



Chancellor of Justice

2013 OVERVIEW OF THE CHANCELLOR OF JUSTICE ACTIVITIES

Chancellor of Justice as National Preventive Mechanism

Chancellor of Justice as Ombudsman for Children

Principle of Equality and Equal Treatment

Statistics of Proceedings

Tallinn 2014

OFFICE OF THE CHANCELLOR OF JUSTICE

8 KOHTU STREET

15193 TALLINN

Tel: 693 8400

Fax: 693 8401

www.oiguskantsler.ee

www.lasteombudsman.ee

T r a n s l a t i o n

Margus Puusepp

D e s i g n

AS Vaba Maa

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PART I

PART II

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PART I

CHANCELLOR OF JUSTICE AS NATIONAL PREVENTIVE MECHANISM

I. INTRODUCTION

The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) was adopted on 18 December 2002. Estonia signed the Protocol on 21 September 2004 and it entered into force in respect of Estonia on 17 January 2007. In Estonia, the Chancellor of Justice performs the functions of the national preventive mechanism since 18 February 2007.¹

What constitutes the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment (hereinafter also called ill-treatment) was explained in more detail in the Chancellor of Justice 2010 Overview². There it was also pointed out that the definition of torture established in § 122 of the current Penal Code of Estonia is not compatible, in the opinion of international organisations (e.g. the UN Committee against Torture and the Human Rights Committee³), with the definition of torture established under international conventions binding on Estonia. The Ministry of Justice initiated a Draft Act for amending the Penal Code and the relating legislation, § 290¹ of which will establish torture as a separate punishable criminal official misconduct. The Act for amending the Penal Code was adopted by the Riigikogu on 19 June 2014 and will enter into force on 1 January 2015.⁴

Previously, the European Court of Human Rights has found a violation of Article 3 (establishing a prohibition of inhuman or degrading treatment) of the European Convention on the Protection of Human Rights and Fundamental Freedoms by Estonia on three occasions.⁵ In 2013, two more judgments to this effect were made.⁶

Under the Optional Protocol, places of detention mean all places where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (Article 4 para 1). The notion of "deprivation of liberty" means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority (Article 4 para 2). In other words, in addition to state custodial institutions, places of detention include all other institutions, regardless of their form of ownership, where the liberty of persons is restricted by order of a public authority or with its consent or acquiescence and from where persons are not permitted to leave at will. Thus, places of detention include not only prisons and police detention centres but also closed wards at psychiatric hospitals, care homes, etc.⁷ For example, an indication that the fundamental right to liberty of recipients of nursing care services may be restricted with the knowledge of the state was found in the Health Board's 2011 analysis of the providers of nursing care services⁸, as well as in the 2011 annual summary of the incidents in nursing care compiled by the Estonian Patient Advocacy Association⁹. Inspection visits by the Chancellor of Justice have

1 See the Chancellor of Justice Act, § 1(7).

Available online: <https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/508012014001/consolide>.

2 See the Chancellor of Justice 2010 Overview, p 6.

Available online: http://oiguskantsler.ee/sites/default/files/overview_2010.pdf.

3 Conclusions and recommendations of the Committee against Torture. Estonia. 22 November 2007, CAT/C/EST/CO/4, p 8; Concluding observations of the Human Rights Committee. Estonia. 28 July 2010, CCPR/C/EST/CO/3, p 7.

4 Available online in Estonian: <https://www.riigiteataja.ee/akt/112072014005>.

5 European Court of Human Rights judgment of 8 November 2005 in case No 64812/01, *Alver v. Estonia*; judgment of 2 July 2009 in case No 41653/05, *Kotšetkov v. Estonia*; judgment of 29 May 2012 in cases No 16563/08, 40841/08, 8192/10 and 18656/10, *Julin v. Estonia*.

6 European Court of Human Rights judgment of 28 March 2013 in case No 10195/08, *Korobov and Others v. Estonia*; judgment of 19 December 2013 in case No 429/12, *Tunis v. Estonia*.

7 On distinctions between places of detention and the so-called open establishments, see the Chancellor's 2010 Overview, p 7. Available online: http://oiguskantsler.ee/sites/default/files/overview_2010.pdf.

8 Available online in Estonian:

http://www.terviseamet.ee/fileadmin/dok/Tervishoid/JO_tulemused_hooldusasutustes.pdf.

9 Available online in Estonian: <http://www.epcy.ee/public/files/KOKKUV%C3%95TE%20HOOLDUSRAVI%20JUHTUMITEST%20N%C3%84I%20DETEGA.pdf>.

shown that a risk of unlawful restriction of the fundamental right to liberty of the recipients of nursing care services indeed exists.

There are almost 150 establishments in Estonia qualifying as places of detention within the meaning of OPCAT. The majority of them are police detention facilities and social welfare institutions. The choice of the establishments to be inspected is made when drawing up the Chancellor's annual work plan, also laying down the time and type of the visits (i.e. announced or unannounced visits) and whether and which experts need to be involved in the visits. Naturally, the plan is drawn up subject to consideration that some scope is left for ad hoc visits. The Chancellor's choice of the establishments to be inspected is based first and foremost on the time passed from the previous visit (the aim is to inspect each establishment at least once every three years), the seriousness of problems posed by the particular facility in terms of the guarantee of fundamental rights, and circumstances having attracted the Chancellor's attention and requiring immediate verification (e.g. information obtained from the media or from petitions to the Chancellor).

In 2013, 40 inspection visits to 38 places of detention were carried out. The number of unannounced inspection visits was 29. In comparison, 23 inspection visits to 23 places of detention took place in 2012; 33 visits to 35 places of detention in 2011; 27 visits to 33 places of detention in 2010; 25 visits to 37 places of detention in 2009; 19 visits to 40 places of detention in 2008, and 18 visits in 2007.

By types of establishments, the inspection visits in 2013 can be categorised as follows:

- 1) police detention facilities – 4 visits (3 of them unannounced), 4 places of detention inspected;
- 2) expulsion centre – 2 announced visits, 1 place of detention inspected;
- 3) prisons – 2 announced visits, 3 places of detention inspected (incl. psychiatric department of Tartu Prison);
- 4) Defence Forces – 1 announced visit;
- 5) special schools – 1 announced visit;
- 6) providers of involuntary emergency psychiatric care – 6 visits (5 of them unannounced), 6 places of detention inspected;
- 7) providers of 24-hour special care services – 15 visits (14 of them unannounced), 13 places of detention inspected;
- 8) providers of general care services – 1 unannounced visit;
- 9) providers of nursing care services – 8 visits (6 of them unannounced), 8 possible places of detention inspected.

Experts were involved in six inspection visits in 2013. On five occasions, the experts were general practitioners and on one occasion a paediatrician.

The methodology and criteria of the inspection visits on the basis of which the places of detention are assessed were described in more detail in the Chancellor's 2010 Overview.¹⁰ As a result of each inspection visit, a summary is compiled, containing recommendations and proposals to the inspected establishment and other relevant authorities. Summaries of inspection visits are published on the Chancellor of Justice website. Data protection requirements are observed when publishing the summaries (i.e. no personal data is disclosed, etc). A short abstract of a summary of an inspection visit is also translated into English.¹¹

In addition to inspection visits, other activities for preventing ill-treatment have been carried out with the aim to raise awareness among staff working at and individuals held in the places

10 See the Chancellor's 2010 overview, pp 8–9. Available online: http://oiguskantsler.ee/sites/default/files/overview_2010.pdf.

11 English translations of the abstracts of summaries of inspection visits are available online: <http://oiguskantsler.ee/en/inspection-visits>.

of detention, as well as among the wider public, of the essence of ill-treatment and the need to fight it.

For example, the Chancellor in his circular drew the attention of all the providers of 24-hour special care services to the main shortcomings identified by him in the inspected establishments. The aim of the circular was to make the service providers revise the practice in their respective establishments and, whenever necessary, change it so as to ensure sufficient protection of the fundamental rights and freedoms of recipients of 24-hour care services. The Chancellor in his circular explained that it is prohibited to seclude clients in the rooms not adjusted for the purpose, including in their bedrooms, and asked the service providers to examine all the doors of the rooms of clients of 24-hour special care services and to remove any locking devices from them which enable locking the door only from the outside (Circular to the providers of 24-hour special care services, case No 7-9/130704).

To raise awareness among staff working at and individuals held in the places of detention, the Office of the Chancellor of Justice has also organised training events and information days as well as distributed information materials during the inspection visits, in order to help persons whose liberty is restricted to better understand their fundamental rights and freedoms and to effectively implement the complaint mechanisms. Similarly, in order to raise awareness, the Chancellor's homepage contains a special section on the prevention of ill-treatment.¹² The homepage provides explanations on the definition of ill-treatment, the kinds of establishments treated as places of detention, the rights of persons staying in places of detention, and the role of the Chancellor as the mechanism for the prevention of ill-treatment. The relevant section of the homepage is available in Estonian, Russian and English.

During the reporting year, the Chancellor developed cooperation with the Social Insurance Board which carries out supervision over compliance by providers of 24-hour special care services with the requirements laid down by the administrative agreement and the legislation. In particular, the Chancellor and the Social Insurance Board studied each other's working methods and exchanged the experience gained in inspecting the providers of 24-hour special care services. In addition, advisers to the Chancellor delivered a presentation at the information day organised by the Social Insurance Board on 24 May 2013. Officials from the Chancellor's Office also delivered presentations on issues of prevention at the information days organised by Tartu and Viljandi county governments.

The training project in the course of which R. Sults explained fundamental rights to the conscripts of the Defence Forces also continued in 2013.

In order to raise the overall awareness of society about the prevention of ill-treatment, the Chancellor and his advisers have published both paper and internet articles on issues of ill-treatment. In 2013, in the EUROCHIPS newsletter *Justice for Children of Prisoners* the Chancellor's adviser Ksenia Žurakovskaja-Aru published an article „Children's connections with imprisoned parents in Estonia”.¹³ The article provides an overview of the possibilities of communication between imprisoned parents and their children in Estonia.

During the reporting year, several inspection visits and proceedings carried out by the Chancellor were covered by the media:

Randla, S. *Õiguskantsler Indrek Teder nõuab hooldatavate lukustamise lõpetamist*. [Chancellor of Justice Indrek Teder demands an end to locking up of care service recipients] – *Õhtuleht*, 7 March 2013.¹⁴

12 See the Chancellor of Justice homepage <http://oiguskantsler.ee/en/prevention-of-ill-treatment-1>.

13 Special edition of the newsletter, No 1/ 4-2013, pp 18–19. The article in English is available online: http://lasteombudsman.ee/sites/default/files/IMCE/2013_justice_for_children_of_prisoners_ksenija_0.pdf.

14 Available online in Estonian: <http://www.ohtuleht.ee/512685/oiguskantsler-nouab-hooldatavate-lukustamise-lopetamist>.

- Randla, S. *Teder soovib patsientide õiguste kaitseks palatite ust*. [Teder recommends that wards should have doors to protect the rights of patients] – *Õhtuleht*, 9 April 2013.¹⁵
- Randla, S. *Õiguskantsler uurib, kas vangil on liiga väike kamber*. [Chancellor of Justice investigates whether prisoners' cells are too small] – *Õhtuleht*, 2 May 2013.¹⁶
- *Justiitsministeerium tahab vangidele rohkem kongiruumi anda*. [Ministry of Justice wants to give prisoners more cell space] – *Delfi*, 7 May 2013.¹⁷
- Ojamaa, H. *Õiguskantsler: Lääne prefektuuri arestimajade probleemiks on ametnike vähesus*. [Chancellor of Justice: shortage of staff a problem for police detention centres in the West Prefecture] – *Postimees online*, 20 May 2013.¹⁸
- *Õiguskantsler kontrollis mullu viit politseihoonet*. [Last year the Chancellor of Justice inspected five police buildings] – *BNS*, 21 May 2013.¹⁹
- Filippov, M. *Väljasaadetavate vahel esineb pingeid ja vägivalda*. [Tensions and violence occur between the persons subject to expulsion] – *Postimees online*, 4 June 2013.²⁰
- Filippov, M. *Õiguskantsler: väljasaatmiskeskuses viibijatele tuleb tagada hambaravi keskuse kulul*. [Chancellor of Justice: dental care to persons in the expulsion centre must be guaranteed at the expense of the centre] – *Postimees online*, 4 June 2013.²¹
- Randla, S. *Õiguskantsler kontrollib kinnipeetavate toitlustamist väljasaatmiskeskuses*. [Chancellor of Justice scrutinises catering of persons in the expulsion centre] – *Õhtuleht*, 31 July 2013.²²
- Kalda, E. *Eluagne vang pürib Jõhvi volikogusse*. [Life prisoner wants to run for Jõhvi municipality council] – *Põhjarannik*, 11 September 2013.
- Lakson, P. *Sillamäe haigla lõpetas palatite uste lukustamise*. [Sillamäe hospital ended locking of ward doors] – *Postimees online*, 4 October 2013.²³
- *Õiguskantsler palub vange jalutuskäigule lubada*. [Chancellor of Justice asks prisoners to be given access to exercise yards] – *Õhtuleht*, 15 October 2013.
- *Õiguskantsler uurib uste lõhkumist*. [Chancellor of Justice investigates breaking of doors] – *Õhtuleht*, 31 October 2013.
- In his role as the national preventive mechanism, the Chancellor considers the consistent development of the knowledge and skills of his staff as extremely important. During the reporting year, the Chancellor's advisers participated in the following training events and information days on the prevention of ill-treatment: K. Muller attended the training course „Case-law of the European Court of Human Rights” on 1 February.
- K. Muller attended the training course „Four most common dementia syndromes” on 29 April.
- N. Parrest, K. Muller, A. Aru, I.-I. Määrits, A. Kivioja, J. Konsa, K. Ploom and R. Järvamägi attended the training course „Restraining with drugs” organised by the Office of the Chancellor of Justice on 6 May.

15 Available online in Estonian:

<http://www.oh tuleht.ee/516461/teder-soovitab-patsientide-oguste-kaitseks-palatite-ust>.

16 Available online in Estonian:

<http://www.oh tuleht.ee/519238/oguskantsler-uurib-kas-vangil-on-liiga-vaike-kamber>.

17 Available online in Estonian:

<http://www.delfi.ee/news/paevauudised/eesti/justiitsministeerium-tahab-vangidele-rohkem-kongiruumi-anda.d?id=66089056>.

18 Available online in Estonian: <http://www.postimees.ee/1241982/>

[oguskantsler-laane-prefektuuri-arestimajade-probleemiks-on-ametnike-vahesus](http://www.postimees.ee/1241982/oguskantsler-laane-prefektuuri-arestimajade-probleemiks-on-ametnike-vahesus).

19 Available online in Estonian: <http://news.bns.ee/topic/648/news/45960770/>.

20 Available online in Estonian:

<http://www.postimees.ee/1258270/valjasaadetavate-vahel-esineb-pingeid-ja-vagivalda>.

21 Available online in Estonian:

<http://www.postimees.ee/1258160/oguskantsler-valjasaatmiskeskuses-viibijatele-tuleb-tagada-hambaravi-keskuse-kulul>.

22 Available online in Estonian:

<http://www.oh tuleht.ee/535461/oguskantsler-kontrollib-kinnipeetavate-toitlustamist-valjasaatmiskeskuses>.

23 Available online in Estonian:

<http://tarbija24.postimees.ee/2096916/sillamae-haigla-lopetas-palatite-uste-lukustamise>.

- A. Aru, M. Sarv, K. Paron and A. Reinomägi visited child protection institutions in Iceland on 9–13 September, including the Barnahus support centre for sexually abused children, the Studlar centre for children with psychological and behavioural problems, and the Greiningar counselling and diagnostic centre for children with special needs.
- R. Järvamägi attended the training course „De-institutionalisation in Estonia – guidance by the European Commission and international practices” on 19 September.
- R. Järvamägi and K. Ploom attended the training course „Self-employed guardians” on 18 and 25 September.
- M. Allikmets attended the training course „Training on behavioural psychology – how to be a successful communicator. Coping with complex patients” on 9 October.
- R. Järvamägi and M. Allikmets attended the training course „Mental disorders and recovery – how to understand and support” on 21–22 October.
- K. Ploom attended the training course „Guardianship” on 25 October.
- N. Parrest, S. Laos, M. Mikiver and J. Konsa visited the Parliamentary Ombudsman of Finland on issues of police law and data protection on 28–31 October. Inter alia, the visit focused on the ombudsman’s supervision of police activities and the law enforcement measures used by the Finnish police (e.g. direct coercion, forced sampling, sobering-up).
- K. Muller and R. Järvamägi attended the training course „Application of coercive psychiatric treatment” on 15 November.
- M. Allikmets attended the Estonian Council of Bioethics conference “Accessible high-quality health care – a dream or ethical imperative?” on 22 November.

In addition, the Chancellor of Justice considers international cooperation with other preventive bodies and relevant international organisations to be very important. The Chancellor has been an active member of the Council of Europe Network of National Preventive Mechanisms (NPM) against torture and other cruel, inhuman or degrading treatment and punishment. During the reporting year, advisers to the Chancellor attended the following international events:

- J. Konsa attended the seminar „Ethics in security issues: the role of independent police complaints Commissions in Europe” on 27–28 May in Paris.
- J. Konsa attended the seminar „Improving Conditions Related to Detention” on 13–15 November in Strasbourg.
- K. Albi attended the seminar „Immigration detention in Europe: Establishing Common Concerns and Developing Minimum Standards” on 20–22 November in Strasbourg.

The Chancellor of Justice also received visits from the following foreign guests:

- Advisers Jennifer Croft and Vincent Graaf to the OSCE High Commissioner on National Minorities (HCNM) on 14 March.
- The Council of Europe Commissioner for Human Rights Nils Muižnieks on 26 March.

In 2013, the Chancellor analysed the constitutionality of several legal acts with regard to the issues directly or indirectly related to the prevention of ill-treatment (e.g. constitutional conformity of the conditions of detention and internal rules in the expulsion centre; conformity of the requirement of minimum floor space of prison cells with the Constitution, the Imprisonment Act, Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and case-law of the European Court of Human Rights). In addition, the Chancellor expressed his opinion with regard to the draft regulation for amending the Minister of Social Affairs regulation No 58 of 30 June 2009 on „The health protection requirements for special care services and seclusion rooms”, under which the obligation to ensure the existence of a seclusion room would be maintained only for those providers of 24-hour special care services who provide the service to persons with unstable remission or persons placed in the establishment on the basis of a court ruling. The Chancellor admitted that not all the establishments offering 24-hour special care services necessarily have a need for a seclusion room. However, the Chancellor also pointed out that if service providers have to ensure a seclusion room only in case of need,

in practice this may lead to the application of prohibited means of restraint (e.g. involuntary administration of drugs to a client for purposes of restraint).²⁴

During the reporting year, several negative cases concerning the provision of 24-hour care services received public attention (e.g. freezing to death of a client who left the South Estonian Special Care Services Centre and unauthorised departure of clients from Valkla Home of Hoolekandeteenused Ltd). Prompted by these incidents, a question arose whether and to what extent the freedom of movement of clients of 24-hour care services could be restricted and how to ensure the safety of the clients as well as of the surrounding community.²⁵ During the reporting year, based on the Supreme Court ruling No 3-2-1-44-13 of 30 April 2013²⁶, also a question arose whether the courts always follow the prescribed procedure for establishing the grounds of detention of persons to be subjected to 24-hour special care under a court ruling.

As part of a wider debate in society, the need for a reform of the care services system was raised.²⁷ On this basis, the Riigikogu social affairs committee organised a meeting on 9 April 2013 to discuss the organisation and future development of special care services. In addition, the Government initiated a Draft Act (471 SE) for the amendment of the Social Welfare Act, the Labour Market Services and Benefits Act and the Social Benefits for Disabled Persons Act in the Riigikogu in order to remedy shortcomings concerning the substance and organisation of special care services.²⁸ Significant changes include, for example, maintaining the queue list for special care services on the county level²⁹ and the possibility in certain cases to replace a 24-hour presence of an activity supervisor with a 24-hour presence of a care worker³⁰.

The Chancellor continues to pay attention to the issue of prohibition of corporal punishment of children.³¹ The Chancellor can note with satisfaction that under the guidance of the Ministry of Social Affairs a new Draft Child Protection Act had been prepared, which, inter alia, establishes the prohibition of ill-treatment of children.

Several proceedings carried out in the framework of the Chancellor's ombudsman competence also relate to the prevention of ill-treatment: for example, extended duration of the application of means of restraint in a prison, documenting their application and supervision of the restrained person; observation of the hygiene corner of a prison cell by video surveillance; documenting refusals from medical assistance; restriction of a possibility for one-hour access to an outdoor

24 The opinion is available online in Estonian:

<http://adr.rik.ee/okk/fail/2405188/18-21308481302966%2001.07.2013%20V%C3%A4ljaminev%20kiri.ddoc>.

25 See, e.g., articles „Meegomäe erihooldekodu juhtum tõi kaasa kriminaalmenetluse” [The incident at Meegomäe special care home led to a criminal investigation] (available online in Estonian: <http://uudised.err.ee/v/eesti/54844672-f783-48a1-a834-90e9675db1e9>), „Politsei otsib Saaremaal hooldekodust lahkunud naist” [The police looking for a woman who left a care home in Saaremaa] (available online in Estonian: <http://www.postimees.ee/1283112/politsei-otsib-saaremaal-hooldekodust-lahkunud-naist>), „Valkla hooldekodu kliendid teevad politseile peavalu” [Clients of Valkla care home a headache for the police] (available online in Estonian: <http://eesti.elu.delfi.ee/eesti/harjumaa/kuusalu/elu/tv3-valkla-hooldekodu-kliendid-teevad-politseile-peavalu.d?id=66097048>), „Hooldekodu elanik leiti jõest uppunult” [Inhabitant of care home found drowned in a river] (available online in Estonian: <http://www.postimees.ee/2616452/hooldekodu-elanik-leiti-joest-uppunult>).

26 Available online in Estonian: <http://www.riigikohus.ee/?id=11&tekst=RK/3-2-1-44-13>.

27 See, e.g., articles „Hooldusalune neiu peksis teise hoolealuse surnuks” [Young woman in a care home beat another client to death] (available online in Estonian: <http://uudised.err.ee/v/eesti/773b21b9-6597-45cd-ade4-6eeb4e46dfaa>), „Tsahkna: tahe erihooldekandega seotud probleemid lahendada on olemas” [Tsahkna: the will to resolve problems relating to special care exists] (available online in Estonian: <http://www.riigikogu.ee/index.php?id=176080>), „Vaimupuudega inimest peeti aastate kaupa alusetult kinni” [Person with an intellectual disability detained without grounds for years] (available online in Estonian: <http://epl.delfi.ee/news/eesti/vaimupuudega-inimest-peeti-aastate-kaupa-alusetult-kinni.d?id=66103684>).

28 The Act was adopted by the Riigikogu on 26 February 2014 and will enter into force on 1 January 2015. Available online in Estonian: <http://www.riigikogu.ee/?op=ems&page=eelnou&eid=047c1aa9-b12c-486d-b7b1-df93749ff7e7&>.

29 See the Draft Act 471 SE II, p 20.

30 See the Draft Act 471 SE II, p 37.

31 See also the Chancellor's public address of 19 November 2012 to the Minister of Social Affairs for the prohibition of corporal punishment of children. Available online: <http://oiguskantsler.ee/en/chancellor-of-justices-public-address-to-the-minister-of-social-affairs-on-prohibition-of-corporal>.

exercise yard; provision of personal hygiene articles to detained persons; clothing of persons in a punishment cell; organisation of searches in the expulsion centre; daily living conditions in a battalion. On the basis of the above ombudsman proceedings, the Chancellor has made recommendations, proposals and conclusions for changing administrative practices.

As an important issue of concern, ensuring of fundamental rights and freedoms for minors receiving 24-hour special care arose during the reporting year. The Chancellor was contacted by parents whose minor child had been subjected to a 24-hour care service under a court ruling. The parents found that the special care home did not have an environment suitable for the child and the child's life and health were repeatedly at risk at the care home.

The Chancellor assessed the activities of both the special care home and the Social Insurance Board in ensuring the safety of the child and found breaches in their activities. In particular, the Chancellor found that the Social Insurance Board should have explained to the special care home the requirements for the provision of the service to children³², and the Social Insurance Board should have verified the suitability of the service for the child also after the child's referral to the special care home. The Social Insurance Board should also have given guidance to the care home with regard to the specific requirements of the child and for ascertaining the risks arising from the clients and staff of the particular establishment. As a result of the proceedings, the Chancellor gave recommendations to both the Social Insurance Board and the special care home as to what should be taken into account in the provision of the service to minors subjected to 24-hour care under a court ruling.

After receiving the Chancellor's opinion, the Social Insurance Board transferred all the minors receiving 24-hour special care service to another special care home. Sometime later the child's parents contacted the Chancellor again. This time they pointed out in their petition that in the other special care home an adult client had ill-treated their child. Having assessed the case, the Chancellor concluded that although the special care home applied several general measures for ensuring the safety of the child, it could not be established that at the particular moment the work arrangements at the care home ensured supervision conforming to the individual needs and specific nature of the clients. As a result of these proceedings, the Chancellor also gave recommendations to the Social Insurance Board and the special care home with regard to the aspects that should be taken into account in providing the service to minors subjected to 24-hour special care under a court ruling.

The Social Insurance Board replied to both of the Chancellor's recommendations that it intended to take account of the recommendations in organising the service in the future. According to the information available to the Chancellor, since 3 December 2013 all the minors subjected to 24-hour special care service under a court ruling are accommodated separately from adults (at Imastu Boarding School of Hoolekandeteenused Ltd).³³

The following subdivision contains an overview of the inspection visits made by the Chancellor to different places of detention in 2013, highlighting shortcomings that were detected.

32 Inter alia, to place a child in a room where there are no adults, and to draw attention to the need to find suitable staff for a child or to train the existing staff.

33 See the Social Insurance Board's reply No 18-4/13230 of 3 December 2013 to the Chancellor's recommendation. Available online in Estonian: http://adr.rik.ee/okk/fail/2591027/Sotsiaalkindlustusamet_vastus%20soovitusese.ddoc.

II. PREVENTION OF ILL-TREATMENT IN PLACES OF DETENTION

1. Police detention facilities

In 2013, the Chancellor carried out regular inspection visits to detention chambers of police detention centres of public order bureaus of prefectures of the Police and Border Guard Board (PBGB). In addition, the Chancellor focused on rooms used for short-term detention of individuals within the area of administration of the East and South Prefectures of the PBGB and analysed death cases of individuals detained in the police detention centres of the PBGB.

