the detention centre of the law enforcement bureau of the North Prefecture of the Police and Border Guard Board (PBGB) and offered several recommendations as a result.

The detention centre is not a penal institution but is used to detain foreigners under a court order who are due to be expelled from Estonia, as well as some applicants for international protection.

The detention centre operates in buildings taken into use in 2018 and the grounds include a spacious outdoor area. The Chancellor found that sports fields in the outdoor area could be used considerably more effectively than at present.

All rooms in the detention centre have a separate toilet and a shower. The Chancellor recommended removing thick metal grilles concealing daylight in windows in some rooms and replacing them with another adequate solution such as impact-resistant glass.

The Chancellor appealed to the staff of the centre to use video surveillance in a person's room only if this is indeed necessary in view of their behaviour.

In summaries of inspection visits as well as in her replies to [petitions by individuals](#), the Chancellor has emphasised that people in the detention centre should be able to spend time meaningfully and communicate with their next of kin. Residents of the centre should be able to communicate with their next of kin via video calls, and consideration should be given to allowing people to use their own mobile phone for calls. The Chancellor has asked the PBGB to deal with making information available for people living in the centre as well as creating possibilities for them to communicate.

A foreigner arriving at the centre is segregated in a separate room for some time. This medical isolation should indeed last only as long as it is medically justified. The health check carried out upon arrival should be thorough and well documented. This enables identifying a person's complaints and health problems as well as possible injuries. The health of a foreigner on hunger strike should be carefully monitored. Based on the opinion of an expert participating in the inspection visit, the Chancellor also offered some recommendations for future provision of medical services in the centre.

Some of the Chancellor's proposals also concerned treatment of foreigners detained at the Estonian border. In her letter sent to the [PBGB and Tallinn Airport](#), the Chancellor explained that foreigners kept in the transit zone at Tallinn Airport who have been denied entry to Estonia do not necessarily have to be placed in the detention centre. First and foremost, this applies if a person departs Estonia in a few hours and they do not need to be taken to the detention centre, for example, for provision of medical care.

The Chancellor [emphasised](#) that if police officers detain a person in wet clothes during a border crossing, the person must be provided with dry clothes and footwear as soon as possible. Border guard stations must have a stock of spare clothes and footwear for this purpose.

Closed childcare institutions

During this reporting year, the Chancellor inspected the activities of the [Valgejõe Study Centre of Maarjamaa Education College \(Maarjamaa Hariduskolleegium\)](#). Maarjamaa Education College operates at two study centres. The Chancellor visited the [Emajõe Study Centre](#) during the previous reporting year.

Maarjamaa Education College is an institution intended for living and study by young people referred to a closed childcare institution under court order so as to enable their all-round development and successful coping with support from the childcare institution without harming themselves and others.

Both study centres use modern premises. Staff at the Valgejõe Study Centre of Maarjamaa Education College have been able to establish a good relationship with the children at the centre. The children were particularly satisfied with the psychologist.

The Chancellor asked the centre to ensure that young people studying there would receive the necessary therapy and support from a psychologist speaking their mother tongue, and that assistance from a psychologist is offered as soon as possible after a young person's arrival at the centre. A careful approach is needed in cases where, for reasons of security, a pupil has been placed either in a seclusion room or for a longer period accommodated separately from other young people. For a young person separated from others for a long time, the study centre must have prepared a medical treatment and rehabilitation plan to help them return to the company of other young people as quickly as possible.

Young people considered it very important that they had been able to use their mobile phones at the centre, especially when direct meetings with the family were restricted (e.g. because of the spread of the coronavirus). The Chancellor appealed to the staff at the centre that the rules for use of the telephone and contact with the family must be clear and fixed and must be complied with. The minimum time allowed for using the phone may not be reduced for the purpose of influencing a pupil, and home visits may not be restricted.

Psychiatric hospitals

During the reporting year, the Chancellor inspected two psychiatric hospitals: [the psychiatric unit at Kuressaare Hospital Foundation](#) and the [psychiatric clinic of the North Estonia Medical Centre](#). The psychiatric unit of Kuressaare Hospital has now moved to renovated premises. However, the situation at the psychiatric clinic of the North Estonia Medical Centre proves that it is extremely complicated to provide modern psychiatric care respecting a person's rights and dignity in outdated rooms that have not been renewed in line with modern requirements.