The inspected facilities included the following:

- inspection visit to Viljandi detention chamber of the police detention centre of the public order bureau of the South Prefecture of the PBGB ([case No 7-7/130533](#));
- inspection visit to Paide and Rapla detention chambers of the police detention centre of the public order bureau of the West Prefecture of the PBGB (case No 7-7/130046);
- inspection visit to short-term detention chambers of the East and South Prefectures of the PBGB ([case No 7-7/131201](#));
- inspection visit to the sobering-up facility of the public order bureau of the North Prefecture of the PBGB ([case No 7-7/140068](#)).

The Chancellor's visits to the police facilities were unannounced.

The main problems found during the visits to the detention chambers of the public order bureaus of the PBGB (Viljandi, Paide and Rapla detention chamber) are still the shortage of staff (at Paide and Rapla detention chamber) and occasional violations in drawing up of documents in respect of the detained persons (e.g. primary health check reports in Viljandi detention chamber). The shortcomings identified in the sobering-up facility and in the buildings used for short-term detention are described in more detail below.

1.1. Short-term detention

On 7 and 8 August 2013, advisers to the Chancellor carried out an unannounced inspection visit to the buildings used for short-term detention in the East and South Prefectures of the PBGB.

The following buildings were inspected:

- 1) Tapa constable point;
- 2) Kiviõli constable point;
- 3) Kohtla-Järve constable point;
- 4) Jõhvi constable point (headquarters of the East Prefecture);
- 5) Narva-Jõesuu border patrol station;
- 6) Narva road border crossing point;
- 7) Narva border patrol station;
- 8) Mustajõe border patrol station;
- 9) Punamäe border patrol station;
- 10) Vasknarva border patrol station;
- 11) Alajõe border patrol station;
- 12) Mustvee constable point;
- 13) Mustvee border patrol station;
- 14) Varnja border patrol station;
- 15) Mehikoorma border patrol station;
- 16) Värskä border patrol station;
- 17) Saatse border patrol station;
- 18) Koidula road border crossing point
- 19) Koidula railway border crossing point (Orava border crossing point)

- 20) Piusa border patrol station;
- 21) Luhamaa border patrol station;
- 22) Luhamaa road border crossing point.

The inspection visits focused on the execution of short-term detention, including the conditions of detention and implementing of the PBGB Director General's decree No 488 of 17 November 2010 approving the „Guidelines for short-term detention“³⁴.

The Chancellor identified shortcomings in documenting short-term detention of individuals. It was also found that the catering of detainees was organised differently in different buildings and there is no uniform guarantee of the other rights established by the above guidelines (e.g. distribution of individual hygiene articles, provision of bedclothes). The Chancellor's attention was also attracted by the use of video surveillance in the cells used for short-term detention. In particular, the Chancellor proposed to the police to ensure the privacy of individuals in the hygiene corner in case of the use of video surveillance.

In his reply to the Chancellor's recommendations, the Director General of the PBGB noted that the necessity to properly fill out documents in respect of detained persons (including filling out documents concerning the detention of a person) is stressed to the officers during study days. The Director General also explained that the assistance of detention centres of the prefectures can be used in organising the catering of individuals in police buildings designated for short-term detention. The Director General also agreed with the Chancellor's recommendations concerning variability in the guarantee of the rights of detained persons and the issues relating to video surveillance.

1.2. Inspection visit to the sobering-up facility of the police detention centre of the public order bureau of the North Prefecture of the PBGB

At 6 o'clock in the early morning of 16 November 2013, advisers to the Chancellor made an unannounced inspection visit to the sobering-up facility of the police detention centre of the public order bureau of the North Prefecture of the PBGB (hereinafter the sobering-up facility). A general practitioner was involved in the visit as an expert to assess the provision of health services in the sobering-up facility.

As a result of the inspection, it was found that supervision of the cells in the sobering-up facility might not be sufficient and the Chancellor proposed to the PBGB to find a possibility to install video surveillance in the cells. In the summary of the visit, the Chancellor also stressed once again the importance of properly filling out the reports on the placement of individuals for sobering up and the lawful use of any means of restraint.

The PBGB agreed with the recommendations and proposals made in the summary of the Chancellor's inspection visit.

1.3. Death cases of detained persons in 2012

The Chancellor continued his earlier practice and analysed cases of death of persons detained in police facilities during the year (2012) prior to the reporting year. In doing this, the Chancellor relied on the disciplinary proceedings materials of the PBGB or, in their absence, on the control materials drawn up by the police with regard to deaths of detained persons.

According to the information received from the PBGB, 7 persons died in the police detention facilities in 2012. The deaths occurred in the detention chambers in the East, South and North

³⁴ The Chancellor made a proposal to the Minister of Internal Affairs to adopt such guidelines in 2009 (see the Chancellor's 2009 Overview pp 10-16, available online: http://oiguskantsler.ee/sites/default/files/overview_2009.pdf).

prefectures. The causes of deaths could be divided in three broad categories: poisoning, serious illness and suicide.

As a result of investigating the circumstances of the deaths, the Chancellor made the following recommendations to the PBGB:

- 1) to ensure effective supervision of detainees in the cells (e.g. through a peephole or hatch in a door in combination with video surveillance) and install video surveillance in the cells in Tallinn sobering-up facility;
- 2) to change the practice of distribution of narcotic and psychotropic medicines to detainees, so that each time a staff member of the detention centre must be satisfied that a detainee has actually administered the medicine. If a detention centre has medical staff, they should be involved in the distribution of narcotic or psychotropic medicines to detainees to monitor the administration of the medicine;
- 3) to consider organising training of officers in charge of the detention chambers on the effects of narcotic and psychotropic medicines and assessment of the health of persons placed for sobering up;
- 4) to improve effectiveness of the search of cells where persons using narcotic and/or psychotropic medicines are placed.

In addition, the Chancellor asked the Director General of the PBGB to provide an overview of how the police have complied with the tasks set out in the Minister of Internal Affairs letter No 9-2/65-3 of 17 September 2012, which also concerned the death cases of detained persons and which were prompted by the Chancellor's analysis of the deaths of detained persons in 2011.

The Director General of the PBGB agreed with the Chancellor's recommendations and noted that training events and study days on the issues observed by the Chancellor have already been organised for officers in charge of supervision of detainees and these efforts will continue in 2014. For example, the PBGB training plans for 2014 include a follow-up training on the nature of narcotic intoxication and the effect of medicines used to alleviate it.

2. Expulsion centre (detention centre for foreigners)

In 2013, advisers to the Chancellor carried out an unannounced inspection visit and a follow-up visit to the expulsion centre of the PBGB:

- inspection visit to the PBGB expulsion centre (since 1 October 2013 called the detention centre for foreigners) ([case No 7-7/130203](#));
- follow-up inspection visit to the PBGB detention centre for foreigners ([case No 7-7/131436](#)).

A general practitioner was involved in the inspection visit as an expert.

On 1 October 2013, the expulsion centre was renamed the detention centre for foreigners, following a change in the legal grounds for the detention of asylum seekers. Therefore, the Chancellor pointed out that reorganisation of the centre requires more focus on the distinct nature of the situation of asylum seekers. Inter alia, it is necessary to take into consideration different eating traditions and provide psychological counselling to people who do not speak the foreign languages most commonly used in our region.

The Chancellor's previous inspection visit to the expulsion centre took place in 2011.

2.1. Application of coercion

As a result of the inspection, the Chancellor dealt with the issue of legality of the use of handcuffs. Specifically, it was found that handcuffs were usually used in case of escorting

persons outside the centre, including in respect of women and (allegedly) minors. In addition, no factual justification for the use of handcuffs was recorded on the relevant authorisations and, in some cases, the limits of competence were not respected. It was also not evident in the procedural documents whether handcuffs had been used during medical procedures and whether the escort team was present (i.e. within the hearing distance or the range of vision) during the provision of health services.

The follow-up inspection showed that as a result of the Chancellor's relevant recommendations the practice of using handcuffs had been significantly changed and handcuffs were used only exceptionally.

In addition, the Chancellor dealt with the issue of applying security measures in respect of the detainees in the centre. The Chancellor drew the attention of the Director General of the PBGB to the need to apply security measures only for purposes of eliminating a threat arising from a particular person if the person, either with their actions or due to a health condition, poses a danger to themselves, to others or to the security of the centre. The Chancellor recommended complying with the requirements of administrative procedure when deciding the use of security measures.

2.2. Catering

During the inspection visit, persons staying in the centre complained about catering. The main complaint was insufficiency of the food and a very long interval between dinner and breakfast. The Chancellor recommended to the Director General of the PBGB to increase the standard food portions and to the Health Board, when supervising the provision of meals in the centre, to proceed from the increased standard food portions intended for detainees engaged in little physical activity, staying indoors and engaged in work and activities requiring sitting.

The follow-up visit showed that the recommendation had not been complied with. As the complaints with regard to the catering at the centre had also reached the court, the Chancellor did not find it possible to re-examine the issue.

2.3. Opportunities for spending free time

The Chancellor repeated his recommendation to diversify the range of activities offered to persons detained in the centre for a longer period. The follow-up inspection showed that the PBGB had taken several steps in this regard. The duties of one of the officials who had been employed by the centre included the creation of opportunities for spending free time: Estonian language classes were offered, as well as manual activities (drawing, handiwork), a project to expand sporting opportunities and enable access to the internet was planned.

2.4. Detention of minors

At the time of the inspection visit, several (allegedly) minors were being detained in the centre. However, according to the age assessment expert report, most of them were found to be over the age of 18.

The Chancellor referred to the principle established in international instruments, according to which minors should normally not be detained for purposes of migration management. The Chancellor recommended that in cases where minors are nonetheless detained in the centre, the following should be provided: opportunities for age-specific activities (e.g. by providing art supplies, suitable books, language learning games or books that could be used by persons speaking different languages, opportunities for physical activity); educational supervision and

activity guidance for unaccompanied minors; an opportunity to acquire education for children at the age of compulsory school attendance; providing necessary services (including psychological counselling) in the manner and language understood by minors; explaining internal rules of the institution orally and in simple language; involving guardianship authorities in the resolving of issues relating to stay in the centre.

The Minister of Internal Affairs replied that when the PBGB detains an unaccompanied minor who is a foreigner, they are sent through the Social Insurance Board to an institution providing the substitute home service. However, the administrative court may authorise placement of a person in the centre in case of a reasoned suspicion concerning the correctness of data about the person's age. In this case, the person in the centre is treated as an adult until a different conclusion about the person's age is reached based on an expert assessment or other evidence.

2.5. Other issues

In addition, the Chancellor recommended to arrange for interpretation in case of need during the provision of health services and psychological counselling. He also repeated the recommendation to provide dental treatment to the detainees at the expense of the centre in case the detainees do not have money to pay for dental treatment.

The Chancellor also referred to the incompatibility of the Obligation to Leave and Prohibition on Entry Act with European law with regard to issues concerning voluntary departure of persons from Estonia, establishment of the grounds for detention and the term of detention. In this regard, the Chancellor pointed out the supremacy of European law.

The Chancellor also proposed to the Minister of Internal Affairs to analyse the Obligation to Leave and Prohibition on Entry Act in its entirety, as well as the internal rules of the centre established on the basis of it, in order to take account of the obligations arising from the law, the Constitution, the European Convention on Human Rights, the guidelines of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the principle of good administration.

3. Prisons

During the reporting year, the Chancellor carried out announced inspection visits to two prisons:

- inspection visit to Tartu Prison ([case No 7-7/130537](#));
- inspection visit to Harku territory of Harku and Murru Prison (hereinafter also Harku and Murru Prison) ([case No 7-7/140144](#)).

A general practitioner was involved in the visit to Tartu Prison as an expert to assess the provision of health services. Two paediatricians were involved in the visit to Harku and Murru Prison to inspect the living conditions and growth environment of children in the department for mothers and children, the suitability and sufficiency of health services provided to children staying in the prison together with their mothers, the health and physical development of the children, and social protection of the children.

The Chancellor has previously carried out a thorough inspection of Tartu Prison on two occasions (in 2006 and 2009) and of the former Harku Prison on three occasions (2001, 2007 and 2010).

The shortcomings found as a result of the inspection of the prisons are described in more detail below.

3.1. Checking of a person in case of continued restraint

During the inspections, reports on the use of physical force, service weapons, special equipment or means of restraint and examination of the health status of offenders were examined. The following questions arose upon the examination of the reports. First, after which period does the application of means of restraint become continued? Secondly, after which period should a person subjected to restraint be checked in case of continued restraint (i.e. assess the continued need for the application of the particular means of restraint)?

Based on domestic case-law and opinions of international organisations (e.g. CPT), the Chancellor concluded that, in practice, if means of restraint in respect of a detained person are used for more than 10 minutes continuously a prison should deem it to be a situation of continued restraint. And, Part III („Examination in case of continued use of restraint“) of the report on the use of physical force, service weapon, special equipment or means of restraint and examination of the health status of the offender must always be filled out.

As a result of the inspection, the Chancellor proposed to Tartu Prison that in case of continued restraint with handcuffs the restrained person should be checked by communicating directly with the person at least every 15 minutes.

3.2. Recording of the use of physical force, service weapon, special equipment or means of restraint and examination of the health status of an offender in the relevant report

During the inspections, reports on the use of physical force, service weapon, special equipment or means of restraint and examination of the health status of offenders were examined. It was found that on several occasions the note made by the health care staff regarding the health of a restrained detainee was very general or the time³⁵ and/or date³⁶ of the examination was missing. In addition, the inspection of Harku and Murru Prison revealed shortcomings in documenting the application of direct coercion.

Based on the case-law of the European Court of Human Rights and the Supreme Court, as well as the CPT opinions, the Chancellor emphasised the importance of properly documenting the use of physical force, service weapon, special equipment or means of restraint in respect of detained persons. This is important for the prevention and combating of ill-treatment of detained persons but also for the authorities for disproving unfounded allegations of ill-treatment. The use of these measures must be documented in a manner that allows to establish in respect of whom, which measure and for how long was used and how, when and who checked the condition of the person. In case of a medical examination, it is important to record, inter alia, the time of the examination, any objective findings and the name(s) of the medical staff examining the person.

On this basis, the Chancellor recommended that in the future the prisons should record the result of the examination by health care staff in the report as specifically as possible and also note in the report other data concerning the check carried out by the health care staff (time of the check, name and signature of the staff). In addition, the Chancellor recommended to Harku and Murru Prison in the future to record in the reports on the use of physical force, service weapon, special equipment or means of restraint and examination of the health status of the offenders more specifically also those factual circumstances (e.g. the behaviour of a detained person) which led to the use of direct coercion and its continuation, or clearly indicate in the report where such information can be found.

35 See the inspection visit to Tartu Prison (case No 7-7/130537).

36 See the inspection visit to Harku territory of Harku and Murru Prison (case No 7-7/140144).

3.3. Health examination after escorting in the course of which physical force or means of restraint were used

During the inspection of Tartu Prison, escort plans were examined, showing that in general no handcuffs or leg-cuffs were used when escorting detained persons from one custodial institution to another. At the same time, those measures were used when a person was escorted, for example, from the prison to a hospital or another place outside the custodial institution. The examination of the escort plans and reports on the use of means of restraint drawn up in Tartu Prison did not show that after the use of means of restraint in case of escorting a person outside the prison the person's health was examined by health care staff similarly to the use of means of restraint inside the prison.

The Chancellor recommended to Tartu Prison to comply with the requirement of the Imprisonment Act establishing that a health care worker must examine the health of a detained person after escorting if means of restraint were used in respect of the person. A report on the use of means of restraint and on health examination must be drawn up.

3.4. Inclusion of documents concerning the use of additional security measures in personal files

During the visit to Harku and Murru Prison, an adviser to the Chancellor examined personal files of six prisoners. On the basis of the small number of the examined files, the main problem that could be observed was that the files did not contain sufficient documents on the use of additional security measures. Under the Imprisonment Act and the internal rules of the prison, the prison service is required to include in personal files the documents concerning the use of additional security measures in respect of a detained person. In the opinion of the Chancellor, this requirement means that the file must contain the documents (administrative acts) by which the additional security measures are applied, as well as the materials concerning the continuation or termination of the security measures.

The Chancellor recommended to Harku and Murru Prison in the future to maintain in personal files of the prisoners all the documents required under the Imprisonment Act and the internal rules of the prison, including materials concerning the application of additional security measures.

3.5. Training on mental disorders for prison officers

The decrees on the application of additional security measures examined in Tartu Prison revealed that one of the three most common reasons for applying security measures in respect of detained persons is a person's behaviour which is dangerous to himself or herself. It does not necessarily always concern detained persons who have been diagnosed with a mental disorder. Prison service officers with whom the Chancellor's advisers talked during the visit also pointed out that very often they had to deal with detained persons whose behaviour (e.g. inflicting self-injury) could be an indication of a mental disorder. At the same time the officers said they did not have sufficient knowledge and skills to deal with detained persons in case of whom a suspicion of such a disorder existed.

According to the information available to the Chancellor, there has been at least one training course for the prison service officers in Tartu Prison where a lecturer from Finland dealt with the issues of mental disorders of prisoners.³⁷ The Chancellor recommended to Tartu Prison to continue organising training courses on mental disorders for prison officers.

³⁷ The training course took place on 9 August 2011 in cooperation with the Office of the Chancellor of Justice.

3.6. Application of means of restraint at the psychiatric department of Tartu Prison

At the psychiatric department of Tartu Prison, the Chancellor found shortcomings in the application of means of restraint. Namely, the doctor who had been on home duty outside the working hours had made a decision on the application of means of restraint by phone.

The Chancellor expressed the opinion that making of a decision regarding the application of means of restraint by a doctor at the psychiatric department without personally and directly assessing a patient's condition is contrary to § 14(3) of the Mental Health Act. Such practice may lead to arbitrary interference with a patient's fundamental right to liberty and inviolability of person which, in turn, involves a potential risk for cruel, inhuman or degrading treatment.

On this basis, the Chancellor proposed to Tartu Prison to comply with the requirement of personal and direct assessment of a patient's condition by a doctor upon the application of means of restraint.

In its reply to the Chancellor, Tartu Prison partly agreed with the recommendations. However, the views of the Chancellor and the prison differed with regard to filling out the report on the use of physical force, service weapon, special equipment or means of restraint and examination of the health status of an offender. The prison was of the opinion that the report does not have to be filled out after each case of application of direct coercion and it is also not necessary to record in detail the assessment of the person's health by the health care staff after restraining.

Based on the reply of Tartu Prison to the recommendations contained in the summary of the inspection, on 19 December 2013 the Chancellor made an additional recommendation to Tartu Prison, asking once again to consider changing the practice of filling out the report on the application of means of restraint. In its reply to the Chancellor's additional recommendation, Tartu Prison maintained its earlier position and did not consider it possible to change the current practice.

3.7. Clothing of prisoners

During the Chancellor's visit to Harku and Murru Prison, many prisoners complained that the clothing provided by the prison was too thin and it was cold to wear it outside in winter. The prison does not provide any warmer clothing for winter, it is also not allowed to use personal clothes. It was also claimed that some prisoners did not have warm underwear, the gloves provided by the prison were too thin and the tube-shaped scarf for women was too wide and not fit for purpose. Female prisoners complained that regardless of the availability of money on their internal prison account they had to buy their own underwear and no underwear was provided by the prison service. It was also complained that the prison service did not provide footwear and this also had to be procured by prisoners themselves.

Based on the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Estonian Constitution and the Imprisonment Act, the prison service must ensure that prisoners have sufficiently clean and dry clothes which are suitable for the environment. The CPT has also repeatedly stressed the obligation of the state authorities to ensure that prisoners are provided with sufficient, warm, seasonally appropriate clothing which is also suitable for going outside.³⁸

On this basis, the Chancellor recommended to Harku and Murru Prison to ensure that all the persons detained in Harku imprisonment section are provided with seasonally appropriate clothing (including socks, footwear and underwear), also taking account of a person's mobility

³⁸ See, e.g. „Report to the United Kingdom Government on the visit to the Bailiwick of Guernsey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 19 to 22 March 2010“, p 23. Available online: <http://www.cpt.coe.int/documents/gbr/2010-37-inf-eng.htm>.

opportunities and health. The Chancellor also recommended to analyse the appropriateness of the clothing provided to prisoners by the prison and, if necessary, change the practice of the provision of clothing (i.e. offer clothing which is suitable for the prisoners).

3.8. Outdoor exercise

The inspection of Harku and Murru Prison revealed problems with ensuring daily one-hour outdoor exercise for prisoners were found. The place designated for outdoor exercise was a yard surrounded by wire netting without any walls or roof to protect persons from inclement weather. Male prisoners explained that at the time when they were outdoors the female prisoners could use the shower in the male accommodation bloc and, therefore, it was complicated to go back to the accommodation bloc in case of wish (e.g. when a person got cold while outside), because the prison service did not send the persons back to the building within a reasonable time as of the moment of expressing the relevant wish.

The CPT has constantly stressed the importance of an opportunity for daily outdoor exercise and it has also explained that the place designated for outdoor exercise must offer an opportunity to rest and protection from inclement weather, and the prison service is required to take the necessary measures to ensure this.³⁹ Specifically in the Estonian context, the CPT has criticised Viru Prison, recommending that the outdoor exercise yards should be equipped with a means of rest and shelter from inclement weather.⁴⁰

The Chancellor recommended to Harku and Murru Prison to change the exercise yard next to the accommodation bloc, so that it would offer shelter in case of poor weather (e.g. by partly covering it with a roof, equipping it with a wall behind which it is possible to get shelter from wind). The Chancellor added that the organisation of work should be based on the principle that in case of a wish a person should be sent back to the accommodation bloc within a reasonable time. In the Chancellor's opinion, the reasonable time should not exceed five minutes.

3.9. Living conditions

During the inspection of Harku and Murru Prison, several shortcomings regarding the living conditions were found.

A continuing problem which has persisted for years in the Harku imprisonment section of Harku and Murru Prison is related to the scarce opportunities of female prisoners to take care of personal hygiene. The prisoners complained that during the designated 20-minute period before the line-up in the morning they did not reach to get themselves tidied up and visit the toilet. According to the prisoners, the situation is particularly bad in N1 department which has only 3 lavatories and 3 sinks in the washing room to be shared by approximately 70 prisoners. Female prisoners who take a shower only in the accommodation bloc (i.e. those who are not working) complained that they had too little time (allegedly 15 minutes per person) to wash themselves and then get tidied up (including drying the hair as there is no hairdryer).

The situation of the rooms (as well as the fittings in them) used for taking care of personal hygiene is practically the same as during the previous inspection.⁴¹ The Chancellor notes that

39 See, e.g. „Report to the Spanish Government on the visit to Spain carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 31 May to 13 June 2011“, para 131. Available online: <http://www.cpt.coe.int/documents/esp/2013-06-inf-eng.htm>.

40 See „Report to the Estonian Government on the visit to Estonia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 30 May to 6 June 2012“, para 63. Available online: <http://www.cpt.coe.int/documents/est/2014-01-inf-eng.htm>.

41 See inspection visit to Harku Prison in 2010. Available online: http://oiguskantsler.ee/sites/default/files/IMCE/inspection_visit_to_harku_prison_0.pdf.

his opinion has not changed since 2010 and he still considers it to be a serious problem which the prison service must deal with. The Chancellor proposed that swift measures should be taken to find possibilities to build necessary rooms for taking care of personal hygiene either in the accommodation building or right next to it and equip them with lavatories, sinks and, if possible, with a shower.

During the tour of N1 department, advisers to the Chancellor also checked the room which, according to the prison service, is sometimes also used for carrying out strip searches of female prisoners. The room felt cool, the radiator in it was cold and the window was open.

Although the collected evidence did not show that the room had been kept cool permanently and intentionally, the Chancellor considered it necessary to point out that strip search of persons in a room which does not have at least normal room temperature is inadmissible and proposed to stop it immediately. In the opinion of the Chancellor, the prison service must ensure in the future that a room used for strip searches is sufficiently heated and check it in each particular case (i.e. the prison officer conducting the search should always be convinced that the room temperature is suitable for the search).

In addition, male prisoners complained that metal bunk beds in the cells did not have a ladder to help reach the upper bunk more easily. Both the prison service officers as well as the prisoners with whom the Chancellor's advisers spoke claimed that a person's health status is taken into account when allocating a place either on the lower or top bunk (upper bunks are assigned to those for whom climbing is not so difficult). According to the prison officers, the prison service admits the problem and funds have been requested to procure the means to make reaching the upper bunks easier. The Chancellor expressed hope that the means to simplify climbing to the upper beds would be installed in the near future.

3.10. The computer designated for access to legislation and court decisions

During the tour of Harku and Murru Prison, advisers to the Chancellor wanted to check the possibilities for internet access to the legislation databases and registers of court decisions in the prison as required under the Imprisonment Act. However, the computer in the library did not switch on and, consequently, the advisers to the Chancellor could not be sure whether and what resources the prisoners can access via the internet.

Therefore, the Chancellor recommended to ensure access to the official legislation databases and register of court decisions via the computer in the prison library.

3.11. The department for mothers and children in Harku and Murru Prison

3.11.1. Observations by the Chancellor

There were 2 mothers and 2 infants at the department for mothers and children during the inspection visit. The mothers staying at the department had a washing machine at their disposal; however, the mothers were under an impression that they also had to use the washing machine to wash, at their own expense, the clothes provided by the prison. They also mentioned that no newspaper in Russian reached the department. The mothers also complained that there were problems with catering. In case of breast-feeding, a feeling of an empty stomach comes easily if the period between dinner and breakfast is too long (about 12 hours according to the daily schedule established in the internal rules of the prison).

Under point 11.5 of the internal prison rules, washing of bedclothes, towels, a prisoner's prison clothes and working clothes provided by the prison service is free of charge for prisoners. No exceptions to this have been established in the special provisions of the internal prison rules

concerning the department for mothers and children. The Chancellor recommended to explain additionally to the prisoners at the department for mothers and children that they had the right to submit the clothing provided by the prison to the prison service to be washed free of charge.

Under the Imprisonment Act, prisoners are ensured an opportunity to read national daily newspapers and magazines. On this basis, the Chancellor recommended to the prison to guarantee that national daily papers, including in Russian, which are offered by the prison are also made available for reading at the department for mothers and children.

The Imprisonment Act also obliges the prison service to fit out separate premises for pregnant women at the prison and to organise care for children. In the Chancellor's opinion, this means care in the wider sense, including ensuring fully nutritional food for children staying at the prison together with mothers and that breastfeeding mothers do not have to suffer an empty stomach or feeling of hunger. The Chancellor recommended to the prison to ensure constant monitoring of catering of breastfeeding women at the department and, if necessary, even without a person's request, intervene and reorganise the provision of meals to a breastfeeding prisoner. The Chancellor also recommended to analyse the daily schedule and catering at the department for women and children and find a possibility to offer an additional mealtime to breastfeeding mothers, so that the interval between the dinner and breakfast does not become too long.

3.11.2. Conclusions and recommendation by the experts

The medical experts participating in the inspection visit assessed the living conditions and the growth environment of the children staying at the prison, the appropriateness and sufficiency of the health services for children on the basis of interviews with mothers and the prison medical staff and health cards of the children, as well as the health, physical and mental development of the children in prison. In addition, on the basis of interviews with the staff of the social department of the prison the experts analysed the level of social protection of the children.

In the opinion of the experts, the growth environment for the children and the catering were satisfactory. The children are ensured adequate health examination and good medical care both in case of acute illnesses and chronic diseases.

The experts made the following proposals based on their observations during the inspection:

- 1) to involve more specialists in the monitoring of children, for which the experts also offered their own help;
- 2) to involve a children's psychologist regularly as a specialist;
- 3) to expand the children's communication environment;
- 4) to adopt growth curves of Estonian children in the health cards;
- 5) to enable a general practitioner dealing with a child access to the child's digital health record in order to ensure an adequate overview of the child's consultations outside the hospital;
- 6) to organise, both in case of a mother's scheduled release or release on parole from the prison, a roundtable meeting with the child's mother (if necessary, also involving other family members), the prison social workers, medical staff and child protection worker of the place of residence prior to sending the mother and child home, so as to ensure good health of the child and a diverse and safe growth environment also outside the prison.

The Chancellor notes with regret that several recommendations of the experts are the same as those made after the 2010 visit, as the previous recommendations have not been complied with (growth curves of the children, involvement of a child psychologist). The Chancellor recommended to the prison to implement the recommendations made by the experts involved in the inspection.

4. Defence Forces

On 20 March 2013, advisers to the Chancellor carried out an announced inspection visit to the Guard Battalion (Inspection visit to the Guard Battalion, [case No 7-7/130490](#)). No shortcomings requiring any specific recommendations or proposals to the Defence Forces were identified as a result of the inspection.

5. Special schools

In Estonia there are currently two schools for children requiring special educational measures due to behavioural problems (i.e. special schools): Tapa Special School for boys and Kaagvere Special School for girls. On 8 November 2013, advisers to the Chancellor carried out an announced visit to Tapa Special School (Inspection visit to Tapa Special School, [case No 7-7/140013](#)). The Chancellor's previous inspection of Tapa Special School took place in 2009.

As a result of the inspection, it was found that several of the Chancellor's recommendations and proposals made after the previous visits had not been complied with. Consequently, the situation at Tapa Special School had not improved as compared to 2009. Rather on the contrary – during the inspection, the school environment was tense and both the pupils and some of the staff did not feel safe at school.

The inspection visit raised serious doubts whether Tapa Special School is able to perform the task imposed on it under the Juvenile Sanctions Act to perform constant disciplinary supervision over the children referred to the school and to provide assistance in the re-socialisation of juvenile offenders and to prevent them from committing offences in the future.

In the following part the main shortcomings found during the inspection are described.

5.1. Safety

The issue of safety of the pupils and staff at Tapa Special School arose as a recurring problem during the inspection.

Upon the inspection, it was found that conflicts and violence between the pupils at school are frequent, and both verbal and physical attacks against the staff have also occurred. In addition, the pupils often break school property. There have also been thefts, and prohibited substances and items have been brought to the school territory.

The lack of safety at the school is also exacerbated by the fact that many children attending Tapa Special School have been diagnosed with various mental disorders. For years, child psychiatrists have expressed deep concern for pupils with serious mental disorders at Tapa Special School because, according to the assessment of the psychiatrists, the special school in its current form is not a suitable place for children with low cognitive skills and unpredictable behaviour. Failure to guarantee a necessary rehabilitation environment for children with mental disorders who have been referred to special schools is also incompatible with the UN Convention on the Rights of the Child, under which measures taken in respect of children who have committed an offence must ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence. Heads of special schools have admitted that currently the special schools are unable to offer the environment appropriate for pupils with mental disorders.

As a result of the inspection, the Chancellor made a proposal to the management of Tapa Special School and the Minister of Education and Research to take immediate steps to ensure the safety of the pupils and staff at the school. In addition, the Chancellor recommended that the Minister of Education and Research in cooperation with the Minister of Social Affairs should

draw up regulative provisions to enable an individual approach to pupils referred to special schools and to take into account their special needs, and also establish different regimes for special schools.

5.2. Living rooms and the arrangements for spending free time incompatible with the needs of children

Upon the inspection, it was found that the living conditions and organisation of life at Tapa Special School did not meet the needs of the children at the school.

The furniture in the sleeping rooms of the children was very scarce and in a poor state of repair. For example, in some rooms the only piece of furniture was a bed, and in some rooms a bed and a nightstand. In the rooms without a nightstand the pupils kept their personal belongings on the windowsill. In many of the rooms, windows had no curtains, and several rooms had no door. Doors were also absent in the toilet cubicles in one of the groups. The furniture in the group rooms was also scarce and in a poor state of repair. For example, in one group room, there were not enough chairs for all the pupils and some of the existing chairs were broken and not suitable for use.

The management of Tapa Special School explained the situation by the fact that the pupils themselves had broken all the furniture and, therefore, there was no sense to provide new furniture for the rooms. The Chancellor emphasised that annoyance over the broken furniture cannot be a justification for insufficient furniture (which is also in a poor state of repair) in the living rooms. In the Chancellor's opinion, the fact that pupils often break the furniture is a clear sign of insufficient educational work, insufficient skills in preventing cases of violence and reacting to them, as well as lack of control over the behaviour of the pupils. These are serious problems which need to be resolved, but the solution cannot be the removal of all the furniture and personal belongings from the living rooms of pupils.

Although the current legislation does not establish any specific requirements for rooms in boarding school facilities, this does not mean that pupils in boarding schools could be deprived of basic items of furniture such as a nightstand, chair and table. Definitely, furniture in the rooms of pupils of a special school should not be more scarce than, for example, in a seclusion room for which minimum requirements have been established by a regulation of the Minister of Social Affairs⁴². By way of analogy, with certain concessions, the health protection requirements applicable for child social welfare institutions⁴³ or the substitute home service⁴⁴ establishing, inter alia, specific requirements for the furnishings of rooms, could serve as a model for boarding schools facilities of special schools.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has also noted that a well-designed juvenile detention centre will provide positive and personalised conditions of detention for young persons deprived of their liberty. In addition to being of an adequate size, well lit and ventilated, juveniles' sleeping and living areas should be properly furnished, well-decorated and offer appropriate visual stimuli. Unless there are compelling security reasons to the contrary, juveniles should be allowed to keep a reasonable quantity of personal items.⁴⁵

42 See the Minister of Social Affairs regulation No 33 of 8 February 2002 „Health protection and safety requirements for the seclusion room and its furnishings“. Available online in Estonian: <https://www.riigiteataja.ee/akt/13256047>.

43 See the Minister of Social Affairs regulation No 4 of 9 January 2001 „Health protection requirements for child social welfare institutions“. Available online in Estonian: <https://www.riigiteataja.ee/akt/13360780>.

44 See the Minister of Social Affairs regulation No 59 of 20 July 2007 „Health protection requirements for the substitute home service“. Available online in Estonian: <https://www.riigiteataja.ee/akt/12855667>.

45 See the CPT Standards, p 72, para 29. Available online: <http://www.cpt.coe.int/en/documents/eng-standards-scr.pdf>.

In addition, the inspection revealed that during the time free from school or recreational activities pupils did not have sufficient possibilities to be on their own, stay outdoors, be physically active or engage in other activities to their liking. In case of minors staying in a closed institution, purposeful activities and programmes are particularly important because by participating in them juveniles improve their health and self-respect and develop the skills and abilities necessary for becoming fully functional members of society.⁴⁶ The CPT has noted that although a lack of purposeful activity is detrimental for any prisoner, it is especially harmful for juveniles, who have a particular need for physical activity and intellectual stimulation. Juveniles deprived of their liberty should be offered a full programme of education, sport, vocational training, recreation and other purposeful activities. Physical education should constitute an important part of that programme.⁴⁷

On this basis, the Chancellor recommended that the management of Tapa Special School in cooperation with the Ministry of Education and Research should ensure to the pupils living conditions conforming to their individual needs, as well as proper furnishing in the sleeping and group rooms. The Chancellor also recommended the Minister of Education and Research to establish minimum requirements for furnishings in boarding schools facilities.

In addition, the Chancellor recommended to the management of Tapa Special School to create more possibilities for pupils to be on their own, as well as for purposeful activities, paying particular attention to improving the possibilities for physical activities and staying outdoors.

5.3. Unauthorised departure of pupils from the school

Already during the Chancellor's inspection in 2009 it was found that Tapa Special School had a problem with unauthorised departure of pupils from the school territory. Then, the Chancellor drew the attention of both the school management and the Ministry of Education and Research to the problem, and recommended the director of the school to find and take additional measures to prevent unauthorised departure of pupils from the school territory. Unfortunately, at the time of the inspection in 2013 the situation had not improved.

Tapa Special School is a closed institution from which pupils are not allowed to leave at their own discretion. Under the Juvenile Sanctions Act, for the exercise of constant disciplinary supervision, pupils are prohibited from leaving the territory of a school for pupils who need special treatment due to behavioural problems, except in the cases provided for in the statutes of the school. To comply with this provision, such schools are obliged to exercise constant disciplinary supervision over all the pupils and take necessary measures to prevent unauthorised departure of the pupils from the school. The aim of the restriction of the liberty of the pupils is to ensure an uninterrupted educational and disciplinary process in respect of the pupils. An interruption of the process due to unauthorised departure from the school raises not only a question of the security of society (as persons departing without an authorisation may commit offences) but also has a significant negative impact on the successful re-socialisation of a child. A child leaving the school without an authorisation also fails to comply with the obligation to attend school.

The Chancellor recommended to the director of Tapa Special School to find, in cooperation with the specialists of the Ministry of Education and Research, and take immediate additional measures to prevent unauthorised departure of pupils from the school territory. In addition, the Chancellor recommended to the Minister of Education and Research to do everything within his powers to ensure that a modern living and learning environment corresponding to the needs of the children is created in 2015 at the latest.

46 See the „United Nations Rules for the Protection of Juveniles Deprived of their Liberty“, 14 December 1990, para 12. Available online: <http://www.un.org/documents/ga/res/45/a45r113.htm>.

47 See the CPT Standards, p 72, para 31. Available online: <http://www.cpt.coe.int/en/documents/eng-standards-scr.pdf>.

5.4. Security check without a legal basis

The inspection revealed that supervisory staff at Tapa Special School perform security checks of the pupils arriving at the school, involving both visual as well as pat-down checks. Routine security checks are carried out in respect of all the pupils returning from a home visit or a short-term leave, and sometimes also in case of pupils' movement inside the school. The school supervision manager justified the security checks with the need to ensure that pupils do not possess any prohibited items or substances.

The Chancellor understands the practical need to perform, in case of a reasoned suspicion, security checks of pupils arriving at the school, but cannot accept the restriction of fundamental rights of persons without a legal basis. § 20(1) of the Constitution establishes everyone's right to liberty and security of person (the fundamental right to liberty of person). Under § 20(2) of the Constitution, liberty of person may be restricted only in the cases and pursuant to a procedure provided by law. The Supreme Court has also noted that obliging a person to show the items in their pockets interferes with the right to liberty of person under § 20 of the Constitution and this may be done only in the cases and pursuant to the procedure provided by law.⁴⁸

The Juvenile Sanctions Act does not authorise supervisory staff of special schools to perform security checks of pupils. The director of a school for pupils in need of special treatment due to behavioural problems or a person authorised by the director has the right to confiscate prohibited items and substances from a pupil in the presence of the pupil, as well as open postal and other consignments sent to a pupil in the presence of the pupil. However, the above does not provide for the right to perform a pat-down check of pupils and their clothing.

The power to perform security checks of children in need of special treatment due to behavioural problems does not arise from any other legislation either. The Police and Border Guard Act provides for the right of the police to perform security checks of persons but this right does not extend to the supervisory staff of special schools. Similarly, the provisions of the Security Act authorising security guards, when apprehending a person, to carry out a security check of the person and the items carried by them in order to verify that the apprehended person is not in possession of items or substances with which they could endanger themselves or others, do not extend to supervisory staff of special schools. Supervisory staff of Tapa Special School are neither security guards nor guards of an in-house guarding unit in the meaning of the Security Act. Thus, in case of a reasoned suspicion that a pupil may be in possession of prohibited items or substances, the school should contact the police.

As a result of the inspection, the Chancellor recommended the Minister of Education and Research to analyse whether certain staff of special schools should be given the right to perform security checks of pupils under certain conditions. The Chancellor also recommended the Minister of Education and Research to provide clear guidance to special schools on how to ensure that pupils do not have any prohibited items or substances until the staff of special schools do not have the right to perform security checks.

5.5. Right to the confidentiality of messages and inviolability of private life

The inspection revealed that the possibilities of pupils at Tapa Special School to communicate with their next of kin were extremely limited. The pupils had no possibility to communicate with their next of kin via the internet as the use of the internet was allowed only for study purposes and under the supervision of a member of staff. Pupils could communicate with their next of kin by telephone at the designated times and only if a parent himself or herself called the school. The maximum length of a conversation was limited to 7 minutes at a time and the phone call took place under the supervision of a member of staff. The only possibility of private communication with next of kin was by letter.

⁴⁸ The Supreme Court Criminal Chamber judgment of 19 May 2005, No 3-1-1-43-05, para 7.

Under the Convention on the Rights of the Child and the Child Protection Act, a child whose liberty is restricted and who is thus temporarily separated from his or her parents has the right to maintain personal relations and contact with both parents and close relatives, except if this is contrary to the child's interests. The CPT also attaches considerable importance to the maintenance of good contacts with the outside world for all juveniles staying in closed institutions. The active promotion of such contacts can be especially beneficial for juveniles deprived of their liberty, many of whom may have behavioural problems related to emotional deprivation or a lack of social skills. The CPT also wishes to stress that a juvenile's contact with the outside world should never be restricted or denied as a disciplinary measure.⁴⁹

Under the Juvenile Sanctions Act, the director of a school for pupils in need of special treatment due to behavioural problems or other staff of such a school do not have the right to examine the contents of a pupil's correspondence and messages forwarded by telephone or other public communication channels.

In the summary of his visit, the Chancellor noted that children staying in a closed institution who are separated from their family must have the possibility to communicate with their parents and next of kin. The Chancellor also cannot accept the current arrangement for making phone calls as this violates the right of children to the inviolability of private life and confidentiality of messages.

The Chancellor proposed to the director of Tapa Special School to organise the communication of children with their parents and close ones in a way that does not violate the rights of children to the confidentiality of messages and inviolability of private life. In addition, the Chancellor recommended to the director of the special school, in cooperation with the Ministry of Education and Research, to find the necessary resources to ensure that also those children whose parents cannot pay for the phone calls could regularly communicate with their parents and close ones.

6. Providers of involuntary emergency psychiatric care

During the reporting year, the Chancellor inspected six institutions providing involuntary emergency psychiatric care:

- Tartu University Clinic Foundation ([case No 7-9/130434](#));
- South Estonian Hospital Ltd ([case No 7-9/130245](#));
- Ahtme Hospital Foundation ([case No 7-9/130612](#));
- Narva Hospital Foundation ([case No 7-9/130436](#));
- Kuressaare Hospital Foundation ([case No 7-9/130700](#));
- Pärnu Hospital Foundation ([case No 7-9/140146](#)).

From the six inspection visits to providers of involuntary psychiatric care, one visit was announced.⁵⁰ Experts were not involved in any of the visits as the Chancellor inspected the institutions with regard to the aspects where no specialist knowledge was needed for the assessment.

First of all, the Chancellor noticed as a problem that not in all the psychiatric hospitals a psychiatrist was sufficiently involved in making decisions concerning involuntary treatment and applying means of restraint. As a recurring problem, insufficient registration of the applied means of restraint⁵¹ and insufficient guarantee of the privacy of the patients arose.⁵²

49 See the CPT Standards, p 73, para 34. Available online:

<http://www.cpt.coe.int/en/documents/eng-standards-scr.pdf>.

50 Inspection visit to Pärnu Hospital Foundation (case No 7-9/140146).

51 See the Chancellor's 2012 Overview, pp 8-9. Available online: http://oiguskantsler.ee/sites/default/files/annual_report_2012.pdf.

52 Excessive use of video surveillance, see the inspection visit to Pärnu Hospital Foundation (case No 7-9/140146).

In the following part, the above shortcomings and the Chancellor's proposals for remedying them are described in more detail. Most of the problems pointed out by the Chancellor were eliminated by the inspected institutions during the reporting year.

6.1. Availability of a psychiatrist

The most important shortcoming in organising involuntary treatment is related to the fact that not in all the hospitals a psychiatrist is available all the time. In two of the inspected institutions⁵³ round-the-clock availability of a psychiatrist for making decisions concerning involuntary treatment was not ensured and, therefore, a decision could be made by a person not competent for this. In particular, on weekends and public holidays decisions concerning involuntary treatment could be made by a duty doctor who was not a psychiatrist. In one of the institutions⁵⁴ the Chancellor had a suspicion that it might not be ensured that a person admitted for involuntary treatment without a court authorisation is indeed also examined by another psychiatrist within the required time.

The Chancellor found that the availability of a psychiatrist at the psychiatric department of a hospital is inevitably necessary for making decisions concerning involuntary treatment. Also, for review of involuntary treatment, under § 13(3) of the Mental Health Act a psychiatrist other than the one having made the decision to apply involuntary treatment must carry out a medical examination of a person admitted for involuntary treatment within twenty-four hours after commencement of in-patient treatment. Therefore, the Chancellor proposed to both institutions to ensure that decisions of involuntary treatment are made by a psychiatrist at the psychiatric department. The psychiatrist must do this upon the admission of a person to the psychiatric department or, in case of a person receiving voluntary in-patient treatment at the hospital, immediately after the medical examination when the need to apply involuntary treatment appeared. Furthermore, the Chancellor pointed out that a provider of involuntary emergency psychiatric treatment must ensure that every time a person is admitted for involuntary psychiatric treatment without a court authorisation they are examined by another psychiatrist within 24 hours as of the commencement of involuntary treatment.

It was also found that in one of the institutions⁵⁵ at night the decision to apply means of restraint is taken by the duty nurse of the psychiatric department, and the doctor may grant the authorisation by telephone without having seen the patient. If the doctor makes the decision to apply means of restraint without having personally assessed the patient's condition, the circumstances necessitating the application of restraint have not been directly assessed by a designated professional. The Chancellor reached the opinion that this may constitute an unlawful interference with a patient's fundamental right to liberty and inviolability of person. In applying means of restraint, the requirement of a personal and direct assessment of a patient's condition by a doctor must be complied with.

As an obstacle to a 24-hour availability of a psychiatrist, the above-mentioned psychiatric hospital pointed to the lack of resources and suggested a video consultation as a possible solution.

6.2. Conditions of restraint

The main problems in the restraining of patients were related to inappropriateness of the physical conditions for restraint. In two institutions⁵⁶ the Chancellor had a suspicion that

53 See the inspection visits to South Estonian Hospital Ltd (case No 7-9/130245) and Narva Hospital Foundation (case No 7-9/130436).

54 See the inspection visit to South Estonian Hospital Ltd (case No 7-9/130245).

55 See the inspection visit to Narva Hospital Foundation (case No 7-9/130436).

56 See the inspection visits to Tartu University Clinic Foundation (case No 7-9/130434) and Ahtme Hospital Foundation (case No 7-9/130612).

restraint is carried out within the range of vision of other patients. The Chancellor found that if a person is restrained in view of the other patients this may constitute degrading treatment of the restrained person as it may have a negative impact on self-respect.

In one of the inspected institutions⁵⁷ the seclusion room was used as an ordinary ward and, therefore, sufficient safety of the secluded person was not ensured. For example, there were loose items of furniture in the seclusion room, the window had long curtains and there was a cast iron radiator under the window. The Chancellor is of the opinion that the safety of the patient and the staff must be ensured during restraint. Restraint may only be applied in a designated room where a safe and calming environment for the dangerous person is ensured, so that the person cannot injure themselves. If a room is alternately used either as an ordinary ward or a seclusion room depending on the need, the safety of a secluded person may be endangered as for the time of rearranging the ordinary ward the person in need of seclusion might be temporarily placed in a room not adjusted for seclusion.

On this basis, the Chancellor proposed to ensure that restraint is applied outside the view of the other patients, the seclusion room is sufficiently safe and the seclusion room is used only for the application of restraint.

6.3. Registration of the applied means of restraint

During the reporting year, there were still problems with maintaining a register providing a quick overview of the means of restraint applied within an institution. In one institution⁵⁸ the register of the applied means of restraint lacked important information while in another institution⁵⁹ seclusions were not registered and in the third⁶⁰ there was no general overview of the cases of restraint because the register was filled in only when a patient's file was archived.

In the opinion of the Chancellor, the register must contain all the cases of application of all kinds of means of restraint because otherwise it does not serve its purpose and fails to provide a quick and general overview of the means of restraint applied by a particular health service provider. Register of the application of means of restraint helps to prevent the risk of ill-treatment first and foremost for those applying the means of restraint and also offers a possibility of retroactive analysis of the cases of restraint based on the information in the register. On the other hand, purposeful maintenance of the register provides a possibility for supervisory authorities to carry out effective review of the lawfulness of the application of means of restraint to protect the rights of patients. To obtain an up-to-date overview, the register must be filled in immediately after the application of means of restraint.

6.4. Guarantee of privacy

As a recurring problem, excessive use of video surveillance infringing the privacy of the patients was identified during the reporting year. In one institution⁶¹ extensive video surveillance was used in the premises of the department, including in the wards. In the institution, all the persons, regardless of the need, were subject to video surveillance during their presence in the department, including video surveillance of the patients in all the wards.⁶²

However, in the Chancellor's opinion, such extensive restriction of human dignity and the right to inviolability of private life without a person's consent and without consideration of

57 See the inspection visit to Ahtme Hospital Foundation (case No 7-9/130612).

58 See the inspection visit to Ahtme Hospital Foundation (case No 7-9/130612).

59 See the inspection visit to Narva Hospital Foundation (case No 7-9/130436).

60 See the inspection visit to Kuressaare Hospital Foundation (case No 7-9/130700).

61 See the inspection visit to Pärnu Hospital Foundation (case No 7-9/140146).

62 According to the explanations by the staff, video surveillance was necessary for effective monitoring of the patients and preventing incidents of violence. Video surveillance also helps to ascertain retroactively the circumstances of violent incidents, etc, in the department.

its necessity and justification in each case cannot be purposeful. On this basis, the Chancellor recommended to ensure that in a situation where a person has not given a consent for using video surveillance in a ward the necessity and extent of applying video surveillance will be considered in each particular case.⁶³

7. Providers of 24-hour special care services

In 2013, the Chancellor inspected 13 providers of 24-hour special care services:

- non-profit association Paju Boarding Houses ([case No 7-9/130478](#));
- non-profit association South Estonian Special Care Services Centre ([case No 7-9/130904](#));
- non-profit association Lääne County Psychosocial Rehabilitation Centre ([case No 7-9/130534](#));
- Haapsalu Welfare Centre Foundation ([case No 7-9/130477](#));
- Sõmera Home of Hoolekandeteenused Ltd ([case No 7-9/130603](#));
- Pariisi Special Care Centre Ltd ([case No 7-9/131299](#));
- Erastvere Home of Hoolekandeteenused Ltd ([case No 7-9/130438](#));
- Rõngu Nursing Care Centre Foundation ([case No 7-9/130435](#));
- Kodijärve Home of Hoolekandeteenused Ltd ([case No 7-9/130901](#));
- South Estonian Care Centre Ltd ([case No 7-9/130904](#));
- Kehra Home of Hoolekandeteenused Ltd ([case No 7-9/130902](#));
- Viljandi Hospital Foundation ([case No 7-9/130865](#));⁶⁴
- non-profit association Valga County Support Centre ([case No 7-9/130903](#)).

The aim of the inspection was to assess the safety of clients receiving 24-hour special care services and lawfulness of the restriction of the fundamental right to liberty. All the inspection visits were unannounced and no experts were involved as the Chancellor inspected the institutions with regard to the aspects where no specialist knowledge was needed for the assessment. Some institutions⁶⁵ were visited repeatedly during a short period by the Chancellor's advisers, including at night without a prior notice, in order to verify compliance with the Chancellor's proposals.

The main problems found during the inspections concerned possible unlawful restriction of the fundamental right to liberty of the recipients of 24-hour special care services, non-conformity of the number of clients to the number of places noted on the operating licence, and an insufficient number of activity supervisors. In addition, there were still problems with the safety of seclusion rooms and registration of the applied means of restraint.

These shortcomings and the Chancellor's proposals and recommendation for remedying them are described in more detail below. Several of the shortcomings pointed out by the Chancellor had been eliminated by the time of writing this report.

7.1 Restriction of the liberty of persons

Similarly to the inspection visits in 2012, it was found that in some special care homes the clients' fundamental right to liberty could be unlawfully restricted. For example, in three of the inspected institutions⁶⁶ doors of the rooms of persons voluntarily receiving 24-hour special care

63 In the interests of transparency and verifiability, such a decision should be made in a reproducible form in writing in each case and in respect of each person. The decision to apply video surveillance should be valid only for a specific period after which it should be reviewed.

64 Social welfare unit.

65 See the inspection visits to Viljandi Hospital Foundation (case No 7-9/130865) and non-profit association Valga County Support Centre (case No 7-9/130903)

66 See the inspection visits to non-profit association Paju Boarding Houses (case No 7-9/130478), non-profit association Lääne County Psychosocial Rehabilitation Centre (case No 7-9/130534) and Viljandi Hospital Foundation (case No 7-9/130865).

services had locking devices which could be opened only from the outside. In two institutions⁶⁷ advisers to the Chancellor found that a person receiving 24-hour special care services had indeed been locked into their bedroom.

The Chancellor is of the opinion that seclusion of a client of 24-hour special care services in their room is inadmissible. In order to prevent arbitrary restriction of the liberty of service recipients the Chancellor proposed to immediately remove from the doors of the rooms of clients any locking devices which can be opened only from the outside. In addition, the Chancellor recommended to the service providers to analyse which lawful measures can be taken to ensure the safety of a client who can quickly become violent as well as other clients at night and, in order to resolve the situation, take measures which, in proportion to the threat, cause least interference with the rights of the clients. The Chancellor also considered it necessary for the institution to explain to its staff the cases of admissibility of restricting the fundamental right to liberty.

7.2. Sufficient number of activity supervisors

During the inspection of several institutions⁶⁸ the Chancellor had a suspicion whether there was a sufficient number of activity supervisors to provide the service to persons receiving 24-hour special care. For example, in one of the inspected institutions⁶⁹ only one activity supervisor was at work during the inspection visit and had to take care of 12 service recipients with serious multiple disabilities, including cooking for them, heating the stove and cleaning the rooms. In two institutions⁷⁰ the Chancellor saw the problem that depending on the roster sometimes only 2 staff members per 6 houses could be on duty at night. Video surveillance was used in the corridors of the houses and the activity supervisors on night duty made a round of the houses according to the need. In the evening the activity supervisors helped clients in all the houses with their personal needs.