The Chancellor has always drawn the attention of hospitals to the fact that, if a person needs to be restrained in a psychiatric hospital, then a medical professional must constantly be present with the restrained person and monitor their condition.

Restraint means controlling a violent patient by physical force, mechanical equipment allowed for doing so, or appropriate medication. Of course, in doing so no excessive force or inappropriate aids (such as handcuffs) may be used. Medical professionals must record in detail, inter alia, injuries caused during restraint and any changes in the condition of a person under restraint so as to be clear why it was decided to continue restraint. Chemical restraint (i.e. restraint by using medication) must also be documented. Subsequently, a conversation with the patient should be carried out in order to discuss the events leading to restraint.

Use of video surveillance in patients' wards without a direct reason is prohibited. Video surveillance is only justified if a person needs to be monitored more closely due to their mental health and if someone actually does directly view the video feed and intervene if necessary.

Psychiatric hospitals must also pay attention to the possibility for patients to maintain contact and meet with their next of kin while under treatment. The hospital cannot prescribe who a person maintains contact with.

Prisons

In the summaries of inspection visits to [Viru Prison](#) and [Tallinn Prison](#), the Chancellor once again dealt with problems of solitary confinement. She emphasised that a nurse or a doctor must monitor the health of prisoners in solitary confinement on a daily basis, and a person in solitary confinement must also be able to have at least two hours of meaningful communication a day. A prison must actively deal with people held in an isolated locked cell in order to bring them out of solitary confinement as soon as possible. In this regard, an individual action plan for return from solitary confinement must be prepared for every inmate held in an isolated locked cell.

Lengthy solitary confinement is often related to a disciplinary punishment stipulating placement in a disciplinary cell. On the same issue, at the request of the Supreme Court, the Chancellor submitted her [opinion](#) in administrative case [No 3-18-1895](#). The Chancellor explained that any solitary confinement may pose a harmful effect on a person and alleviating it necessarily involves reducing the statutorily allowed maximum duration of a disciplinary confinement punishment. Peaceful refusal to work does not constitute such a serious violation as to impose a disciplinary confinement punishment for it on someone as a measure of last resort.

The Ministry of Justice asked for the Chancellor's opinion on a [Draft Act](#) intended to reduce periods of disciplinary confinement and lift the accompanying complete ban on visits. Unfortunately, the Chancellor's [proposal in 2014](#) to change the legislative provisions on the detention requirements for remand prisoners has still not been taken into account.

In summaries of inspection visits, the Chancellor noted that even though all the prison buildings in Estonia are new and modern, attention should also be paid to living conditions in prisons. Exercise areas must have benches for rest and training equipment, and windows should also be installed in exercise yards where this is possible in terms of engineering and without endangering prison security.

At the beginning of 2020, working arrangements of prison libraries were changed and books were distributed on shelves in different accommodation blocks. The Chancellor has explained to prisons and the Ministry of Justice that, after reorganisation, the selection of books for inmates has become significantly smaller.

In recent years, the Chancellor has paid much attention to the possibility for convicted and remand prisoners to maintain contact with their family and next of kin. In a summary of inspection visits to Viru and Tallinn prisons, the Chancellor emphasised that convicted and remand prisoners should also be able to communicate with their family via a video link. The Ministry of Justice drew up the relevant [Draft Act](#).

The Chancellor asked the Ministry of Justice to also review those provisions which may impose unjustified obstacles to contact with family and next of kin. For instance, serious consideration should be given to whether it is justified to charge a fee for using rooms for long-term visits.

The Chancellor [reminded](#) Tartu Prison that prison staff must be able to establish good contact with prisoners' next of kin, in particular children, and that children's needs and interests should be taken into account when setting conditions for visits. During short-term visits, family members should not be separated from a prisoner by a glass partition, and small children should be able to take along a favourite toy to a visit.

For a long time, the Chancellor has been concerned about how a search of family members arriving for a visit is arranged. She has [repeatedly](#) explained to prisons that children coming for a visit may not be forced to undergo a strip search. Tallinn Court of Appeal agreed with the Chancellor by holding (in case No [3-21-161](#)) that this procedure was unlawful.