The Chancellor doubts whether some of the inspected institutions always have a sufficient number of activity supervisors present to ensure the fundamental rights of service recipients. In order to ensure a safe living environment for the recipients of 24-hour special care services and maintain or increase their ability to cope independently, in consideration of their condition and skills, the Chancellor proposed to guarantee that a sufficient number of activity supervisors are on duty in each institution every day to provide 24-hour special care.

In reply to the Chancellor's proposal, two of the institutions⁷¹ expressed the view that they had a sufficient number of activity supervisors and their availability was ensured by the use of video surveillance in the corridors and making regular rounds of the houses, and there was no money to hire additional staff.

7.3. The number of service recipients

In two institutions⁷² the Chancellor found that the number of service recipients exceeded the number of persons noted on the operating licence. For example, one institution⁷³ had been

67 See the inspection visits to non-profit association Lääne County Psychosocial Rehabilitation Centre (case No 7-9/130534) and Viljandi Hospital Foundation (case No 7-9/130865).

68 See the inspection visits to non-profit association Lääne County Psychosocial Rehabilitation Centre (case No 7-9/130534), Kodijärve Home of Hoolekandeteenused Ltd (case No 7-9/130901) and Kehra Home of Hoolekandeteenused Ltd (case No 7-9/130902).

69 See the inspection visit to non-profit association Lääne County Psychosocial Rehabilitation Centre (case No 7-9/130534).

70 See the inspection visits to Kodijärve Home of Hoolekandeteenused Ltd (case No 7-9/130901) and Kehra Home of Hoolekandeteenused Ltd (case No 7-9/130902).

71 See the inspection visits to Kodijärve Home of Hoolekandeteenused Ltd (case No 7-9/130901) and Kehra Home of Hoolekandeteenused Ltd (case No 7-9/130902).

72 See the inspection visits to Sõmera Home of Hoolekandeteenused Ltd (case No 7-9/130603) and South Estonian Care Centre Ltd (case No 7-9/130904).

73 See the inspection visit to South Estonian Care Centre Ltd (case No 7-9/130904).

granted a licence for the provision of 24-hour special care services to maximum 60 people but during the inspection visit the service was provided to 93 persons. In another institution⁷⁴ 24-hour special care service was provided to one more person with a serious multiple disability than authorised by the operating licence.

As the operating licence proves that the particular service provider complies with the minimum requirements established by the law, including being able to provide a service of at least minimum quality simultaneously to the requested number of persons, the Chancellor proposed to the institution to ensure that the number of persons simultaneously receiving the 24-hour special care service does not exceed the maximum number of persons indicated on the operating licence.

In their replies, the institutions expressed the view that the maximum number of places for the provision of the 24-hour special care service indicated on the operating licence only covered the service funded by the state and the number did not include persons who pay for the service themselves.

7.4. Safety of seclusion rooms and register of means of restraint

Problems relating to the safety of seclusion rooms were found in five of the inspected institutions.⁷⁵ In the Chancellor's opinion the main problems concerning seclusion of persons were the absence of a seclusion room, its inadequate safety and use of a seclusion room for other purposes. In addition, there were still problems with keeping the register of means of restraint.

Even where a seclusion room existed, its safety was diminished due to an unsecured bed⁷⁶, presence of irrelevant items either in the room or in front of it⁷⁷ and use of the room for other purposes.⁷⁸ In two of the institutions⁷⁹ it was not possible to monitor everything taking place in the seclusion room. Five of the inspected institutions lacked a seclusion room and a register of seclusion.⁸⁰

With regard to the seclusion room it should be noted that since 11 August 2013 providers of 24-hour special care services are no longer obliged to have a seclusion room; however, should a service provider find itself in need for use of a seclusion room, it must ensure the existence of such a room complying with all the requirements.

The Chancellor is of the opinion that in case of absence of a seclusion room the institution should proactively consider and prepare detailed guidelines for a situation where a need for a proper seclusion room arises. A seclusion room created in case of need must be safe and the protection of fundamental rights and freedoms of persons must be ensured during its use. Constant monitoring of the secluded person should be ensured throughout seclusion, including the possibility to monitor everything taking place in the seclusion room, and any items kept

74 See the inspection visit to Sõmera Home of Hoolekandeteenused Ltd (case No 7-9/130603).

75 See the inspection visits to non-profit association Paju Boarding Houses (case No 7-9/130478), South Estonian Care Centre Ltd (case No 7-9/130904), Pariisi Special Care Centre Ltd (case No 7-9/131299), Sõmera Home of Hoolekandeteenused Ltd (case No 7-9/130603) and South Estonian Care Centre Ltd (case No 7-9/130904).

76 See the inspection visit to non-profit association Paju Boarding Houses (case No 7-9/130478).

77 See the inspection visit to Pariisi Special Care Centre Ltd (case No 7-9/131299).

78 See the inspection visits to Pariisi Special Care Centre Ltd (case No 7-9/131299), South Estonian Care Centre Ltd (case No 7-9/130904) and Sõmera Home of Hoolekandeteenused Ltd (case No 7-9/130603).

79 See the inspection visits to Pariisi Special Care Centre Ltd (case No 7-9/131299) and South Estonian Care Centre Ltd (case No 7-9/130904)

80 See the inspection visits to non-profit association Lääne County Psychosocial Rehabilitation Centre (case No 7-9/130534), Haapsalu Welfare Centre Foundation (case No 7-9/130477), non-profit association South Estonian Care Centre Ltd (case No 7-9/130904), Rõngu Nursing Care Centre Foundation (case No 7-9/130435) and non-profit association Valga County Support Centre (case No 7-9/130903).

by the entrance to a seclusion room should not pose a danger to the person taken to the room or to the staff. On this basis, the Chancellor proposed to ensure the existence of a proper seclusion room in case a need for seclusion arises.

In the reply to the Chancellor, four of the institutions⁸¹ did not consider it necessary to create a permanent seclusion room as they have no need to seclude their clients.

The Chancellor also recommended to introduce a register of seclusion, as this helps to prevent the risk of ill-treatment first and foremost for those carrying out the seclusion and also offers a possibility of retroactive analysis of the cases of seclusion based on the information in the register. On the other hand, purposeful maintenance of the register provides a possibility for supervisory authorities to carry out effective review of the lawfulness of seclusion to protect the rights of clients. In order for the register of seclusion to serve its purpose, i.e. provide a quick and general overview of the cases of seclusion, it is important that all the information necessary for establishing the lawfulness of seclusion is entered in it.⁸² The register must also be accessible to external supervisory authorities to ensure effective control.⁸³

8. Providers of nursing care services

During the reporting year, the Chancellor inspected 8 institutions providing nursing care services:

- Kiviõli Health Centre Foundation ([case No 7-9/130607](#));
- Sillamäe Hospital Foundation ([case No 7-9/130437](#));
- PJV Nursing Care Foundation ([case No 7-9/140101](#));
- East Tallinn Central Hospital Ltd ([case No 7-9/131500](#));⁸⁴
- Kilingi-Nõmme Health and Care Centre ([case No 7-9/131307](#));
- Abja Hospital Foundation ([case No 7-9/131308](#));
- Kallavere Hospital Ltd ([case No 7-9/131434](#));
- Pärnu-Jaagupi Care Home Foundation ([case No 7-9/140001](#)).

The choice of the providers of nursing care services was based on the aim to inspect a diverse range of service providers and on the information available about the institutions in the media.⁸⁵ In case of nursing care hospitals, the aim was to assess first and foremost the guarantee of the fundamental right to liberty, and in case of five of the inspected institutions the Chancellor also assessed the guarantee of human dignity and obtaining of consent for the provision of health services.

Three of the visits to the providers of nursing care services were announced in advance⁸⁶, while the rest were unannounced. In one of the unannounced inspections, a general practitioner was involved as an expert to assess the quality of the provision of nursing care services and assist the Chancellor's advisers in carrying out the interviews.⁸⁷

81 See the inspection visits to Pariisi Special Care Centre Ltd (case No 7-9/131299), Sõmera Home of Hoolekandeteenused Ltd (case No 7-9/130603), South Estonian Care Centre Ltd (case No 7-9/130904) and Haapsalu Welfare Centre Foundation (case No 7-9/130477).

82 See the inspection visits to non-profit association Paju Boarding Houses (case No 7-9/130478), Pariisi Special Care Centre Ltd (case No 7-9/131299), Sõmera Home of Hoolekandeteenused Ltd (case No 7-9/130603), Viljandi Hospital Foundation (case No 7-9/130865) and Kehra Home of Hoolekandeteenused Ltd (case No 7-9/130902). The register of seclusion should contain the following fields: a) description of the situation prior to seclusion, b) time of beginning and end of seclusion, c) cause of seclusion, d) name of the person making the decision, e) sustained injuries, f) information on notifying the ambulance or the police, g) time of notifying the police or the ambulance, h) note on explaining the purpose and cause of seclusion to the secluded person.

83 See the inspection visits to Erastvere Home of Hoolekandeteenused Ltd (case No 7-9/130438) and Viljandi Hospital Foundation (case No 7-9/130865).

84 Järve unit of the nursing care clinic.

85 See the pieces of media coverage in the Introduction to Part I of the report.

86 See the inspection visits to Kilingi-Nõmme Health and Care Centre Foundation (case No 7-9/131307), Abja Hospital Foundation (case No 7-9/131308) and Kallavere Hospital Ltd (case No 7-9/131434).

87 See the inspection visit to East Tallinn Central Hospital Ltd (case No 7-9/131500).

During the reporting year, the Chancellor still found cases of unlawful restriction of the liberty of nursing care recipients and problems with the nurse call system. Besides these problems, the Chancellor also found significant shortcomings in obtaining consent for the provision of nursing care services, in ensuring human dignity and in overcoming the language barrier.

8.1. Restricting the liberty of persons

8.1.1. Locking of doors of wards

In four of the institutions providing nursing care services⁸⁸ the Chancellor ascertained a risk of restriction of the liberty of service recipients, as it was found that in these institutions it was possible to lock patients in the wards. During the inspection, latches⁸⁹ or similar locking devices which could be opened only from the outside (the so-called „butterflies“;⁹⁰ keys on the outside⁹¹) were found on several doors. In some institutions it was found that some wards were locked regularly for the night, so that the patients in them could not leave on their own.⁹² Doors in some wards also lacked an (inside) handle.⁹³

Locking of a door of a ward restricts the liberty of persons in it without a legal basis. A latch or a key on the outside of the doors of wards can be arbitrarily used to lock a door from the outside by the staff as well as by other patients. Therefore, the Chancellor proposed to remove such locking devices and ensure that the doors of all the wards can be easily opened from both the inside and outside.

In the reply to the Chancellor, one of the institutions⁹⁴ did not find the Chancellor's proposal justified but still removed the locking devices from the doors of the wards.

8.1.2. Unlawful mechanical fixing

The use of means of restraint during the provision of nursing care services still continues to be a serious problem.⁹⁵ In one institution, guidelines for mechanical restraint had been adopted⁹⁶ and during the inspection visit one patient's arm was fixed to the bed. The guidelines did not specify whether physical restriction of the freedom of movement takes place only during the performance of a medical procedure or also later. In two institutions⁹⁷ there have been cases where a patient was tied to the bed with the consent of their next of kin.

Restraining of patients during the provision of nursing care services is not allowed (except for the duration of a medical procedure).⁹⁸ To avoid unlawful restriction of the liberty of persons,

88 See the inspection visits to Sillamäe Hospital Foundation (case No 7-9/130437), PJV Nursing Care Foundation (case No 7-9/140101), Pärnu-Jaagupi Care Home Foundation (case No 7-9/140001) and Kilingi-Nõmme Health and Care Centre Foundation (case No 7-9/131307).

89 See the inspection visits to Sillamäe Hospital Foundation (case No 7-9/130437) and Pärnu-Jaagupi Care Home Foundation (case No 7-9/140001).

90 See the inspection visit to Kilingi-Nõmme Health and Care Centre Foundation (case No 7-9/131307).

91 See the inspection visits to PJV Nursing Care Foundation (case No 7-9/140101) and Pärnu-Jaagupi Care Home Foundation (case No 7-9/140001).

92 See the inspection visit to Pärnu-Jaagupi Care Home Foundation (case No 7-9/140001).

93 See the inspection visits to Pärnu-Jaagupi Care Home Foundation (case No 7-9/140001) and PJV Nursing Care Foundation (case No 7-9/140101).

94 See the inspection visit to Pärnu-Jaagupi Care Home Foundation (case No 7-9/140001).

95 See the 2012 inspection visit to Tapa Hospital Ltd (case No 7-9/130295).

96 See the inspection visit to East Tallinn Central Hospital Ltd (case No 7-9/131500) and 2012 inspection visit to Jõgeva Hospital Foundation (case No 7-9/130302).

97 See the inspection visits to Kilingi-Nõmme Health and Care Centre Foundation (case No 7-9/131307) and PJV Nursing Care Foundation (case No 7-9/140101).

98 To comply with § 20 of the Constitution, fixation should be immediately terminated upon the completion of the procedure which necessitated it. See the inspection visit to East Tallinn Central Hospital Ltd (case No 7-9/131500).

the Chancellor proposed to the service providers to explain to their staff that tying up of nursing care patients (except in case of need for the duration of a medical procedure) is not allowed. Even if consent for this was given by a patient's next of kin or their guardian. In addition, the Chancellor asked to consider training of the staff on the issues of the prevention of the need to tie up patients and implementing alternative measures to tying up.

8.2. Nurse call system

The inspection visits carried out during the reporting year revealed insufficiencies in the nurse call system in two institutions.⁹⁹ In one of them¹⁰⁰ refurbished wards had a nurse call system but it was switched off, while in the rest of the wards the system did not exist at all. In another institution¹⁰¹ one of the houses had a nurse call system but some of the patients were not aware of it, while in another house of the same institution the system did not exist at all.

The Chancellor continues to be of the opinion¹⁰² that the protection of the health and human dignity of the patients must be ensured in all situations during the provision of nursing care services. The existence of a nurse call system contributes to the achievement of these objectives. Its absence significantly restricts a patient's possibility to swiftly notify of the deterioration of their condition or the need for care. Also, the system can only be useful if it works, is easily accessible for the patients and the patients have been informed of its existence and possibility of use. For these reasons, the Chancellor proposed to ensure the existence of a nurse call system and better inform the patients (repeatedly, if necessary) of its existence and possibilities of use.

8.3. Consent for the provision of nursing care services

During the reporting year, the Chancellor paid more attention to the existence of a consent for the provision of nursing care services. Problems with documenting the consent were found in four¹⁰³ of the inspected institutions. For example, there were cases where no consent for the provision of nursing care services had been obtained¹⁰⁴ or it had been obtained from a person who did not necessarily understand the meaning of the consent.¹⁰⁵ As the treatment documents of several patients lacked a written record of the consent for the provision of the services and no explanations with regard to the person's incapacity to decide had been given, the Chancellor had a suspicion whether a legally required consent had been obtained from all the recipients of nursing care services or their legal representatives.¹⁰⁶

Consenting to the provision of a health service concerns the freedom to decide over a person's physical and mental inviolability protected under § 26 and § 19 of the Constitution. As the

99 See the inspection visits to Sillamäe Hospital Foundation (case No 7-9/130437) and Kallavere Hospital Ltd ([case No 7-9/131434](#)).

100 See the inspection visit to Sillamäe Hospital Foundation (case No 7-9/130437).

101 See the inspection visit to Kallavere Hospital Ltd (case No 7-9/131434).

102 See the 2012 inspection visits to Jõgeva Hospital Foundation (case No 7-9/130302) and Rapla County Hospital Foundation (case No 7-9/13027).

103 See the inspection visits to PJV Nursing Care Foundation (case No 7-9/140101), East Tallinn Central Hospital Ltd (case No 7-9/131500), Kilingi-Nõmme Health and Care Centre Foundation (case No 7-9/131307) and Kallavere Hospital Ltd (case No 7-9/131434).

104 See the inspection visits to East Tallinn Central Hospital Ltd (case No 7-9/131500), PJV Nursing Care Foundation (case No 7-9/140101), Kilingi-Nõmme Health and Care Centre Foundation (case No 7-9/131307) and Kallavere Hospital Ltd (case No 7-9/131434).

105 See the inspection visit to Kallavere Hospital Ltd (case No 7-9/131434).

106 In case of absence of a legal representative, the patient's next of kin, the patient himself or herself or the local authority should submit an application to the court for the restriction of the patient's capacity. If a legal representative has been appointed the health service provider must examine the relevant court decision and on the basis of it determine with regard to which issues and to what extent the patient's appointed guardian may decide instead of the patient.

provision of health services affects a person's body and spirit in one or another way, it is necessary that already prior to the commencement of the provision of the service a person could decide whether they wish the service to be provided or not. Therefore, the Chancellor proposed to ensure that patients coming to receive the nursing care service or their legal representatives are always immediately asked for a consent for the provision of the service and it is recorded in writing. To obtain a proper consent, it should be ensured that a patient's treatment documents contain an explanation why the provider of nursing care services found that the patient had no capacity to decide or a patient with limited capacity was not able to weigh responsibly the pros and cons of the provision of the service.

8.4. Care corresponding to human dignity

In the opinion of the Chancellor, in two of the institutions¹⁰⁷ there was a risk of degrading human dignity of the patients during the provision of the nursing care service. It was found during the inspection that feeding of the patients was rushed and some patients had to go to sleep on an empty stomach. Some patients complained that the staff did not provide them sufficient information concerning their stay at the hospital, and in case of asking for assistance the response was angry. It was also found that no particular attention was paid to finding leisure activities for patients, including taking them outdoors.

In addition, the Chancellor had a suspicion that the following situations may lead to the degrading of human dignity:

- patients are forced to wash in an insufficiently heated room;
- patients are forced to eat in the conditions where people would normally not eat voluntarily;
- lack of sufficient supervision of dementia patients creates a situation where one dementia patient can lie down to sleep next to another patient.

§ 10 of the Constitution gives rise to the principle of human dignity which is one of the main constitutional principles.¹⁰⁸ The answer to the question when is a person's dignity degraded in a manner which could amount to ill-treatment, i.e. when is the prohibition of degrading treatment under § 18 of the Constitution violated, depends to a large extent on the particular circumstances.¹⁰⁹ For example, situations where treatment humiliates or debases an individual, showing a lack of respect for or diminishing their human dignity, or the behaviour which arouses feelings of fear, anguish or inferiority, could amount to a degrading treatment.¹¹⁰

Therefore, the Chancellor found that the above situations cannot be considered compatible with the principle of respect for human dignity and proposed to the institutions to ensure that nursing care patients are treated in line with human dignity in all situations.

8.5. Language barrier

In one institution¹¹¹ it was found that the patients speaking only Estonian had problems of communication with the Russian-speaking staff, as some of the Russian-speaking staff did

107 See the inspection visits to PJV Nursing Care Foundation (case No 7-9/140101) and Kallavere Hospital Ltd (case No 7-9/131434).

108 The principle of human dignity gives rise to the requirement to treat people as subjects regardless of their current situation. This means that people should be treated with respect and they should be seen as autonomous subjects with their own will. Persons may not be seen or treated as a thing. Similarly, they may not be forced into conditions which debase their dignity as humans.

109 The duration of the treatment, its impact on the person (both physical and mental), the person's gender, age and health, the combination of different conditions and the situation of the particular person also have to be taken into account.

110 See also the European Court of Human Rights judgment of 9 January 2014 in case No 66583/11, *Budanov v. Russia*, para 64.

111 See the inspection visit to Kallavere Hospital Ltd (case No 7-9/131434).

not speak Estonian. In addition, during the inspection visit one of the nursing care patients only spoke a foreign language which none of the hospital staff spoke, and in case of need the assistance of the patient's relative was used to be able to communicate.

To better guarantee the right to the protection of health arising from § 28(1) of the Constitution, it is necessary that hospital staff are able to communicate with the patients in a language understood by them. The skill and ability to communicate with patients is also necessary to ensure their human dignity during the provision of the service, so as to understand the concerns of the patients and offer them the best possible assistance. Language barrier may also be an obstacle to repeating essential information to the patients.

The Chancellor is of the opinion that providers of nursing care services must ensure that the staff who come into contact with the patients are able to communicate with them to the necessary extent in a language understood by them. If a provider of nursing care service does not understand the language spoken by a patient and the concerns expressed by them, a risk of misinterpreting a patient may occur and they might not receive the necessary assistance.¹¹² By using next of kin as interpreters a provider of nursing care services takes a risk that a patient's consent is not based on relevant and complete information or the patient did not actually give the consent.

On this basis, the Chancellor proposed to ensure that all the staff whose tasks involve communicating with patients and taking care of their needs are sufficiently able to communicate with patients who speak only Estonian, so as to ensure their right to the protection of health and treatment in line with human dignity.¹¹³

9. Providers of general care services

During the reporting year, the Chancellor inspected one provider of general care services: Aa Care Home of Häcke Ltd ([case No 7-9/130528](#)).

The aim of the inspection was to assess whether the service provider unlawfully restricts the liberty of service recipients. During the Chancellor's 2007 inspection visits it was found that the general care home had a department with reinforced supervision where clients were secluded in a seclusion room not conforming to the requirements.¹¹⁴

The inspection revealed that the institution had a seclusion room although recipients of general care services may not be secluded and the institution did not have an operating permit for the provision of 24-hour special care service. The furnishings of the seclusion room were such that they could enable people staying in the room to cause injuries, the room had poor general lighting, it smelled of tobacco, and it was generally dirty. According to the service provider, the seclusion room was not used.

The Chancellor reached the opinion that the existence of a seclusion room in an institution where seclusion is not allowed constitutes a potential danger to the fundamental right to liberty and leaves a possibility for unjustified restriction of this right. On this basis, the Chancellor proposed to change the furnishings and function of the seclusion room in the general care home so as to eliminate the danger of restricting the fundamental right to liberty.

112 See also the European Court of Human Rights judgment of 8 July 2004 in case No 53924/00, *Vo v. France*, para 10–12.

113 In case of patients speaking only foreign languages the Chancellor recommended using such ways of communicating and exchanging information with a patient that ensure the patient's right to the protection of health and human dignity, including in obtaining the pertinent consent for the provision of the nursing care service and in satisfying the patient's daily needs.

114 The Chancellor's inspection visits of 18 June 2007 and 2 August 2007 to Aa Care Home of Ltd Häcke (case No 7-9/071015).

In addition, smoking was allowed indoors on all floors of the institution and strong smell of tobacco could be felt in the corridors. In this connection, the Chancellor found that the right to the protection of health also includes the aspect that polluted indoor air should not have a negative impact on the health of people. The Chancellor recommended to revise the smoking arrangements in the general care home and ensure that the recipients of the general care service enjoy an indoor climate which does not damage their health.

The institution replied to the Chancellor that the former seclusion room is only used as a storage in case of need, and plans to improve the ventilation have been made to stop the tobacco smell.

PART II

CHANCELLOR OF JUSTICE AS OMBUDSMAN FOR CHILDREN

I. INTRODUCTION

The United Nations General Assembly adopted the Convention on the Rights of the Child on 20 November 1989. Estonia ratified the Convention on 26 September 1991. Under Article 4 of the Convention, States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the Convention. The UN Committee on the Rights of the Child considers the establishment of an independent supervisory institution on the rights of children as one of the obligations of States Parties under Article 4. In Estonia the function of the independent supervisory institution on the rights of children (i.e. ombudsman for children) is performed by the Chancellor of Justice since 19 March 2011.¹¹⁵

In addition to monitoring the implementation of the Convention on the Rights of the Child and resolving specific complaints concerning the rights of children, the role of the Ombudsman for Children also includes carrying out an impartial analysis and pointing out systemic problems in the child protection system in Estonia.

The Chancellor of Justice as the Ombudsman for Children verifies the legality and constitutionality of legislation on children. The Chancellor also supervises the lawfulness of the activities of persons and bodies exercising public functions in relation to children and parents. The Chancellor may initiate proceedings on the basis of a petition or on his own initiative.

Each child himself or herself may contact the Ombudsman for Children for the protection of their rights. Also a parent or legal representative of a child may submit a petition for the protection of a child's rights to the Ombudsman for Children. Everyone may contact the Chancellor to draw his attention to general problems in the child protection system in Estonia. The task of the Ombudsman for Children is to ensure that all the authorities, institutions and persons who pass decisions concerning children respect the rights of children and proceed from the best interests of the child.

The Chancellor, while also performing the functions of the national preventive mechanism for ill-treatment, regularly inspects children's institutions where the freedom of movement of children is restricted (e.g. special schools, closed child psychiatry wards) in order to assess the protection of the rights of children and prevent ill-treatment in such establishments.

Besides the supervisory function, the tasks of the Ombudsman for Children also include raising awareness of and promoting the rights of children. The mission of the Ombudsman for Children is to support the inclusion of children and strengthen their position in society as active participants and contributors. In order to encourage and support active participation of children in analysing and understanding their rights and duties, an advisory body to the Ombudsman for Children has been established at the Office of the Chancellor of Justice. Members of the advisory body include representatives from different children's and youth organisations who are involved in the work of the Ombudsman for Children. The ombudsman also encourages other state and local government institutions to involve children to a greater extent in their work.

The task of the Ombudsman for Children also includes contributing to making society's attitudes more child-friendly. For this, the ombudsman raises awareness of the Convention on the Rights of the Child and explains the rights of children to different social groups: children themselves, parents, specialists working with children, state and local government officials and other members of society. The Ombudsman for Children organises analytical studies and surveys concerning the rights of children, and draws general conclusions based on them. On the same basis, he also makes recommendations for improving the situation of children and draws

¹¹⁵ See the Chancellor of Justice Act, § 1(8). Available online: <https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/508012014001/consolide>.

impartial attention to problems of child protection in society. The Ombudsman for Children represents the interests of children in the legislative process and organises training events and seminars on the rights of the child. The ombudsman replies to questions of children and other persons about the rights of children and cooperates with state and local government bodies, civil society organisations, schools, specialists and other members of the network involved in protecting and promoting the rights of children.

To perform the functions of the Ombudsman for Children, the Office of the Chancellor of Justice includes the Children's Rights Department as a separate structural unit, having a staff of four in 2013.

The following part of the overview describes the main proceedings concerning the rights of children in 2013, as well as inspection visits to children's institutions and activities relating to promoting the rights of children.

II. PROCEEDINGS

In 2013, the Chancellor reviewed 128 petitions concerning the rights of children. Of these, in 49 cases substantive proceedings were initiated. 79 petitions concerned matters outside the competence of the Chancellor. In those cases, the Chancellor explained to the petitioners the Chancellor's competence and advised them how to best protect their rights. Children themselves contacted the Chancellor for the protection of their rights on four occasions during the reporting year. In the remaining cases the Chancellor was contacted by parents or other legal representatives of a child. Advisers at the Department of Children's Rights of the Chancellor's Office also provided explanations about the rights of the child by telephone.

During the reporting year, the Chancellor opened 12 cases to verify the constitutionality of legislation concerning children. Of these, two cases were opened on the Chancellor's own initiative and 10 on the basis of a petition. For example, the Chancellor analysed the legality of the rates of fees for places at pre-school child care institutions of several municipalities and the constitutionality of the conditions for the payment of support by municipalities. These cases are described in more detail in the following subdivisions. To verify the lawfulness of activities of persons and agencies exercising public authority, the Chancellor initiated 23 proceedings, of these 10 on his own initiative and 13 based on a petition. In addition, during the reporting year the Chancellor expressed an opinion on 7 pieces of draft legislation concerning children and submitted his recommendations to the drafters.

During the reporting year, several petitions concerned the issues of the right of custody and visiting rights in respect of children. The petitioners complained first of all against the activities of child protection workers of rural municipality or city authorities but also against courts and bailiffs.

The large number of petitions and telephone calls concerning the right of custody and visiting rights in respect of children is an indication of serious problems in organising the life of children after the divorce of the parents. As a result of analysing the complaints, a suspicion arose whether the interests and opinion of a child are sufficiently taken into account in organising the life of the child after the divorce of the parents. The petitions revealed that often the parents are occupied only with their own problems and are not able to act in the interests of the child. In such a situation where parents are unable to place the child's interests first the state needs to interfere to protect the interests of the child. However, it was found during the reporting year that the activities of the state in protecting the interests of the child when resolving disputes concerning the right of custody and visiting rights of the parents could be organised better. On several occasions, the Chancellor found violations in the activities of city or rural municipality child protection workers. Problems with ascertaining and taking account of the interests of the child in court proceedings were revealed by the results of the survey on custody rights of parents carried out by Tartu University social sciences applied research centre RAKE¹¹⁶. Problems with taking account of the interests of the child in executing court rulings concerning visiting rights were also found during the reporting year.¹¹⁷

116 Available online in Estonian:

http://valitsus.ee/UserFiles/valitsus/et/riigikantselei/strateegia/poliitika-analuusid-ja-uuringud/tarkade-otsuste-fondi-uuringute-kokkuvotted/Vanema%20hooldus%C3%B5iguse%20m%C3%A4%C3%A4ramise%20uuring_1%C3%B5ppraport.pdf. About the RAKE survey, see in more detail also the subsection on studies, analyses and information materials under the relevant part on the activities of the Ombudsman for Children.

117 The Supreme Court *en banc* has pointed out that the full procedure for the execution of a special court decision regulating contacts between a parent and a child under visiting rights is not regulated with sufficient clarity under the Code of Enforcement Procedure and, therefore, the regulation in combination with § 563 of the Code of Civil Procedure needs to be supplemented or amended, so as to ensure the existence of a clear procedure for the execution of a court decision regulating contacts between a parent and a child and a swift and effective execution of such a decision. In more detail, see the Supreme Court *en banc* ruling of 17 December 2013 No 3-2-1-4-13, para 55.

In the opinion of the Chancellor, to protect the interests of children in case of legal separation of the parents the parents should be offered significantly more opportunities for using family counselling and conciliation services. In doing this, it is important that the services are made available everywhere in Estonia and are affordable for parents.

The state's intervention in the custody and visiting rights of the parents would be more effective if in each proceeding concerning children the factors affecting the welfare of the particular child and the impact of possible solutions on the child's welfare are established, as well as the child's own opinion if the child's level of development enables to express it.

The following part contains an overview of the selected proceedings in 2013.

1. The rates of fees of kindergarten places in Keila town and Saue rural municipality

Case No 6-4/121345

Case No 6-4/130349; 7-8/130559

During the reporting year, on two occasions the Chancellor verified the lawfulness of the rate of fee paid by a parent for a place in a pre-school child care institution. Both cases concerned a situation where the local authority, so to speak, bought additional kindergarten places from a private kindergarten / another local authority under a contract in order to comply with the Pre-School Child Care Institutions Act. In comparison with the fees in municipal kindergartens operated by Keila town and Saue rural municipality, parents had to pay more for the additional places bought by the local authorities.

In both cases, a question of the legal nature of the contract concluded between the local authority and the service provider arose.

Performance of an administrative function may be delegated to another person by an administrative act/administrative contract or a contract under civil law. The conclusion of an administrative contract requires a relevant delegating norm in an Act, but the Pre-School Child Care Institutions Act does not contain such a delegating provision. Therefore, it is not possible to adopt an administrative act or conclude an administrative contract for ensuring the availability of a pre-school child care institution service via another person. Such a contract would be unlawful.

Delegating the performance of an administrative function under a civil law contract does not require the existence of a delegating norm in an Act, but the preconditions for concluding a civil law contract established under the Administrative Cooperation Act must be complied with. Inter alia, a contract for delegating the performance of an administrative function may not regulate the rights or duties of the recipient of a public service (child/parent) and by delegating the performance of the service the local authority is not relieved of the duty imposed on it under the Act.

Both Keila town and Saue rural municipality breached the conditions for the admissibility of concluding the above civil law contract.

In case of Keila town, the amount of the fee paid by the parents of children attending a private kindergarten arose from the contract concluded between Keila town and the operator of the private kindergarten. Hence, the contract regulated the rights and duties of the recipient (child/parent) of the public service. Therefore, the Chancellor reached the opinion that in this regard the contract had been concluded in breach of the law and was void. The Chancellor noted that Keila rural municipality had adopted a regulation on fees for kindergarten places and therefore this regulation also had to be used to calculate the service fee paid by the parents whose

children attended a private kindergarten. On this basis, the Chancellor proposed to the city to rely on a valid Keila town regulation instead of applying conditions which are void, and to amend the contract between the town and the private kindergarten so that it does not contain any void conditions.

In case of Saue rural municipality, the amount of the fee paid by the parents whose children attended Saue town municipal kindergarten arose from a legal act passed by Saue town. This regardless of the fact that even after the conclusion of the cooperation agreement Saue rural municipality still remained the guarantor of the service. Therefore the cooperation agreement did not relieve the rural municipality of the duty imposed by the law to establish the fee by its own legislation. Hence, the kindergarten fee of parents of Saue rural municipality had to be established on the basis of the relevant legal act passed by Saue rural municipality. It was found that already during the Chancellor's proceedings the rural municipality took steps to ensure that the parents of children of Saue rural municipality who attend the kindergarten of Saue town do not have to pay a higher fee than they would pay in case of attending the kindergarten at Saue rural municipality. The Chancellor acknowledged the rural municipality for its pertinent and swift action.

2. Transport compensation to pupils in Rae rural municipality

Case No 6-4/130715

On the basis of a petition, the Chancellor verified compliance of the right of free transport provided to pupils of the school of Rae rural municipality with the law and the Constitution. Not all the pupils of the school of Rae rural municipality had the right of free transport but only those whose both parents were registered, according to the population register, as inhabitants of Rae municipality at least three months before the date of submitting the application for the benefit.

The Chancellor found that although the local authority is not obliged to provide a free public transport service, it may however voluntarily and from its own budget provide benefits under the Public Transport Act, including offering free transport. In case of a benefit the receipt of which does not depend on a family's income and the payment of which is not required from the local authority under any Act, the local authority has more discretion in restricting the fundamental right to equality. This means that the local authority may establish conditions for the receipt of the benefit which are suitable and necessary for achieving the aim of paying the benefit but which may place a certain group of persons in a more favourable situation in comparison with the persons who are in a similar situation but do not meet the established conditions.

In the petitioned matter, the Chancellor reached the opinion that the condition for the receipt of the transport benefit established by the regulation of Rae rural municipality does not violate the general fundamental right to equality.

3. Weekly load of pupils engaged in education for children with severe and profound intellectual disability

Case No 6-2/120901

On the basis of a petition, the Chancellor verified the compatibility of the regulation of the weekly load of pupils engaged in education for children with severe and profound intellectual disability with the principle of equal treatment arising from the Constitution. The load of pupils studying according to the curriculum for such education is maximum 20 hours per week on the whole basic school level, while for other basic school pupils it is within the range of 20–32 hours per week depending on the grade.

As a result of the analysis, the Chancellor reached the conclusion that the aim of different treatment of pupils engaged in education for children with severe and profound intellectual disability in comparison with other basic school pupils is to ensure a weekly load taking into account their potential to participate in learning, and the additional aim is the state's wish to make an optimal and effective use of both the money and people (special education teachers). In assessing the constitutionality of the different treatment, the Chancellor found that the weekly load of pupils engaged in education for children with severe and profound intellectual disability which stays on the level for children in the first grade (i.e. children 7–8 years old) does not constitute a serious interference with the fundamental right to equality of such pupils. The seriousness of the interference is also diminished by the obligation under the Act to adjust the instruction according to a child's individual potential and the possibility of pupils in such education to study for a total of 12 years at the basic school.

In conclusion, the Chancellor reached the opinion that the 20-hour weekly load of pupils engaged in education for children with severe and profound intellectual disability applicable throughout the basic school level is compatible with the fundamental right to equality established under the Constitution.

4. Payment of support to a toddler staying at home in Rae rural municipality

Case No 7-5/130127

The Chancellor was contacted by a petitioner to whom Rae rural municipality government had refused to pay 120 euros of support for a toddler staying at home, as the petitioner had not paid 2 euros and 50 cents for the study journal of the family's child who was attending school. The debt had been incurred because the offer for the sale of the pupil's study journal had been addressed to the mother while the invoice was sent to the father's e-mail address which he no longer used.

In the petitioned matter, the Chancellor established that Rae rural municipality government had failed to comply with the principle of guaranteeing fundamental rights and freedoms in four aspects.

First, contrary to the Administrative Procedure Act the municipality had failed to notify the petitioner of the administrative proceedings initiated against them and did not give the petitioner a possibility to submit their opinion and objections within the administrative proceedings. According to the explanations by the municipality, the petitioner had not been heard because at the time of making the order to stop the payment of the support they were indebted to the municipality. Another reason given by the rural municipality was that the municipality's legal act establishing the payment of the support is available for everyone, persons themselves can examine it and find out the consequences of indebtedness to the municipality or any of its subdivisions.

Second, contrary to the Administrative Procedure Act the municipality failed to make use of its discretion when making the decision to stop the payment of the support. In issuing the order to stop the payment of the support the municipality relied on the provision of the underlying regulation according to which discretion should have been used when deciding to stop the payment of the support.

Third, the decision to stop the payment of the support for the toddler staying at home was disproportionate. In accordance with the principle of proportionality, an administrative body may restrict a person's rights or cause them other burdensome consequences only if this is indispensable. Contrary to the principle first to choose the means which are least burdensome for the person while still equally effective for achieving the desired aim, Rae rural municipality chose a measure having significantly negative consequences for the petitioner. In addition to

the impact on the petitioner, stopping of the payment also affected their child for whose care and development the support was intended.

Fourth, the rural municipality did not deliver the decision to stop the payment (a burdensome administrative act) to the petitioner in accordance with the law. The municipality delivered it electronically without having complied with the conditions for electronic delivery laid down by the Administrative Procedure Act.

Due to the above violations, the Chancellor proposed to Rae rural municipality to apologise to the petitioner and pay them the support for the toddler at home which had been withheld in October 2012. The Chancellor also recommended to the municipality to improve the legal awareness of the rural municipality government, check the knowledge of administrative procedure requirements among the municipality officials and offer them appropriate training.

5. Placement of a child in a special care home

Case No 7-4/130602

In 2013, the Chancellor verified the activities of the Social Insurance Board in placing a petitioner's child in Võisiku Home for the receipt of special care service under a court ruling. The care home did not have an environment suitable for the child and the child's health and life were repeatedly at risk.

Under the Social Welfare Act, on the basis of a court ruling 24-hour special care service may be provided to person regardless of their age, i.e. including to a minor. The provision of the service is organised by the Social Insurance Board which also decides the referral of a person to a particular care home. The Chancellor expressed the opinion that in view of the fact that the Act gives the Social Insurance Board the possibility to decide how to organise the provision of the 24-hour care service on the basis of a court ruling, the Social Insurance Board is responsible that the service should be developed in a way as to ensure the rights of the persons receiving the service. However, at the time of the above incident there was not a single care home whose 24-hour special care service would have been suitable for minors.

The Chancellor in his opinion explained that although the Social Welfare Act does not include any specific requirements establishing what the 24-hour service provided under a court ruling should look like, the requirements can be found in other legislation and international documents which Estonia is obliged to comply with. First, availability of staff with relevant training must be ensured. A child should be separated from adults (in particular from adults with mental disorders), except if this is contrary to the interests of the child. It must also be ensured that the child can engage in suitable activities contributing to their development, they must have opportunities to spend free time in a suitable manner. As far as possible, the child must live in a smaller group in a safe environment which is as family-like as possible and where they can also be in privacy. It is important that the child is ensured access to education. None of these requirements had been complied with in Võisiku Home.

The Chancellor also drew the attention of the Social Insurance Board to the fact that in addition to the above conditions the Board must constantly verify on its own initiative whether the service is still suitable for the child and fulfils its purpose. In this case, no such own-initiative verification took place.

In view of all the above, the Chancellor found that the Social Insurance Board had failed to comply with the principle of ensuring the fundamental rights and freedoms when placing the child in a special care home but did not give guidelines on what kind of service is suitable for the child and did not assess systematically and regularly the suitability of the service being provided.

The Chancellor recommended to the Social Insurance Board in the future to organise the 24-hour

special care service to minors in a manner which is suitable for them, including agreeing on the requirements and conditions for the provision of the service in the framework agreements concluded with the service providers and assess systematically and regularly the suitability of the 24-hour special care service provided to a child.

6. Acquisition and transfer of securities on behalf of a child

Case No 6 1/130611

In 2013, in two cases the Chancellor had to assess the constitutionality of the restriction arising from § 188(1) of the Family Law Act.

On the basis of a petition from an individual, the Chancellor verified whether the restriction under the Family Law Act establishing that a parent may acquire and transfer securities on behalf of the child only with the consent of a court is contrary to the right under the Constitution to freely possess, use or make dispositions with respect to one's property. The petitioner found that asking a court's authorisation places the child (as the owner of shares in a fund) in a less favourable situation in comparison to other investors.

In a similar issue, the Supreme Court¹¹⁸ has found that the Family Law Act can be interpreted in compatibility with the Constitution in a way that does not disproportionately restrict the rights of persons. In the opinion of the Supreme Court, in case of investment transactions the courts should prefer giving a general consent. If such general consent is granted a child's legal representative does not have to have recourse to the court again every time (when making transactions on the basis of an investment contract) and the child will not be in a less favourable situation in comparison with other investors.

As a result of the proceedings, the Chancellor concluded that the restriction under which a parent may acquire and transfer securities on behalf of a child only with the consent of a court is not incompatible with the Constitution.

7. Rights of a successor who is a minor in succeeding to units in a pension fund

Case No 6-1/130664

The Chancellor was contacted by a petitioner who found that the provisions of the Funded Pensions Act regulating succession to the units of a pension fund are not in conformity with the rights or interests of a child under the Family Law Act. The petitioner questioned the proportionality of the requirement to have a court's consent for the redemption of units in a pension fund, pointing out that a pension account can be opened for a child successor and the inherited units can be transferred to the account without a court's consent while a court's prior consent is needed for the redemption of the units in a pension fund.

As redemption of units in a mandatory pension fund inherited by a minor constitutes transfer of securities and, under the Family Law Act, a court's consent is required for transfer of securities, the main issue in this case was whether the restriction under the Family Law Act stipulating that a parent may transfer securities on behalf of a child only with the court's consent is contrary to the Constitution.

As a result of the proceedings, the Chancellor concluded that the requirement under the Family Law Act for a court's consent for the redemption of units in a pension fund does not disproportionately restrict the right of a minor successor to freely make dispositions with respect to their property under § 32 of the Constitution.

118 See the Supreme Court Civil Law Chamber judgment of 5 June 2012, No 3-2-1-68-12.

8. Payment of the childbirth allowance in Haapsalu town

Case No 7-5/120526

On the basis of a petition from an individual, the Chancellor verified the constitutionality of the „Procedure for the granting and payment of social benefits“ approved by Haapsalu Town Council regulation, to the extent as regards the payment of a childbirth allowance to a parent who permanently resides in Haapsalu town and was entered in the population register as an inhabitant of Haapsalu at least one year prior to the birth of the child.

In the proceedings there was no dispute whether the local authority may establish as a precondition for the payment of a social benefit the requirement that according to the population register the residence of a recipient of the benefit must be in the territory of the respective local authority. The main issue in the proceedings was whether Haapsalu town has the right to establish as an additional precondition for the receipt of the childbirth allowance that the recipient of the allowance must actually live in Haapsalu town.

As a result of the analysis, the Chancellor concluded that the additional precondition requiring the permanent residence of a person applying for the child birth allowance to be in Haapsalu town is in conformity with the Acts and the Constitution. In this regard, it is of decisive importance that the childbirth allowance is a benefit voluntarily (i.e. not under a statutory obligation) paid by a local authority and, in accordance with the autonomy of local authorities, each local authority may itself establish the preconditions for the payment of its voluntary benefits.

9. Registration of the birth and medical check-up of a child

Case No 7-8/121241

The Chancellor verified on his own initiative the activities of Märjamaa rural municipality government after having learned of a six-month-old child in the municipality whom the parent had not registered in the population register and with whom the parent had not been to a medical check-up.

In the course of the proceedings it was found that the rural municipality government took steps immediately after finding out about the child and took the child for a medical check-up even on the same day, and three days later contacted the court to establish the birth. In this regard, the municipality's actions were exemplary.

However, further steps by the municipality government were not as consistent. After the registration of the child's birth and the initial medical check-up, the child protection specialist agreed with the mother that the mother would register the children in the practice list of a general practitioner and would take the children for regular health checks. The duty of the child protection specialist was to verify that these steps are actually implemented. The child protection specialist verified compliance with the agreements only more than half a year later than prescribed in the case management plan and only after the relevant enquiry by the Chancellor.

On this basis, the Chancellor recommended to Märjamaa rural municipality government to pay more attention to the assessment of the planned and implemented activities when providing assistance to individuals.

10. Activities of Pärnu city government in organising the life of a child separated from family

Case No 7-5/111603

On the basis of a petition, the Chancellor verified lawfulness of the activities of Pärnu city government in organising the life of a child separated from family and in restricting the rights of the parents. As a result of the proceedings, the Chancellor found several violations in the activities of the city government.

First, Pärnu city government endangered the welfare of the child by its delay to have recourse to the court in a situation where the city government was obviously aware of the need for restricting the right of custody of the child's father and appointing a guardian for the child.

Second, the city government breached the principle of good administration by providing contradictory and partly incorrect explanations concerning the issues of the right of custody, representation and visiting rights in respect of the child to the mother's guardian and the substitute family.

Third, the city government violated the visiting rights of the child and the mother by organising meetings only at the request of the mother and failing to implement measures to promote their contacts.

On this basis, the Chancellor recommended to Pärnu city government that in the future in situations where welfare of a child is in danger, and in order to eliminate the danger it is necessary to restrict a parent's right of custody, it should have immediate recourse to the court to implement the necessary measures. The Chancellor also recommended to Pärnu city government to proceed from valid legislation when giving explanations concerning the right of custody, representation and visiting rights in respect of children, and not place the duty of legal representation of a child on a service provider or other third person who is not the child's legal representative. In addition, the Chancellor recommended to the city government in the future to promote contacts between a mother and a child on its own initiative. For this, the Chancellor recommended the city government to ascertain which organisational measures help to promote contacts between the particular child and the mother and then implement those measures.

In its reply to the Chancellor, Pärnu city government promised to start organising regular meetings between the child and the mother with participation of the officials fulfilling the duties of the guardians of the child and the mother who can provide guidance to the mother on how to communicate with the child.

11. The activities of Paldiski town government in its function as the guardian in ensuring the rights of the child

Case No 7-5/130761

On the basis of a petition from an individual, the Chancellor verified whether Paldiski town government had complied with the principle of guaranteeing fundamental rights and freedoms and ensured the welfare of the petitioner's grandchild.

As a result of the proceedings, the Chancellor concluded that Paldiski town government, in fulfilling its social welfare functions and looking after the custody of the child in its function as the guardian, had not violated the principle of guaranteeing the fundamental rights and freedoms with respect to the petitioner.

However, the Chancellor found that Paldiski town government had not sufficiently guaranteed the welfare and safety of the petitioner's grandchild. Namely, in communication with the petitioner the child protection workers of Paldiski town government had repeatedly pointed out that in order to ensure all-round development and social communication of the child the child should attend a kindergarten. However, in the opinion of the town government, the petitioner (the child's grandmother) was responsible that the child did not attend a kindergarten.

The Chancellor drew the attention of the town government to the fact that the child's grandmother had no right of custody and the resulting right of representation in respect of the child. The responsibility for the child's welfare was on Paldiski town government. Thus, Paldiski town government in its function as the guardian had to ensure that the child was attending a kindergarten.

12. Violating the right of decision-making of a parent in the provision of social services

Case No 7-5/121317

The Chancellor verified whether the activities of Jõelähtme rural municipality government complied with the principle of guaranteeing fundamental rights and freedoms when providing social services to the petitioner's child against the petitioner's will.

In the course of the proceedings, it was found that Jõelähtme rural municipality government had placed the petitioner's son to live with a third person. The petitioner had agreed that the son could stay with the third person for three months. Before the arrival of the term, the petitioner sent a letter to the municipality government withdrawing their earlier consent and expressing the wish to raise their son themselves in the future. The municipality government did not take the petitioner's wish into account and continued to conclude agreements with the third person concerning the issues of organising the child's life.

As a result of the proceedings, the Chancellor concluded that Jõelähtme rural municipality government had failed to comply with the principle of guaranteeing the petitioner's fundamental rights and freedoms by organising the life of the petitioner's child without taking into account the wishes of the parent.

On this basis, the Chancellor recommended to Jõelähtme rural municipality government in the future in situations where the welfare of a child is at risk but the parent who has custody of the child, or any other legal representative, refuses from the measures offered for eliminating the risk, to have recourse to the court under the Family Law Act for implementing the necessary measures. The Chancellor also recommended in the future, when providing assistance to people, to proceed from the principle of case management and draw up a case management plan for a person in need of long-term assistance, as required under the Social Welfare Act.

13. Organising contacts between a parent and child

Case No 7-5/130764

On the basis of a petition, the Chancellor verified whether Tallinn Lasnamäe District Administration complied with the principle of guaranteeing fundamental rights and freedoms when organising communication between a parent and child after the child's separation from the family.

In the course of the proceedings, it was found that the petitioner had been deprived of the rights of custody in respect of the child by a court ruling while the right of contact had not been

restricted by the court. The petitioner had filed an appeal against the ruling on deprivation of the right of custody. The petitioner was in a custodial institution and wished to meet with the daughter and asked the assistance of Tallinn Lasnamäe District Administration for this. The city district administration refused to organise contacts between the petitioner and their daughter, referring to the court ruling which had not entered into effect but under which the petitioner was deprived of the right of custody in respect of the daughter.

The Chancellor concluded that Tallinn Lasnamäe District Administration had violated the principle of guaranteeing the fundamental rights and freedoms of the petitioner by refusing to create possibilities for contact between the petitioner and their daughter while also not having recourse to the court to restrict the petitioner's right of contact with the daughter.

On this basis, the Chancellor proposed to the city district administration to create possibilities for contact between the petitioner and their daughter by providing them all-round assistance for this, or have recourse to the court to restrict the petitioner's right of contact with the daughter.

The Chancellor also recommended in the future, in cases where the city district administration separates a child from the family before a court ruling, to immediately file an application with the court for restricting the parent's rights in respect of the child.

14. Problems relating to rights of custody and representation of children separated from family

On his own initiative, the Chancellor analysed the provisions of the Family Law Act concerning separation of a child from the family and division of the right of custody and representation of a separated child between a parent (legal representative) and the local authority carrying out the separation. As a result of the analysis, the Chancellor concluded that the Family Law Act does not regulate with sufficient clarity the representation of a child and the right of custody during the period when a child is separated from family, the local authority has recourse to the court and the court resolves the issue of the right of custody by way of preliminary legal protection. For example, the Family Law Act does not stipulate that in case of separation of a child from the family the local authority immediately assumes the right of representation of the child or that the local authority assumes the duties of the guardian in case of separation of a child. The Act also fails to stipulate the duty of local authorities upon recourse to the court to immediately request resolving of the right of representation by way of preliminary protection or the duty of the court to regulate these issues immediately (even if the local authority does not request this). Such a situation leads to practical problems when quick decisions with regard to a child have to be made, for example if the separated child is ill and a decision concerning the child's treatment for which the consent of the child's legal representative is needed has to be made. Under the Family Law Act, all the decisions concerning a child have to be made by the parent; at the same time a child could be separated from the family precisely for the reason that a parent fails to make adequate decisions (e.g. in the case of the above example, unreasonably refuses from the child's treatment).

The Chancellor described these problems in his opinion on the Draft Act for the Amendment of the Family Law Act (case No 18-2/130893).

By now, the problems described by the Chancellor, which arise when a child is separated from the family, have been resolved in the Draft Act for the Amendment of the Child Protection Act initiated by the Ministry of Social Affairs. Under § 28 of the Draft Act, if a local authority separates a child from the family, the right of custody of the legal representative is suspended. The Chancellor has also submitted his opinion on the Draft Act.

III. INSPECTION VISITS

In 2013, the Chancellor inspected three child care institutions. All the inspection visits were announced in advance. The Chancellor's visit to Tapa Special School (Inspection visit to Tapa Special School, [case No 7-7/140013](#)) was described in more detail in Part I of the report.

In addition, the Chancellor visited two substitute homes: Kiikla substitute home (Inspection visit to Kiikla substitute home, case No 7-9/130668) and the centre for infants and children with disabilities of Tallinn Children's Home (Inspection visit to the centre for infants and children with disabilities of Tallinn Children's Home, case No 7-8/130943).

1. Compliance with the recommendations given on the basis of an analysis of the substitute home service

In 2013, the Office of the Chancellor of Justice completed an analysis of the substitute home service¹¹⁹, on the basis of which the Chancellor made several recommendations to the Minister of Social Affairs, local authorities, substitute homes and other agencies.

Minister of Social Affairs

The Chancellor's main criticism to the Minister of Social Affairs was that under the current regulation the description of the substitute home service is very general and vague with regard to the expenses necessary for satisfying the basic needs of a child. Therefore, several requirements have to be derived from the Constitution, international instruments binding on Estonia and the optional guidelines given on the basis of them. Thus, the state should provide clear guidelines regarding what and to what extent a substitute home must ensure in terms of material welfare of children, i.e. the so-called minimum service standard.

The Minister replied that by the end of 2014 the Ministry of Social Affairs will prepare a concept covering all forms of the substitute home service, along with specific proposals for legislative amendments according to which the financing of the substitute home service will be organised in the future.