Unfortunately, Tallinn Prison has continued its unlawful activity even after the court judgment entered into effect.

The Chancellor [assessed](#) how the prison service has investigated the circumstances of deaths occurring in prisons from September 2020 to September 2021. Suicides were investigated effectively and the prison internal audit service offered pertinent recommendations to prisons for avoiding deaths. The Chancellor underlined that prisons need more mental health specialists to prevent suicides and that a big problem is shortage of prison officers.

For the prison service it is significant that on 15 March 2022 the Supreme Court issued a judgment (in case [No 5-19-29](#)) holding that a person's impaired hearing below the required threshold cannot be an absolute impediment for employment in the prison service. Rules must enable a decision as to whether an officer with impaired hearing is able to perform their working duties or not.

General care homes

Every stage in a person's life should be characterised by the word "dignified". This could also be so in a situation where we need more external assistance for everyday coping. Therefore, the Chancellor regularly inspects the work of general care homes in Estonia.

This year, the Chancellor's advisers carried out inspection visits to [Kanepi Home](#) operated by the South-Estonian Care Centre Ltd, and to [Kose Home](#), [Koeru Care Home Foundation](#), [Care Home Saaremaa Valss Foundation](#), [Käru Südamekodu](#) operated by Südamekodu AS, and [Kohtla-Järve Care Home for the Elderly](#). The Chancellor also enquired how her previous recommendations had been complied with by the [care home of the non-profit association Paju Pansionaadid](#) and the [Nõlvaku care home of the Tartu Mental Health Care Centre](#).

Residents of general care homes are mostly people who are no longer able to cope on their own at home, due either to poor health or an unsuitable living environment, and therefore need constant support in their everyday activities. At the same time, among general care home residents are also younger people who cannot cope on their own at home as a result of illness or injury, or who are waiting there to be able to get a place in a special care home.

Over the years, more and more care home buildings have been remodelled and also made accessible for people with challenged mobility. Heads of care homes have begun to understand the importance of care plans and increasing efforts are being made to enable people under care to spend meaningful time.

For years general care homes have been plagued by shortage of staff. Although the law does not lay down strict requirements for staff numbers, it is clear that the number of properly trained staff must be sufficient in order to enable provision of quality care to people. This means that care workers must also have time to take residents for a walk outdoors and offer them diverse recreational activities. However, because of shortage of staff, often only an assistant staff member is left to deal with people under care even though that person lacks the necessary preparation. This is not how it should be because untrained staff might not know how to properly assess situations or how to act in high-anxiety moments by taking account of a resident's interests.

Probably shortage of staff also leads to inadmissible concessions in care. Bedridden persons must be turned after certain intervals and residents must be given a whole-body wash at least once a week. Certainly, hygiene and care procedures must be carried out in privacy. For this, a screen or a partition curtain must be available in a bedroom with several residents.

Often, residents are mostly left on their own in the evening and at night. A functional staff call system would be of great assistance in these cases, enabling calls for assistance, for example, in case of an accident (e.g. if someone falls) or if a bedridden person needs something.

A painful topic is related to locking people in their rooms. The law does not allow restricting people's freedom of movement in a general care home; moreover, leaving a person in a locked room may endanger their health. Those locked into their rooms mostly included people with problematic and unpredictable behaviour as well as those with a dementia diagnosis, who are difficult to handle. Naturally, the staff worry that a resident may wander off and get lost while moving around on their own, but other – lawful – possibilities exist for resolving such situations. Changing a care home's internal working arrangements or spatial planning, as well as increasing the number of carers, might be of assistance in this respect.

Breaches against storing and use of medication also occur. The Chancellor's advisers have found prescription medication in staff working rooms where it was not clear for whom the medication had been prescribed and how and to whom it was administered. Sometimes expired medication was not properly destroyed or medication was stored so that it could be easily accessible to people who are unable to understand on their own that using medication without a doctor's prescription is dangerous.

A follow-up inspection carried out in two care homes revealed that even though a few aspects had improved, some of the changes recommended by the Chancellor had not been implemented for various reasons. The care homes were still short of staff, people's freedom of movement was restricted, and a staff call system had still not been installed.