Local authorities

The Chancellor recommended to local authorities as the guardians and organisers of welfare services of children growing in substitute homes to take better responsibility for the well-being of children.

Most of the local authorities in whose activities the Chancellor found shortcomings promised in the future to perform the functions of legal representation of children personally and not delegate them to substitute homes (e.g. applying for the rehabilitation service). Local authorities which did not do so before have also set an aim to visit children regularly and support them in accordance with the principle of case management (i.e. by drawing up case management plans for the children).

Substitute homes

The Chancellor's main criticism to substitute homes concerned the ratio of children and staff in substitute homes. In order to create a family-like, stable and safe environment which is conducive to the development of children, the Chancellor recommended not to admit more than 8 children in a family with carer and six children in a family with a family elder. In addition, the

¹¹⁹ Available online in Estonian: http://lasteombudsman.ee/sites/default/files/asenduskodeenuse_analuus_0.pdf.

Chancellor recommended to ensure a 24-hour presence of at least one carer or family elder in each family where even one child is staying at home, and in the period from 06:00 to 22:00 have at least two carers (or a family elder and carer) present in a family with more than four children under the age of three or children with a severe or profound disability.

Most of the substitute homes explained in their reply to the Chancellor what steps they have taken or intend to take in order to comply with the requirements under the law.

Ratio of staff and children

Regrettably, during the inspection visits in 2013 it was found that in several substitute homes there were still problems with ensuring compliance with the required ratio of children and staff. There were problems in both substitute homes visited by the Chancellor during the reporting year.

In one family at the Kiikla substitute home of the non-profit association Avatud Värav there were nine children and during the school holidays children of two families were integrated into one family. The Chancellor explained to the head of the substitute home that the statutory requirements for the ratio of children and teachers must be complied with. This is an important indicator of the quality of the substitute home service. The existence of a sufficient number of carers is important to ensure the safety and well-being of each child in each family. The higher the number of children per one carer the less time that person has for children and the more superficial the relationships and the less this form of care resembles the family model. The smaller the number of children per one carer, the more time the carer has for each child. Personal activities with children are one of the most important components of the substitute home service.

In addition, the Chancellor explained that the aim of the substitute home based on the family model is to offer family-like conditions, which means inter alia that every day, as far as possible, the same people should take care of the child, so that the child can develop a trust-based relationship with them. If for a certain period the primary caretaker of a child in a substitute home is a carer of one family and then a carer of another family, the relationship of the child with the adults raising him or her is weak and superficial and it is improbable that the child will develop a trust relationship with any of them.

Thus, moving of children from one family and house to another should happen only if this is necessary in the interests of the child. Of course, in certain situations the change of the environment could be the best solution for the child and, hence, the change of the family would be justified. However, such a decision should be carefully considered and justified based on the interests of the child.

In a situation where children of one family in a substitute home move to another family house for the period of school holidays, vacation of carer, etc, children are forced to adjust to the carers who are not their daily caretakers. As in such a case the aim is first and foremost optimising the working time of the staff, moving does not take place based on the interests of the child.

The Chancellor found that moving of children from one family to another, unless this occurs in the best interests of the child, violates the right of children to grow in a stable, family-like environment, and such practice is not in conformity with the Social Welfare Act.

The Chancellor proposed to the head of Kiikla substitute home not to admit new children to the substitute home before the size of the family conforms to the law, and not to move children from one family and house to another, except in exceptional cases when this is in the interests of the child.

In three families in Tallinn Children's Home centre for infants and children with disabilities where the children had a severe or profound disability the requirement of the presence of two carers was not fulfilled in the morning when the children awoke. Thus, one carer carried the responsibility of changing diapers, washing, dressing, preparing for school or kindergarten and accompanying from the house to the bus of seven or eight children of one family.

The Chancellor proposed to the head of Tallinn Children's Home and head of the centre for infants and children with disabilities to comply with the Social Welfare Act by ensuring that the required number of carers is on duty. The Chancellor emphasised that, as a first priority, in order to ensure adequate care of the children there should be at least two carers on duty in each family in the morning.

Qualification of staff

As a result of the inspection visits during the reporting year, it was found that in both substitute homes people without the required qualification were working with children. While at Kiikla substitute home two of the nine people working with children did not have the required qualification, in the Tallinn Children's Home centre for infants and children with disabilities even 17 out of 41 people did not have the required qualification of at least an assistant carer.

The inspection revealed that also other centres of Tallinn Children's Home had the problem of unqualified staff working with children. At the end of 2012, 80% of all the unqualified staff (52 out of 65) in all the substitute homes worked at Tallinn Children's Home and only 20% at the remaining 34 substitute home service providers.¹²⁰

The provision of a high-quality service without qualified staff might not be possible as work with children nowadays also requires specialist knowledge in addition to suitable personality traits. Staff without sufficient qualification are not necessarily able to resolve more complicated rearing problems or offer sufficiently professional support and assistance to a child, for example due to a special need or in exceptional circumstances.

On this basis, the Chancellor proposed to the head of Tallinn Children's Home and head of the centre for infants and children with disabilities to take necessary steps to ensure that all the people engaged in care work with children in the substitute home comply with the qualification requirements established by the law.

¹²⁰ In comparison: at the end of 2012, about 20% of all the carers and family elders working in substitute homes and children living in them were at Tallinn Children's Home and 80% at the remaining 34 service providers.

IV. PROMOTING THE RIGHTS OF THE CHILD

1. Studies, analyses, information materials

Besides supervisory functions, the tasks of the Ombudsman for Children include promoting the rights of children and drawing attention to problems which are important for children. In order to get a better overview of the situation of children and better plan his work of promoting the rights of children, the Ombudsman for Children considers it necessary to carry out regular surveys and analyses concerning children, and to publish statistics on children.

Compilation „Welfare of Children“

During the reporting year, Statistics Estonia published the compendium „Welfare of Children“¹²¹. Advisers Andra Reinomägi and Kristi Paron from the Children’s Rights Department of the Office of the Chancellor of Justice also provided an important contribution to the compendium. Alongside the officials from Statistics Estonia and the Office of the Chancellor, authors and editors from the Ministry of Social Affairs, the Ministry of Justice, the Ministry of Education and Research, the National Institute for Health Development, Tallinn University, Tartu University, the Estonian Health Insurance Fund and the Health Board also contributed to the completion of the compendium.

The compendium „Welfare of Children“ includes topics on the welfare of children and provides an overview of the situation of children in Estonia today. The compendium explores topics such as the growth environment and living conditions of children, their family composition, economic situation, possibilities for spending free time, education and health, and also gives an overview of the issues of security, describes the social insurance system and possibilities of social welfare measures to support children. It also deals with the possibilities of children to participate in the life of society, as well as problems and attitudes relating to parenting.

In the opinion of the Ombudsman for Children, it is positive that the compendium contains a separate overview of the information concerning children, because a comprehensive overview of the situation of children creates better possibilities for ensuring their welfare.

E-publication „Approach to measuring the child welfare“

At the same time with the compilation „Welfare of Children“, Statistics Estonia also completed an e-publication „Approach to measuring the child welfare“¹²². The publication provides an overview of the possibilities for measuring child welfare and offers a preliminary list of indicators which could be used for describing welfare of children in political decision-making in Estonia. The proposed approach takes into account both international and domestic practices and needs.

Adviser Andra Reinomägi from the Children’s Rights Department of the Chancellor’s Office gave an important contribution also to the preparation of this publication.

In the opinion of the Ombudsman for Children, it is important that both the approach on measuring the child welfare as well as the compendium deal with the issues of child welfare and development conditions of children more broadly and do not focus only on describing the economic situation of families.

121 Available online in Estonian: http://oiguskantsler.ee/sites/default/files/IMCE/laste_headolu_0.pdf.

122 Available online in Estonian: http://lasteombudsman.ee/sites/default/files/IMCE/lapse_headolu_mootmise_kasitus.pdf.

Survey on awarding the right of custody of parents

During the reporting year, the survey on awarding the right of custody of parents commissioned by the Ministry of Justice, the Office of the Chancellor and the State Chancellery and financed by the fund for smart decisions was completed¹²³. The survey was carried out by Tartu University social sciences applied research centre RAKE.

The aim of the survey was to ascertain the existing practices for awarding the right of custody of parents and make proposals for changing the system so as to ensure the best protection of the interests of the child in this process.

The authors of the survey also made their own proposals on how to improve the protection of the rights of children. Inter alia, the authors found that with regard to the matters of custody of parents the court should not be obliged to guide the parties towards a conciliation if this is contrary to the interests of the child, and it should also be possible to change a compromise reached in matters concerning custody of parents. The authors of the survey draw attention to the fact that court decisions should contain a better reasoning of awarding the right of custody to either one or another parent. It is also necessary to improve the awareness of people about the essence of the right of custody, the duty to notify of a child in danger or need, and about situations when a local authority or the court should be contacted. The survey also points out the need to train judges, child protection workers, teachers and representatives of the child.

Booklet explaining the possibilities for psychological and psychiatric assistance

The monitoring survey of the rights of the child carried out in 2012¹²⁴ as well as several other surveys indicate that parents do not always know where and in which cases they may seek assistance for resolving problems relating to a child, or they do not dare to seek such assistance. In order to improve the awareness of parents about the possibilities to receive assistance and encourage them to seek advice and assistance, specialists in cooperation with the advisers to the Ombudsman for Children prepared an information booklet¹²⁵ explaining the possibilities to receive psychological and psychiatric assistance for parents in Estonia.

The booklet encourages parents to seek additional information and assistance in case of questions and doubts concerning raising of children. The booklet explains in which cases it would be worth to contact a specialist for advice or assistance and which specialist to choose. In addition, the booklet contains a detailed list of various counselling possibilities offered either free of charge or for a fee and intended for children or parents. The booklet also includes references to the literature on topics of raising children.

Parents are afraid to contact specialist help for various reasons, for example being afraid of accusations or not daring to speak about delicate issues. The booklet explains to parents that actually people who come for counselling can decide themselves what they are ready to talk about and what to change in their behaviour or attitudes, nobody will be forced to do anything as a result of counselling. In counselling, often issues relating to the confidentiality of private life arise. The booklet explains that regardless of whether a parent contacts a psychologist, psychiatrist or counsellor, everything that is spoken during the conversation will remain only between the parties to the conversation. In the opinion of the Ombudsman for Children, it is

123 The survey is available online in Estonian:

http://valitsus.ee/UserFiles/valitsus/et/riigikantselei/strateegia/poliitika-analuusid-ja-uuringud/tarkade-otsuste-fondi-uuringute-kokkuvotted/Vanema%20hooldus%C3%B5iguse%20m%C3%A4%C3%A4ramise%20uuring_%C3%B5ppraport.pdf.

124 Summary of the survey is available online in Estonian:

http://lasteombudsman.ee/sites/default/files/lapse_oiguste_ja_vanemluse_monitooringu_kokkuvote.pdf.

125 Available online in Estonian:

http://lasteombudsman.ee/sites/default/files/IMCE/lasteombudsman_psuuh_abi_loplik.pdf.

important for parents to understand that the sooner they start dealing with a problem the easier it is for a specialist to help them. Materials of the information booklet are available on the homepage of the Ombudsman for Children in Estonian and Russian.

2. Advisory body to the Ombudsman for Children

An advisory body to the Ombudsman for Children was established in 2011 to involve children in the work of the ombudsman. Participation in the work of the advisory body provides children an opportunity to express their views on issues which they find important and draw the attention of society to problems about which children are concerned. The work of the advisory body is regulated by a statute¹²⁶.

Members of the advisory body are children under 18 years old, representing different children's and youth organisations. The advisory body includes representatives from the following organisations: youth assembly of the Estonian Guides Association, the Estonian National Youth Council, the Estonian Scouts Association, *Eesti 4H*, Organisation of Home Daughters, youth assembly of the Estonian Union for Child Welfare, Young Eagles, the Assembly of Student Councils, the Estonian School Student Councils' Union, and the association *Ühise Eesmärgi Nimel*.

In 2013, members of the advisory body met three times. One of the recurring topics in all the meetings was local government elections and the expectations of children and young people in connection with them. At the meeting in March, advisers to the Ombudsman explained the principles of local elections. In May, the advisory body in an extended composition discussed issues important for children in connection with local authorities: areas which most affect the daily life of children and possibilities for involvement of children on local level were discussed. Young people participating in the meeting clearly expressed their expectation that more debates on issues important for children should be held on local level and that children and young people should also be involved in such debates. In October, advisers to the Ombudsman introduced to the advisory body a summary compiled of the opinions of children¹²⁷ and the address of the Ombudsman for Children¹²⁸ in connection with local elections and involvement of children in shaping local life.

The advisory body also continued its discussions and activities concerning the topic of creating a safe school environment and school bullying. During the meeting in March members of the advisory board debated this problem under the guidance of the advisers to the Ombudsman. In May, advisers to the Ombudsman in cooperation with the advisory body carried out workshops on school bullying at the annual meeting of the Estonian School Student Councils' Union. A prevailing opinion voiced by the pupils during the debates was that schools do not pay sufficient attention to the problem of bullying. According to the pupils, it is important to pay attention to the prevention of bullying. At the same time, it was pointed out that only a few schools have school psychologists and pupils might not always trust them. Pupils also found it important that in addition to subject teaching schools should also shape the values of pupils. A safe school environment should be an important value both for the management and pupils. Pupils also noted that internal evaluations carried out at schools should be public and more attention should be paid to the analysis of developmental conversations with pupils.

Since the new school year, several members of the advisory body changed as the previous members reached adulthood and new younger members were admitted. Therefore, during

126 Available online in Estonian: http://lasteombudsman.ee/sites/default/files/IMCE/nouandva_kogu_statuut.pdf.

127 Available online in Estonian: http://lasteombudsman.ee/sites/default/files/IMCE/laste_ootused_seoses_kov_valimistega_0.pdf.

128 Available online: <http://lasteombudsman.ee/en/ombudsman-for-children-children-should-be-more-involved-in-organisation-of-local-life>.

the October meeting the role of the Ombudsman for Children and the advisory body were discussed again. As a result of the joint debate it was found that the Ombudsman for Children can contribute to improving the life of children in several ways: by listening to children and young people and offering advice, information and objective assessments. In the opinion of the advisory body, currently the most topical issues in Estonia relate to the educational system and the curriculum; as well as issues of family, including violence; achieving and securing welfare, including the economic situation of children and families.

3. Writing competition organised by the Ombudsman for Children and the Centre for Children's Literature in Estonia

In order to hear the opinions of children and help children and young people generate discussions on topics important for them in society, the Ombudsman for Children together with the Centre of Estonian Children's Literature invited children to write and express their views on topics concerning the life of children, their surrounding environment and relationships and to discuss how to improve the life of children in Estonia.

The children could choose between four topics on which to write: „Good children grow without punishment“; „Who controls my behaviour – I myself or someone else?“; „My fears and worries“; „A 100-year-old Estonia where I feel good“. Over 280 contributions were received at the competition.¹²⁹

The joint team of the Ombudsman for Children and the Centre for Children's Literature distinguished the works of 20 authors who were acknowledged at the event taking place at the Centre for Children's Literature on 1 June. In addition to the award ceremony, several other nice events took place at the Centre in the framework of the International Day for the Protection of Children to which also those children who did not participate in the competition but who like reading were welcome.

4. Public address for the involvement of children in shaping local life

In October before the local elections, the Ombudsman for Children delivered a public address to support better involvement of children in deciding local issues. The Ombudsman called candidates for local councils to take better account of the needs, wishes and opinions of children and young people in shaping local life. Children who make up almost one fifth of the Estonian population do not have the right to vote, yet they too have different needs and possibilities. The best experts with regard to their needs are children and young people themselves, and interviews with children showed that they are gladly ready to share their thoughts with adults. The Ombudsman for Children in his address emphasised that in order to find out the needs of children and young people, it is necessary to be in constant dialogue with them, to collect regular information about their situation and expectations and explain and justify the decisions also for children and young people in a manner understandable by them. The Ombudsman reminded that the Convention on the Rights of the Child, to which Estonia has acceded, also obliges us to hear and seriously consider the opinion of children and young people.

5. Domestic cooperation

During the reporting year, advisers to the Ombudsman for Children also cooperated with several non-profit associations and organisations, in addition to state and local government bodies, for protecting and promoting the rights of children: the Estonian Association of School Psychologists, the Estonian School Student Councils' Union, the Estonian Scouts Association,

¹²⁹ See in more detail in Estonian:

<http://lasteombudsman.ee/et/lasteombudsman-eesti-lapsed-vajavad-rohkem-tunnustust-ja-tahelepanu-2>.

Just Film, the Union for Child Welfare, the Child Advocacy Chamber, Family Centre You and Me, Against Bullying Foundation, etc.

6. International cooperation

In spring 2013, the second meeting of the ombudsmen for children of Baltic countries was held in Riga. During the two-day meeting organised by the Latvian ombudsman for children good practices and experiences were shared, and common problems and future cooperation possibilities were discussed. The tradition of organising annual meetings began in 2012 on the initiative of the Estonian Ombudsman for Children.

In August 2013, head of the Children's Rights Department of the Office of the Chancellor of Justice, Andres Aru, and adviser to the Chancellor, Andra Reinomägi, attended the meeting of ombudsmen for children of Baltic and Nordic countries in Jyväskylä. At the meeting, Andres Aru introduced the results of the analysis of the substitute home service carried out by the Chancellor's Office and the methodology of inspection visits. At the meeting, the Baltic and Nordic ombudsmen for children also made a joint statement urging their governments to take steps to ban and prevent corporal punishment of children.¹³⁰

Head of the Children's Rights Department of the Chancellor's Office, Andres Aru, and adviser to the Chancellor, Kristi Paron, attended the General Assembly and Annual Conference of the European Network of Ombudspersons for Children (ENOC) in Brussels. In 2013, the main topic of the annual conference was the rights of children on the move. At the annual conference, ENOC members adopted a position statement emphasising particular vulnerability of children who have left their homeland and the need to protect the rights of these children and calling on all European states and institutions to take necessary measures for improving the situation. ENOC also made a statement concerning the situation of Syrian child refugees, drawing attention to the fact that children in refugee camps do not have enough food, water and medical assistance, and the coming winter may lead to the death of many child refugees.¹³¹

In the framework of a study visit, in autumn 2013 the staff of the Children's Rights Department of the Chancellor's Office visited the Icelandic Ombudsman for Children and other Icelandic state agencies and organisations safeguarding the rights of children.

7. Participation in the activities of other institutions

In 2013, staff of the Children's Rights Department also participated in the activities of other institutions: Andra Reinomägi participated in the working group for preparing the concept of child welfare; Andres Aru and Margit Sarv participated in the work of the study grant committee of the non-profit association SEB Charity Fund; Andres Aru was a member of the editorial board of the magazine *Märka Last* published by the Union for Child Welfare.

8. Special programme on the rights of the child at the festival *Just Film*

One of the tasks of the Ombudsman for Children is to inform about the rights of children, including raising topics which are important for children and generating discussion. Estonia's own film festival which is recognised equally by children, young people and adults definitely offers an excellent opportunity for this.

¹³⁰ The text of the joint statement is available online: <http://www.lapsiasia.fi/nyt/aloitteet/aloite/-/view/1862473>.

¹³¹ The report of the ENOC 2013 conference is available online: <http://crinarchive.org/enoc/resources/infoDetail.asp?id=32251>. The texts of the joint statements are published as annexes to the report, pp 35–40.

In the framework of the children's and youth films festival Just Film, as part of the Black Nights Film Festival (PÖFF), a special programme on the rights of the child was shown already for the third consecutive year. This year's special programme consisted of seven carefully selected unique films.

In addition to the Just Film programme team, also representatives from the Office of the Chancellor of Justice, the Ministry of Justice and the Union for Child Welfare participated in the selection of the films to be shown within the special programme on the rights of the child. The choice of films within the programme was very diverse: there were films from Korea, New Zealand, Poland and the United States. This time the central topics were neglected young people and noticing and helping children in need, issues related to school, and loneliness.

The special film programme on the rights of the child also included debates in the cinema hall chaired by experts on child protection and other child related issues. In addition, in the framework of the special programme a free showing of a film took place in the Chancellor's Office, followed by a debate on the topic of the needs and opportunities of children in substitute homes. One of the recurring ideas at the debate was that, first and foremost, children separated from their biological family need stable human relations, a long-term and trustful relationship with an adult.

The key message of the Ombudsman for Children in relation to the films shown within the programme was that no child should be alone with their concerns.

9. Homepage and Facebook profile

To inform about the rights of children and explain the institution and activities of the Ombudsman for Children, the Facebook profile of the Ombudsman has been created, and in March 2012 the homepage of the Ombudsman for Children was opened. The homepage is available in Estonian, Russian and English.

The homepage of the Ombudsman for Children has a child-friendly and cheerful design. Its key content and one of the most important values is that the Chancellor of Justice as ombudsman for children explains for children and young people their main rights and duties in a simple and understandable language. The homepage also offers information on the rights and duties of parents, the organisation of child welfare in Estonia, and various interesting information relating to the rights of the child and the work of the Ombudsman for Children.

Through the Facebook profile and the homepage of the Ombudsman, children can also easily submit petitions to the Chancellor.

10. Lectures, presentations and speeches

The Ombudsman for Children and his advisers delivered several presentations, speeches and lectures during the reporting year, the most important ones being listed below.

23 January. M. Sarv, presentation „The rights of children in alternative care“ at the seminar „Perekonnas hooldamine“ [Care in a family] of the Child Advocacy Chamber.

20 February. M. Sarv, presentation „A child in need and data protection“ for the staff of the Estonian Unemployment Fund.

06 March. A. Reinomägi, presentation for students about the rights of the child and the Ombudsman for Children at the University of Tartu Institute of Sociology and Social Policy.

- 13 March. A. Aru, K. Paron and M. Sarv, presentation „The rights and duties of children in the school environment“ at the seminar of the Child Advocacy Chamber at Viimsi School.
- 27 March. A. Reinomägi, presentation „Inclusion of children as an indicator of social cohesion“ for the staff of the Ministry of Finance.
- 27 March. A. Aru, presentation „Child in the legal system“ at Viljandi County Government.
- 28 March. A. Reinomägi, M. Sarv, presentation on the rights of the child at Kadriorg German Upper Secondary School.
- 02 April. A. Aru, presentation at the seminar „Lastekaitseüsteemi tõhustamine“ [Raising the effectiveness of the child protection system] at the Riigikogu.
- 05 April. K. Paron, M. Sarv, chairing of workshops on bullying at the annual meeting of the Estonian School Student Councils' Union.
- 12 April. A. Aru trained the heads of kindergartens in Tartu.
- 18 April. M. Sarv, presentation „The rights of children in alternative care“ at the seminar of child protection workers.
- 19 April. A. Reinomägi, M. Sarv, presentation „Ensuring the rights of children by noticing“ at the seminar „Märka, sekku“ [Notice, intervene!] of the Child Advocacy Chamber.
- 04 May. M. Sarv participated as a youth work committee expert at the simulation of Tallinn City Council at Tallinna Ühisgümnaasium.
- 09 May. M. Sarv, presentation „A child in need and data protection“ at the seminar „Abivajav laps loovterapeudi kliendina“ [A child in need as a client of the creative therapist].
- 15 May. A. Aru, M. Sarv, presentation „The rights of children in alternative care“ at the information day of social workers of Harju County local authorities.
- 17 May. M. Sarv, presentation „The right of the child to inclusion in the light of the analysis of the substitute home service“ at the seminar „Asendushooldusteemaline mõttekoht“ [Food for thought with regard to the alternative care] of Põltsamaa SOS Children's Village.
- 17 May. A. Reinomägi, K. Paron, training of professional support persons (cycle III) on the issues of the rights of the child, the Ombudsman for Children and monitoring at the non-profit association Advisory Centre for Families and Children.
- 23 May. A. Aru, presentation at the information day for heads of kindergartens at Pärnu County Government.
- 29 May. M. Sarv, presentation on the analysis of the substitute home service at the annual meeting of the Estonian Association of Substitute Home Workers.
- 05 June. A. Aru, M. Sarv discussed the issues of family law with child protection workers of Hiiu County local authorities and introduced the methodology of the Chancellor of Justice inspection visits to officials of Hiiu County Government.
- 13 June. A. Reinomägi, introducing the Ombudsman for Children and the rights of the child, watching and debate of the film „Hold Me Tight“ at the summer school of school psychologists.

21 June. A. Aru, presentation on the tasks of the ombudsman and the Ombudsman for Children at the European Union House.

27 June. A. Reinomägi, introducing the Ombudsman for Children and the approach to measuring the child welfare at the summer seminar of the Public Institute for Education Research.

26 August. M. Sarv, presentation „A child in need and data protection“ at the summer school of the National Institute for Health Development for people from organisations working in the field of HIV prevention.

01 September. Greeting of the Ombudsman for Children on the occasion of the beginning of the school year.

08 October. M. Sarv, presentation „The right to security of children in alternative care“ at the seminar of the Estonian SOS Children’s Village Association.

08 October. A. Reinomägi, introduction of the activities of the Ombudsman for Children, discussion on noticing a child in need and watching of the film „Hold Me Tight“ at the seminar for heads of boards of trustees of Valga County schools and kindergartens.

04 November. A. Reinomägi, introduction of the approach to measuring the child welfare to the research council of the population and social statistics department of Statistics Estonia.

07 November. A. Aru, presentation on the Ombudsman for Children and the rights and duties of young people at the youth seminar in Põlva County.

11 November. M. Sarv, presentation „Involvement of children in inspection visits to substitute homes“ to supervisory officials of the Finnish child welfare services.

20 November. A. Aru, M. Sarv, presentation „Children without parental care, and social welfare according to the principle of case management“ at the information seminar for child protection workers in Tallinn.

22 November. I. Teder, welcoming speech at the youth forum in the Riigikogu.

06 December. M. Sarv, presentation on the rights of the child at the UN simulation training day of the Estonian National Commission for UNESCO.

07 December. M. Sarv participated in the discussion panel „Growth of a child without closeness of the parents“ at the seminar on the 10th anniversary of the Women’s Network of the Estonian Police in Pärnu.

Articles, opinions, interviews

Interview with the Chancellor of Justice Indrek Teder and head of the Children’s Rights Department Andres Aru. Indrek Teder: a child must have a future! – *Postimees*, 1 June 2013.

M. Sarv. Kohaliku omavalitsuse ja asenduskoduteenuse osutaja roll asenduskodus elava lapse õiguste tagamisel. [The role of local authorities and providers of the substitute home service in ensuring the rights of children living in substitute homes] – *Sotsiaaltöö* No 3, 2013.

A. Aru. Õiguskantsleri büroo: riik saab lasteaedade rajamist toetada. [Office of the Chancellor of Justice: the state can support creation of kindergartens] – *Postimees*, 12 July 2013.

A. Kivioja. Initsiatiivika ja koostööalt õpilase kasvatamine eeldab samasugust õpetajat. [Raising of a pupil who takes the initiative and is ready to cooperate presumes a similar teacher] – *Õpetajate Leht*, 13 September 2013.

A. Reinomägi. Viiendik ühiskonnast, kellega arvestada. [One fifth of society to reckon with]– *Postimees*, 10 October 2013.

A. Reinomägi, A. Leps. Et ükski laps ei oleks üksi. [That no child should be alone] – special paper of the Just Film festival *Just Leht* (published as an insert of *Postimees* daily), 15 November 2013.

A. Reinomägi. Kuulame laste arvamust. [Listening to the views of children] – *Märka Last*, autumn 2013.

K. Žurakovskaja-Aru. Children's connections with imprisoned parents in Estonia. – *Eurochips* [European Network for Children of Imprisoned Parents], newsletter „Justice for children of prisoners“, 2013.

During the reporting year, Andres Aru gave four television interviews on the topic of the rights of the child which were aired in ETV and ETV2 news programmes *Aktuaalne kaamera*, Kanal 2 programme *Reporter* and Tallinn TV programme *Parasjagu päevakorral*. In addition, the topic of the rights of the child was covered by Hent Kalmo in television interviews summarising the Chancellor's 2012 annual report (ETV *Aktuaalne kaamera*, Delfi Video).

The Chancellor of Justice and his advisers gave 11 radio interviews on the topic of the rights of the child during the year. Most often the issues of the rights of the child were covered in radio programmes by Andres Aru (6 times) and Andra Reinomägi (3 times). In three radio interviews Andres Aru spoke about the results of the writing competition organised by the Ombudsman for Children and the Centre of Estonian Children's Literature (on Kuku Radio, Vikerraadio and Radio 4) and he also gave one interview on compliance with the requirements for test papers (on Kuku Radio). In addition, Aru commented on the new Draft Child Protection Act (on Vikerraadio) and he was interviewed by Kuku Radio in connection with the call by the Ombudsman for Children to better involve children in organising matters of local life.

Andra Reinomägi spoke on Vikerraadio about the booklet explaining the possibilities to receive psychological assistance, and she gave an interview to Kuku Radio on the results of the writing competition and to Radio Elmar on child poverty.

Margit Sarv was interviewed by Kuku Radio in connection with the analysis of the substitute home service, and the Chancellor of Justice Indrek Teder gave a radio interview to Vikerraadio in connection with the project „101 children in the Riigikogu“.

PART I

PART II

PART III

PART IV

PART III

OVERVIEW OF THE PERFORMANCE OF OTHER FUNCTIONS ENTRUSTED
BY LAW TO THE CHANCELLOR OF JUSTICE

I. THE PRINCIPLE OF EQUALITY AND EQUAL TREATMENT

The principle of equal treatment is one of the fundamental principles under the Estonian Constitution. Under § 12(1) of the Constitution, everyone is equal before the law. No one may be discriminated against on the basis of nationality, race, colour, sex, language, origin, religion, political or other views, property or social status, or on other grounds.

The principle of equal treatment has been elaborated by the Gender Equality Act and the Equal Treatment Act.

Under the Chancellor of Justice Act, with regard to the issues of equality and equal treatment the Chancellor is competent to verify conformity of legislation with the Constitution and the Acts (i.e. the constitutional review competence), verify the activities of representatives of public authority (i.e. the ombudsman competence) and arrange conciliation proceedings for resolving disputes between persons under private law. Division 4 of Chapter 4 of the Chancellor of Justice Act establishes the activities of the Chancellor in promoting the principle of equality and equal treatment.

In 2013, the Chancellor was contacted on 39 occasions in connection with the issues of equality and equal treatment. Mostly, these concerned the general fundamental right to equality. Five proceedings concerned different treatment due to a specific attribute of discrimination. In 20 proceedings, the matter concerned conformity of a legal act with the Constitution (i.e. the constitutional review proceedings). The proceedings dealt with different areas of law (e.g. differences in kindergarten fees, transport benefits, access to justice, right to vote, distribution of local council mandates, request for partial compensation of university teaching expenses, relief from the land tax, frequency of technical inspection of electrical installations, conditions for the payment of a special pension, labour law).

With regard to the constitutional review of legislative acts, the Chancellor submitted two memorandums to the Minister of Internal Affairs in 2013, as he found that the Aliens Act is not in conformity with the principle of equal treatment. According to the Chancellor's assessment, the Aliens Act is contrary to § 26 and 27 of the Constitution in combination with § 12 and 14 because it does not establish a legal basis for granting a residence permit to a same-sex partner of an Estonian citizen or a foreigner living in Estonia on the basis of a residence permit to enable them lead a family life in Estonia. The Chancellor noted the unconstitutionality of a situation where the state has created grounds to apply for a residence permit for married couples while there are no grounds to apply for a residence permit for same-sex partners who cannot marry.

In addition, the Chancellor found that § 143(1) of the Aliens Act is in conflict with the fundamental rights to a family and equality to the extent that it stipulates that if an alien has been married for less than three years to a person legally residing in Estonia, the alien may be granted a temporary residence permit for a period of up to one year and the permit may be extended in each of the following three years for no longer than one year at a time.

In the Chancellor's 2013 Overview it is noted that the Chancellor initiated proceedings to verify whether the weekly load established under the basic school simplified curriculum for education of children with severe and profound intellectual disability is in conformity with the Act and the Constitution. In the Chancellor's opinion, the provision under which the weekly load of pupils engaged in education for children with severe and profound intellectual disability is maximum 20 hours in all the three stages of development as well as during the additional study year is compatible with the fundamental right to equality.

The Chancellor, performing his functions as ombudsman, issued several opinions with regard to the rights of people with disabilities. The Chancellor found that the exclusion of inhabitants of Tallinn who are minors with a hearing impairment from the target group for sign language interpreting services was contrary to the fundamental right to equality. The Chancellor recommended to Tallinn City Government to consider whether suitable measures for increasing the flexibility of the special bus service intended for people with disabilities can be found. The Chancellor pointed out that a more flexible bus service would improve the possibilities of people with disabilities to move around, better organise their life independently, participate more actively in the life of society, and also ensure equal opportunities with others. In 2013, the Chancellor also opened own-initiative proceedings to investigate how people with mobility, visual or hearing impairments are guaranteed the right to the services of a notary. The proceedings in this matter continue in 2014.

In addition, as a result of two proceedings the Chancellor found a violation of the principles of lawfulness and equal treatment in establishing the kindergarten fee.

In 2013, the Chancellor received a petition from a foreign student who found that a public university had discriminated them in applying to become an exchange student. In the opinion of the Chancellor, the facts gathered during the proceedings did not indicate that the petitioner had been treated unjustifiably less favourably due to their nationality or on other grounds.

In 2013, the Chancellor also received some petitions asking to verify whether persons in private law had complied with the principle of equal treatment. One petition concerned working conditions and equal remuneration for similar work. The Chancellor explained to the petitioners that, as a rule, he cannot verify activities of persons in private law, and the petitions also did not show a wish to carry out conciliation proceedings.

Thus, no conciliation proceedings were carried out in 2013 and the Chancellor still has not approved any agreements reached in conciliation proceedings.

The Chancellor's 2011 and 2012 overview explained the Chancellor's memorandums concerning gaps in legal regulation or failure to implement the existing provisions. In 2013, the respective legal acts were not amended and, therefore, the protection of fundamental rights of individuals with regard to the issues explained in the memorandums is still insufficient.

In 2011, the Chancellor drew attention to the fact that it is contrary to the Constitution that the scope of application of the Equal Treatment Act has been defined narrowly and a different scope of protection has been established with regard to different attributes of discrimination (discrimination of individuals on grounds of religion or other beliefs, age, disability or sexual orientation is prohibited only at work and in occupational activities).

In 2011, the Chancellor also submitted a memorandum with regard to the implementation of the Gender Equality Act to the Minister of Social Affairs. In the memorandum, the Chancellor pointed out that the Government has still not adopted the regulation required under § 11(2) of the Gender Equality Act to establish the procedure for the collection of employment-related gender-disaggregated statistical data and the list of such data. According to the reply by the Minister of Social Affairs it was hoped that the issue would be resolved in 2012; however, the relevant regulation has still not been adopted.

In addition, in 2011 the Chancellor sent a memorandum to the Minister of Justice to regulate the legal issues of family relationships of same-sex persons. On 17 April 2014, members of the Riigikogu initiated the Draft Partnership Act. The Chancellor monitors the progress of this draft.

PART IV

STATISTICS OF PROCEEDINGS

1. General outline of statistics of proceedings

1.1. Petition-based statistics

In 2013, the Chancellor of Justice received 1901 petitions. In comparison to 2012, the number of petitions has dropped by 6.8%.

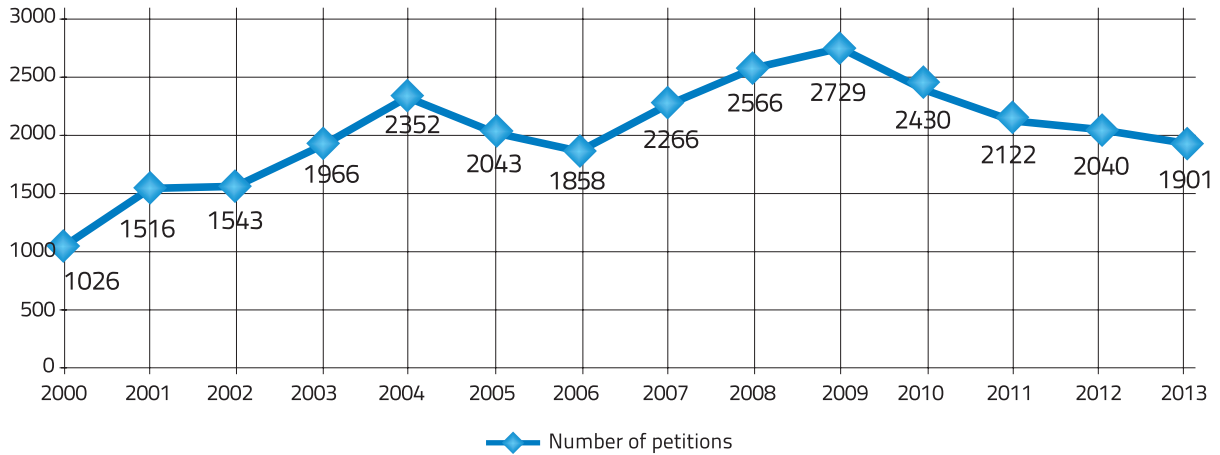


Figure 1. Number of petitions 2000–2013

1.2. Statistics based on cases opened

Statistics of the Office of the Chancellor of Justice are based on cases opened. A 'case opened' means taking procedural steps and drafting documents to resolve an issue falling within the jurisdiction of the Chancellor. Petitions that raise the same issue are joined and regarded as a single case.

The Chancellor initiates proceedings based either on a petition or on his own initiative. In dealing with a case, the Chancellor decides whether to carry out substantive proceedings or reject a petition for proceedings.

Substantive proceedings are divided as follows based on the Chancellor's competencies:

- review of the legality or constitutionality of legislation (i.e. constitutional review proceedings);
- verification of the legality of activities of the Government, local authorities, other public-law legal persons or of a private person, body or institution performing a public function (i.e. ombudsman proceedings);
- proceedings arising from the Chancellor of Justice Act and other Acts (i.e. special proceedings).

The distribution of cases by substance only includes all the proceedings initiated during the reporting year.

During the reporting year, the Chancellor opened 1552 cases, which is 3.6% less than in 2012. As at 4 February 2014, 1447 of the cases had been completed and 105 cases were still being investigated. In 411 cases substantive proceedings were conducted, and in 1140 cases no substantive proceedings were initiated for various reasons. 92 cases were opened on the Chancellor's own initiative, and 49 inspection visits were conducted.

Table 1. Distribution of cases by content

Type of case	Number and proportion of cases opened					
	2008	2009	2010	2011	2012	2013
Cases accepted for proceedings, including	480 24.7%	449 22.1%	480 24%	395 22.7%	296 18.4%	411 26.5%
constitutional review proceedings	151 7.8%	124 6.1%	168 8.4%	127 7.3%	98 6%	136 8.8%
ombudsman proceedings	258 13.3%	231 11.4%	214 10.7%	186 10.6%	109 6.8%	168 10.8%
special proceedings	71 3.7%	94 4.6%	98 4.9%	82 4.7%	89 5.5%	107 7.0%
Non-substantive proceedings of cases	1464 75.3%	1584 77.9%	1523 76%	1344 77.3%	1314 81.6%	1140 73.5%
Total cases, including	1944	2033	2003	1739	1610	1552
own-initiative proceedings	66 3.5%	82 4%	75 3.7%	72 4.1%	52 3.2%	92 5.9%
inspection visits	33	49	42	53	44	49

2. Opinions of the Chancellor of Justice

Resolving petitions received by the Chancellor takes place according to the principle of freedom of form and expediency of proceedings, and by taking necessary investigative measures to ensure effective and independent investigation. The Chancellor’s opinion upon closing a case shows what solutions the Chancellor found or what steps he took as a result of the proceedings.

By types of cases the Chancellor’s opinions can be divided as follows (see also Figure 2):

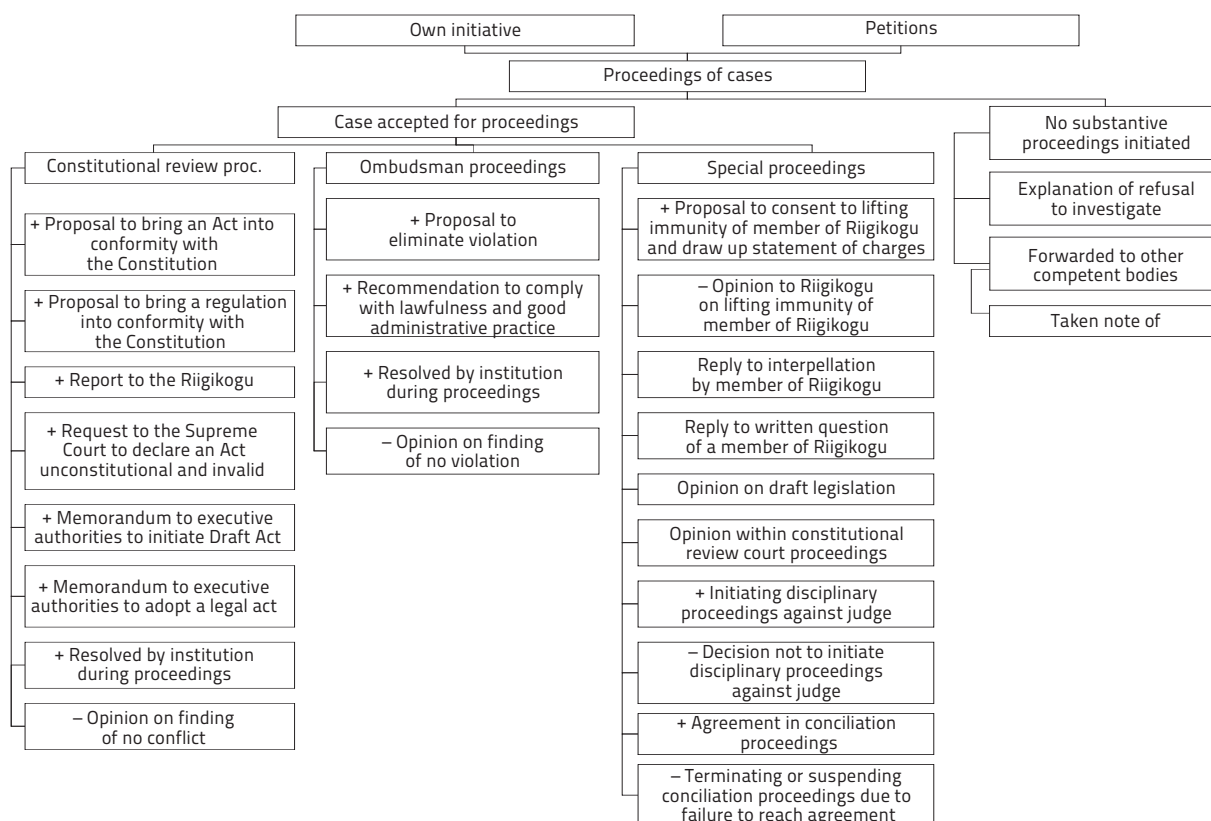


Figure 2. Distribution of cases opened and outcome of proceedings

The Chancellor's opinions in reviewing the constitutionality and legality of legislation, depending on whether a conflict was found or not

A conflict was found:

- + a proposal made to bring an Act into conformity with the Constitution;
- + a proposal to bring a regulation into conformity with the Constitution or an Act;
- + a request to the Supreme Court to declare a legal act unconstitutional and invalid;
- + a report to the Riigikogu;
- + a memorandum to executive authorities for initiating a Draft Act;
- + a memorandum to executive authorities for adopting a legal act;
- + a problem resolved by the relevant institution during the proceedings.

No conflict was found:

- an opinion stating a finding of no conflict.

The Chancellor's opinions in reviewing the legality of activities of bodies performing public functions, depending on whether a violation was found or not

A violation was found:

- + a proposal for eliminating a violation;
- + a recommendation for complying with lawfulness and the principle of good administration;
- + a problem resolved by the relevant institution during the proceedings.

No violation was found:

- an opinion stating a finding of no violation.

The Chancellor's opinions in special proceedings

- an opinion within constitutional review court proceedings;
- a reply to an interpellation by a member of the Riigikogu;
- a reply to a written enquiry by a member of the Riigikogu;
- an opinion on a draft legal act;
- + a proposal to grant consent to lifting the immunity of a member of the Riigikogu and drawing up a statement of charges in respect of the member;
- an opinion to the Riigikogu on lifting the immunity of a member of the Riigikogu;
- + initiating disciplinary proceedings against a judge;
- a decision not to initiate disciplinary proceedings against a judge;
- + an agreement reached within conciliation proceedings;
- terminating or suspending conciliation proceedings due to failure to reach an agreement.

The Chancellor's opinions in case of petitions declined for proceedings

- explanation given of reasons for refusal;
- petition forwarded to other competent bodies;
- petition taken note of.

2.1. Review of constitutionality and legality of legislation of general application

The figures concerning statistics of proceedings are based only on the proceedings opened in 2013. All the opinions of the Chancellor, including those concerning cases opened before 2013, are available on the website of the Chancellor of Justice¹³².

The Chancellor opened 136 cases to review the constitutionality and legality of legislation of general application, which makes up 8.8% of the total number of cases and 33% of the total

¹³² Available in Estonian: <http://oiguskantsler.ee/et/seisukohad/viimased-seisukohad>.

number of substantive proceedings of cases. Of these, 114 were opened on the basis of petitions and 22 on own initiative.

Within constitutional review proceedings the following were scrutinised:

- conformity of Acts with the Constitution (105 proceedings, of these 92 based on petitions by individuals and 13 on own initiative);
- conformity of regulations of local councils and rural municipality and city governments with the Constitution and Acts (17 proceedings, of which 11 based on petitions by individuals);
- conformity of regulations of Ministers with the Constitution and Acts (9 proceedings, of these 6 based on petitions by individuals and 3 on own initiative);
- conformity of Government regulations with the Constitution and Acts (5 proceedings based on a petition by an individual).

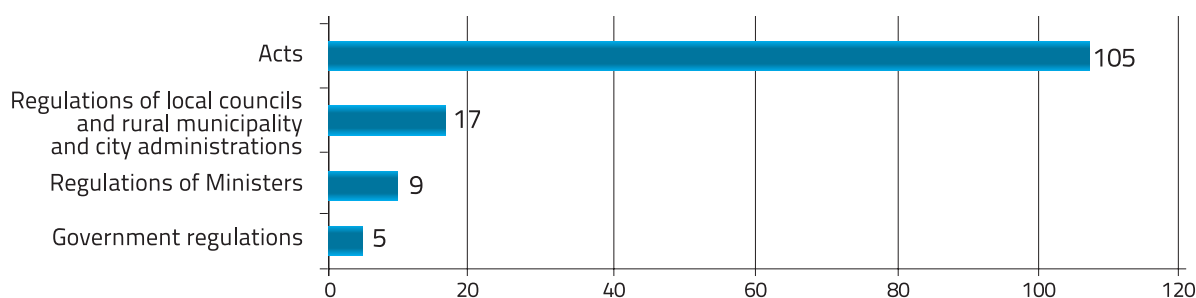


Figure 3. Distribution of constitutional review proceedings

The Chancellor reached the following opinions as a result of review of the constitutionality and legality of legislation of general application¹³³:

- opinion stating a finding of no conflict (79 cases);
- memorandum to executive authorities for initiating a Draft Act (7 cases)¹³⁴;
- issue resolved by the institution during the proceedings (3 cases);
- memorandum to executive authorities for adopting a legislative act (1 case);
- proposal to bring an Act into conformity with the Constitution (1 case);
- proposal to bring a regulation into conformity with the Constitution (1 case).

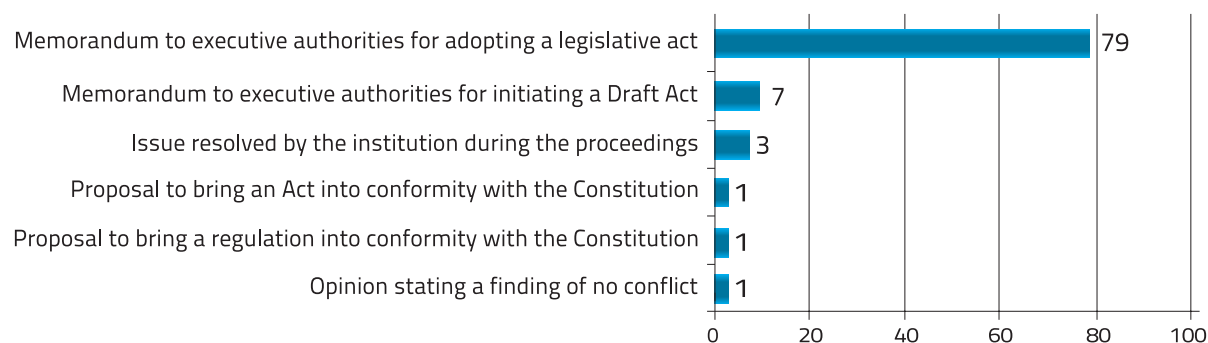


Figure 4. Chancellor's opinions upon review of conformity with the Constitution and Acts

In case of proceedings for review of conformity with the Constitution and Acts, the Chancellor found conflict with the Constitution or an Act in 7.4% of the cases. In 2012, the indicator was 13%.

133 Within the cases opened in the previous years, in 2013 the Chancellor made 5 requests to the Riigikogu which are available in Estonian on the [website](#) of the Chancellor of Justice.

134 Together with the cases opened in the previous years, in 2013 the Chancellor issued 21 memorandums which are available in Estonian on the [website](#) of the Chancellor of Justice

2.2. Verification of lawfulness of activities of agencies and institutions performing public functions

The Chancellor initiated 168 proceedings for verification of legality of activities of the state, local authorities, other public-law legal persons or of a private person, body or institution performing a public function. This makes up 10.8% of the cases opened and 40.8% of the total number of substantive proceedings. Of these, 95 were based on petitions by individuals and 73 on own initiative.

In proceedings initiated to verify the activities of agencies and institutions performing public functions, the following were scrutinised:

- activities of a state agency or body (79 proceedings, of these 64 based on petitions by individuals and 15 on own initiative);
- activities of a body or agency of a legal person in public law, or of a body or agency of a private person performing state functions (54 proceedings, of these 10 based on petitions and 44 on own initiative);
- activities of a local government body or agency (35 proceedings, of these 21 based on petitions and 14 on own initiative) (see Figure 5).

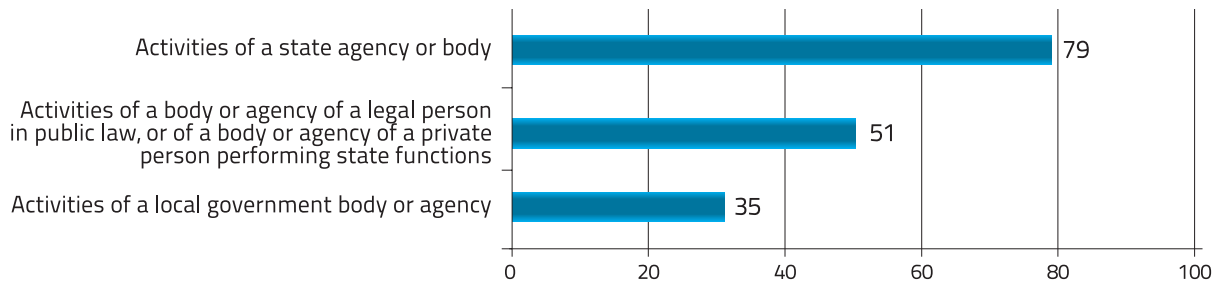


Figure 5. Distribution of cases opened for scrutiny of activities of persons, agencies, and bodies

The Chancellor's reached the following opinions upon supervision of activities of agencies and institutions performing public functions:

- recommendation to comply with lawfulness and good administrative practice (50 cases);
- opinion stating a finding of no violation (43 cases);
- proposal to eliminate a violation (34 cases);
- resolved by the institution during the proceedings (8 cases) (see also Figure 6).

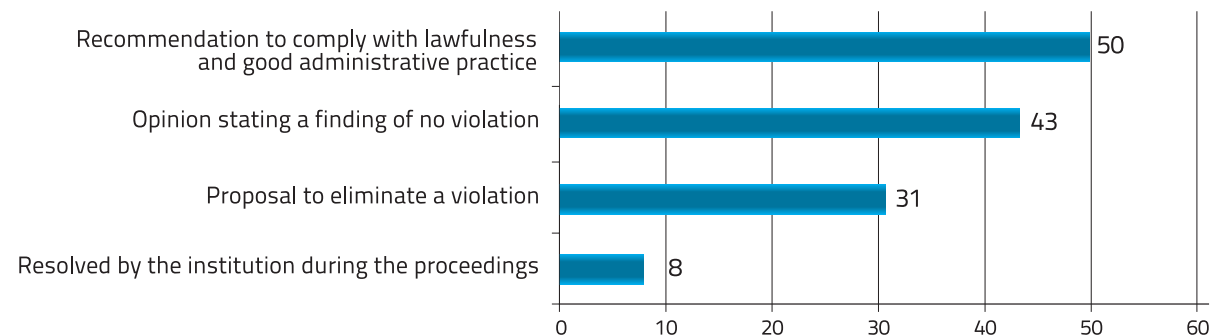


Figure 6. Chancellor's opinions upon scrutiny of activities of agencies and institutions performing public functions

In proceedings initiated for scrutiny of activities of persons, agencies and bodies, the Chancellor found a violation of the principles of good administration and lawfulness in 50% of the cases. In 2012, the indicator was 38.5%.

2.3. Special proceedings

There were 107 special proceedings during the reporting year, i.e. 7% of the total number of cases opened and 26% of the total number of substantive proceedings.

Special proceedings are divided as follows:

- providing an opinion on a legal act within constitutional review proceedings (40 cases);
- other activities arising from law (27 cases)
- opinions on draft legal acts and documents (19 cases);
- initiating disciplinary proceedings against judges and other proceedings relating to the activities of courts (17 cases);
- replying to written questions by members of the Riigikogu (5 cases) (see also Figure 7).

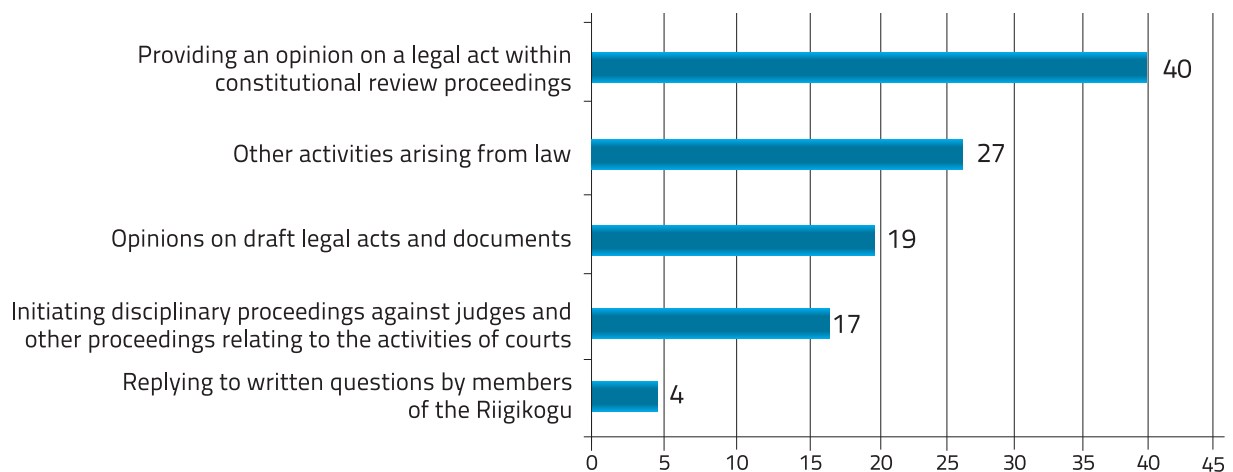


Figure 7. Distribution of special proceedings

The largest number of proceedings were related to providing an opinion on a legal act within constitutional review proceedings and other activities arising from law (40 and 27 proceedings respectively).

2.4. Cases without substantive proceedings

The Chancellor of Justice does not initiate substantive proceedings with regard to a petition if its resolution is not within his competence. In that case, the Chancellor explains to the petitioner which institution should deal with the issue. The Chancellor can also reject a petition if it is clearly unfounded or if it is not clear from the petition what constituted the alleged violation of the petitioner's rights or principles of good administration.

The Chancellor is not competent to intervene if a court judgment has been made in the matter of the petition, the matter is concurrently subject to judicial proceedings or pre-trial complaint proceedings (e.g. when a complaint is being reviewed by an individual labour dispute settlement committee or similar pre-judicial body). The Chancellor cannot, and is not permitted to duplicate these proceedings, as the possibility of filing a petition with the Chancellor of Justice is not considered a legal remedy. Rather, the Chancellor of Justice is a petition body, with no direct possibility to use any means of enforcement. The Chancellor resolves cases of violation of people's rights if the individual cannot use any other legal remedies. In cases when a person can file an administrative challenge or use other legal remedies or if administrative challenge proceedings or other non-compulsory pre-trial proceedings are pending, the Chancellor's decision is based on the right of discretion, which takes into account the circumstances of each particular case.

The Chancellor may also decide not to initiate proceedings with regard to a petition if it was filed more than one year after the date on which the person became, or should have become, aware of violation of their rights. Applying the one-year deadline is in the discretion of the Chancellor and depends on the circumstances of the case – for example, severity of the violation, its consequences, whether it affected the rights or duties of third parties, etc.

In 2013, the Chancellor declined to open substantive proceedings in 1140 cases, which makes up 73.5% of the total number of cases.

Proceedings were not opened for the following reasons:

- lack of competence by the Chancellor (382 cases);
- the individual could file an administrative challenge or use other legal remedies (348 cases);
- judicial proceedings or compulsory pre-trial proceedings were pending in the matter (178 cases);
- petition did not comply with requirements under the Chancellor of Justice Act (130 cases)
- a petition was manifestly unfounded (59 cases);
- no public interest for the review of conformity of legislation of general application with the Constitution or an Act (18 cases);
- administrative challenge proceedings or other voluntary pre-trial proceedings were pending (13 cases);
- the petition had been filed one year after the petitioner discovered the violation (12 cases) (see also Figure 8).

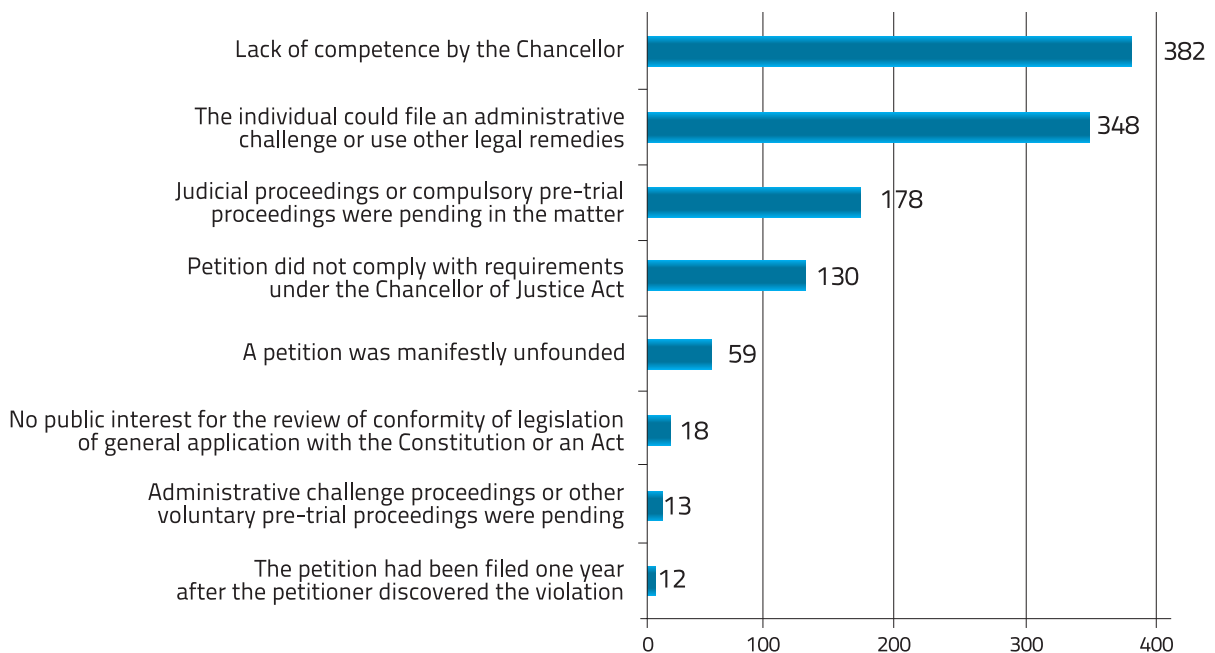


Figure 8. Reasons for declining to initiate proceedings of petitions

In case of petitions declined for proceedings, the competence of the Chancellor, Acts and other legislation were explained to the petitioners. The steps taken on the basis of petitions could be divided as follows:

- an explanatory reply was given (1027 cases);
- a petition was forwarded to competent bodies (52 cases);
- a petition was taken note of (65 cases) (see also Figure 9).

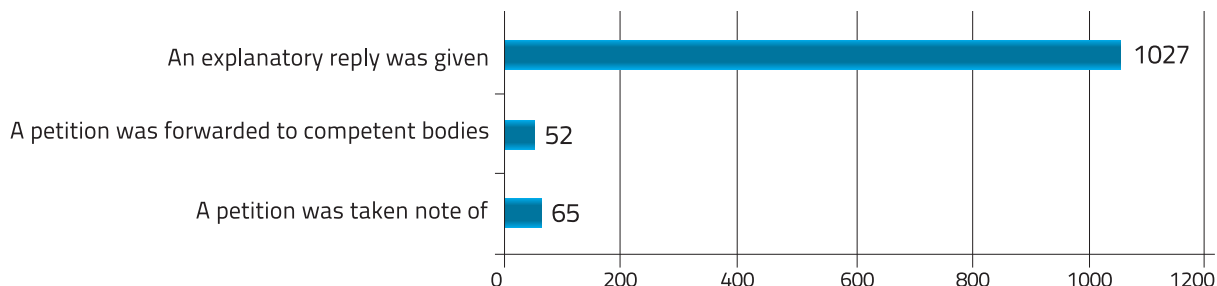


Figure 9. Distribution of replies in case of declining to accept a petition for proceedings

3. Distribution of cases by respondents

By types of respondents, proceedings of cases were divided as follows:

- the state (1072 cases);
- local authorities (236 cases);
- a legal person in private law (155 cases);
- a natural person (41 cases).
- a legal person in public law, except local authorities (20 cases) (see also Figure 10).

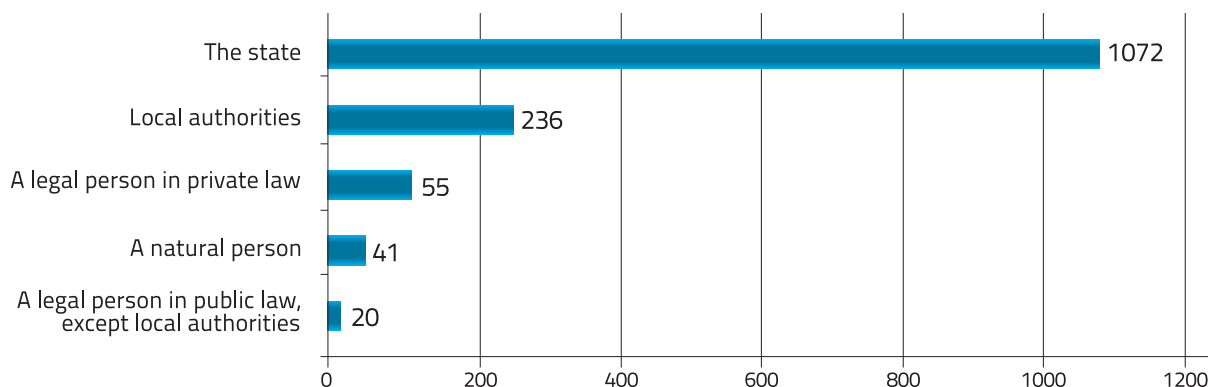


Figure 10. Distribution of cases by respondents

Distribution of cases opened in 2013 by areas of government and type of proceedings is shown in Tables 2 and 3 and Figures 12 and 13. Proceedings are divided by areas of responsibility of government agencies and other institutions depending on who was competent to resolve the petitioned matter or against whose activities the petitioner complained.

Table 2. Distribution of cases by respondent state or government agencies or institutions

Agency, body, person	Cases opened	Pending proceedings or proceedings with no outcome	Pro-ceedings initiated	Finding of conflict with the Constitution or an Act	Finding of violation of lawfulness or good administrative practice	No pro-ceedings con-ducted
Riigikogu or the Chancellery of the Riigikogu	29	1	10	1	1	18
Supreme Court or other courts, except registry departments	151	2	19	0	1	130
State Audit Office	0	0	0	0	0	0
President of the Republic or Office of the President	0	0	0	0	0	0
Government of the Republic or Prime Minister	5	0	5	0	0	0
Chancellor of Justice or Chancellor's Office	14	0	1	0	0	13
Area of government of the Ministry of Education and Research	15	2	3	0	0	10
Ministry of Education and Research	13	2	3	0	0	8
Agency subordinate to the Ministry of Education and Research	2	0	0	0	0	2
Language Inspectorate	0	0	0	0	0	0
Area of government of the Ministry of Justice	475	20	104	5	9	351
Ministry of Justice	157	15	80	4	3	62
Agency subordinate to the Ministry of Justice	5	0	1	0	1	4
Bar Association	6	0	0	0	0	6
Data Protection Inspectorate	3	0	1	0	1	2
Harku and Murru Prison	22	1	0	0	0	21
Tallinn Prison	97	2	10	0	2	85
Tartu Prison	87	1	5	1	1	81
Viru Prison	37	0	2	0	0	35
Bailiffs	35	0	4	0	0	31
Notaries	4	0	1	0	1	3
Chamber of Bailiffs and Trustees in Bankruptcy	0	0	0	0	0	0
Trustees in bankruptcy	1	0	0	0	0	1
Prosecutor's Office	20	1	0	0	0	19
Area of government of the Ministry of Defence	30	3	18	0	1	9
Ministry of Defence	15	1	11	0	0	3
Agency subordinate to the Ministry of Defence	14	1	7	0	1	6
Defence Resources Agency	1	1	0	0	0	0

Agency, body, person	Cases opened	Pending proceedings or proceedings with no outcome	Pro-ceedings initiated	Finding of conflict with the Constitution or an Act	Finding of violation of lawfulness or good administrative practice	No pro-ceedings conducted
Area of government of the Ministry of the Environment	34	2	5	0	0	27
Ministry of the Environment	29	2	5	0	0	22
Agency subordinate to the Ministry of the Environment	1	0	0	0	0	1
Environmental Board	2	0	0	0	0	2
Land Board	2	0	0	0	0	2
Environmental Inspectorate	0	0	0	0	0	0
Area of government of the Ministry of Culture	2	0	0	0	0	2
Ministry of Culture	0	0	0	0	0	0
Heritage Board	2	0	0	0	0	2
Area of government of the Ministry of Economic Affairs and Communications	35	4	4	1	0	27
Ministry of Economic Affairs and Communications	24	2	4	1	0	18
Competition Board	1	0	0	0	0	1
Roads Administration	6	1	0	0	0	5
Patent Office	1	1	0	0	0	0
Consumer Protection Board	2	0	0	0	0	2
Technical Surveillance Authority	1	0	0	0	0	1
Maritime Administration	0	0	0	0	0	0
Area of government of the Ministry of Agriculture	6	1	1	0	0	4
Ministry of Agriculture	3	1	1	0	0	1
Agency subordinate to the Ministry of Agriculture	1	0	0	0	0	1
Agricultural Board	0	0	0	0	0	0
Agricultural Registers and Information Board	2	0	0	0	0	2
Veterinary and Food Board	0	0	0	0	0	0
Area of government of the Ministry of Finance	49	1	14	0	0	34
Ministry of Finance	30	1	13	0	0	16
Agency subordinate to the Ministry of Finance	1	0	0	0	0	1
Tax and Customs Board	18	0	1	0	0	17
Statistics Estonia	0	0	0	0	0	0
Minister for Regional Affairs, county administration, or subordinate agencies	5	1	1	0	0	3
Area of government of the Ministry of Internal Affairs	111	7	28	2	7	76
Ministry of Internal Affairs	24	3	11	2	0	10

Agency, body, person	Cases opened	Pending proceedings or proceedings with no outcome	Pro-ceedings initiated	Finding of conflict with the Constitution or an Act	Finding of violation of lawfulness or good administrative practice	No pro-ceedings con-ducted
Agency subordinate to the Ministry of Internal Affairs	1	0	0	0	0	1
Security Police Board	3	0	1	0	0	2
Police and Border Guard Board	82	4	15	0	7	63
Rescue Board	1	0	1	0	0	0
Area of government of the Ministry of Social Affairs	79	2	24	1	7	54
Ministry of Social Affairs	29	1	14	0	0	14
Agency subordinate to the Ministry of Social Affairs	1	0	0	0	0	1
Social Insurance Board	30	0	6	0	4	24
Health Board	4	1	1	0	1	2
Labour Inspectorate	2	0	0	0	0	2
Unemployment Insurance Fund	9	0	0	0	0	9
State Agency of Medicines	1	0	0	0	0	1
Health Insurance Fund	3	0	3	1	2	1
Area of government of the Ministry of Foreign Affairs	18	0	3	0	0	15
Ministry of Foreign Affairs	18	0	3	0	0	15
State Chancellery	0	0	0	0	0	0
National Electoral Committee	1	0	0	0	0	1

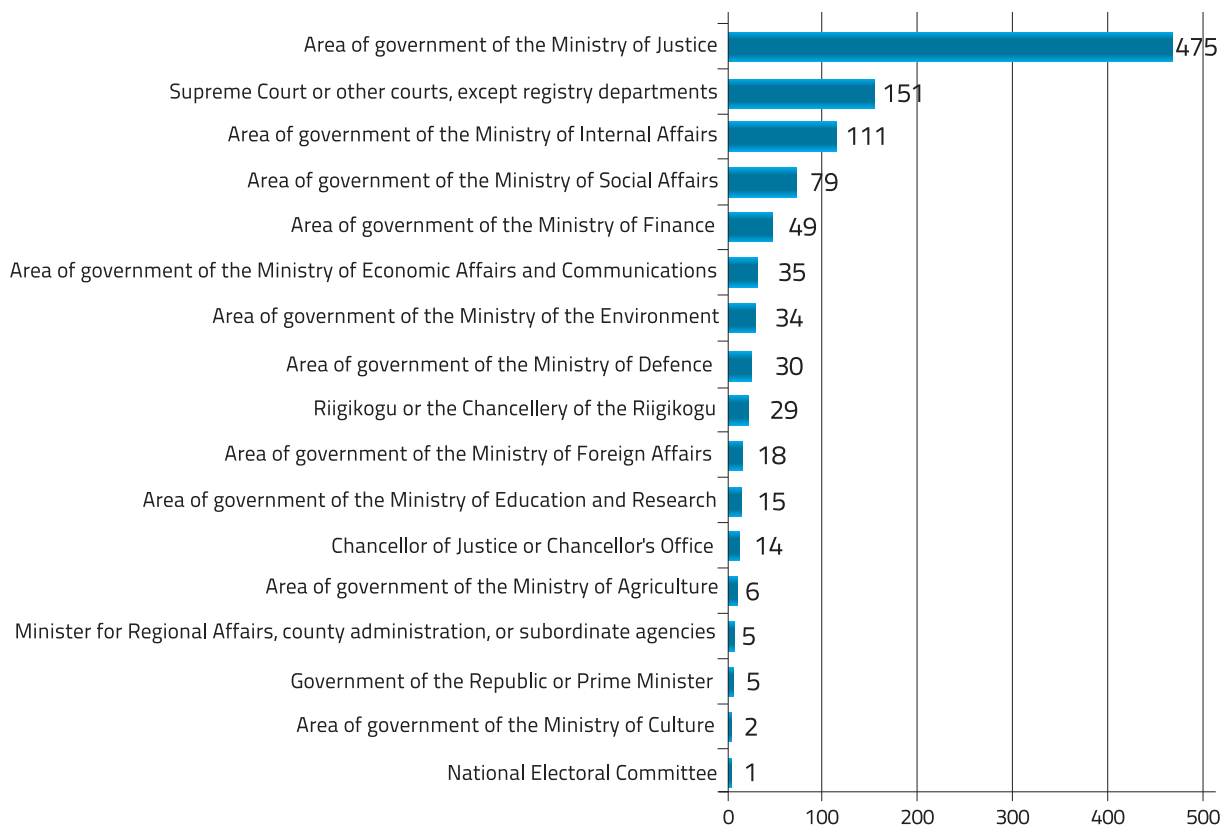


Figure 11. Distribution of cases by respondents on state level

Similarly to the previous years, the largest number of proceedings fell within the area of government of the Ministry of Justice and the majority of these were still related to criminal enforcement law and imprisonment law (see Table 5) and were initiated on the basis of petitions by prisoners. In 78.9% of the proceedings within the area of government of the Ministry of Justice, no substantive proceedings were initiated. In 2012, this indicator was the same.

Table 3. Distribution of cases by respondents on local government level

Agency, body, person	Cases opened	Pending proceedings or proceedings with no outcome	Proceedings initiated	Finding of conflict with the Constitution or an Act	Finding of violation of lawfulness or good administrative practice	No proceedings conducted
Harju County local authorities, except Tallinn city	45	2	10	2	6	35
Tallinn	59	1	8	3	5	50
Hiiu County local authorities	1	0	0	0	0	1
Ida-Viru County local authorities, except Narva city	8	1	1	0	1	6
Narva	7	0	0	0	0	7
Jõgeva County local authorities	3	1	0	0	0	2
Järva County local authorities	3	0	1	0	1	2
Lääne County local authorities	1	0	0	0	0	1
Lääne-Viru County local authorities	7	0	1	1	0	6
Põlva County local authorities	6	0	5	2	0	1
Pärnu County local authorities	15	0	2	0	2	13
Rapla County local authorities	5	0	0	0	0	5
Saare County local authorities	5	0	0	0	0	5
Tartu County local authorities, except Tartu city	20	7	3	0	3	10
Tartu	11	0	1	0	1	10
Valga County local authorities	5	0	1	1	0	4
Viljandi County local authorities	5	0	1	0	1	4
Võru County local authorities	5	0	1	0	1	4

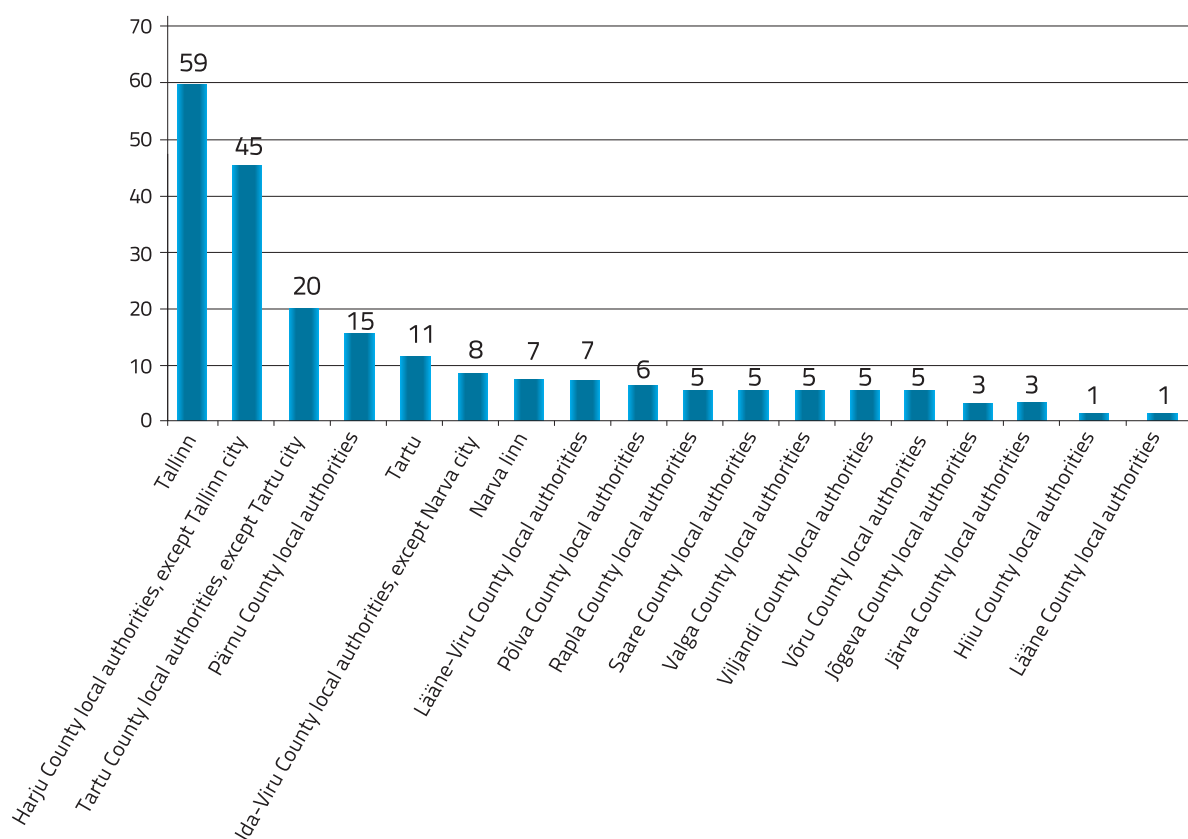


Figure 12. Distribution of cases by respondents on local government level

4. Distribution of cases by areas of law

Similarly to previous years, in 2013 the largest number of cases was opened in connection with criminal enforcement procedure and imprisonment law. The number of cases relating to social welfare law and family law has also increased. At the same time, the number of proceedings relating to financial law and law of obligations has dropped by 16 cases in comparison to the previous year (by 26 and 20 cases respectively)

Table 5. Cases opened by areas of law

Area of law	Number of cases
Criminal enforcement procedure and imprisonment law	287
Social welfare law	82
Civil court procedure law	77
Family law	67
Criminal and misdemeanour court procedure	62
Education and research law	60
Health law	56
Financial law (incl. tax and customs law, state budget, state property)	56
Other public law	52
Social insurance law	51
Enforcement procedure	48

STATISTICS OF PROCEEDINGS

Area of law	Number of cases
Law of obligations	42
Pre-trial criminal procedure	41
Local government organisation law	37
Administrative law (administrative management, administrative procedure, administrative enforcement, public property law, etc)	36
Citizenship and migration law	31
Energy, public water supply and sewerage law	31
Personal data protection, databases and public information, state secrets law	28
Building and planning law	28
Public service	28
Labour law (including collective labour law)	23
Police and law enforcement law	23
Transport and road law	22
Environmental law	22
Administrative court procedure law	21
Ownership reform law	19
National defence law	19
Misdemeanour procedure	18
Non-profit associations and foundations law	17
Traffic regulation law	16
State legal aid	15
International law	14
Electoral and referendum law, political parties law	14
Government organisation law	13
Other private law	13
Ownership law, including intellectual property and copyright law	11
Animal protection, hunting, and fishing law	10
Heritage law	9
Substantive penal law	6
Economic and trade management and competition law	5
Agricultural law (including food and veterinary law)	5
Notarial law	3
Company, bankruptcy, and credit institutions law	5
Consumer protection law	3
Bankruptcy law	3
Telecommunications, broadcasting, and postal services law	3

5. Distribution of cases by regions

Still the largest number of petitions and cases opened on the basis of them was from the largest cities, including Tallinn (431 cases) and Tartu (255 cases). Among the counties, the largest number of proceedings were still in relation to Harju County and Ida-Viru County. 128 proceedings were initiated on the basis of petitions from Harju County, followed by 92 proceedings on the basis of petitions from Ida-Viru County. As before, the smallest number of proceedings was in relation to Hiiu County (3 cases). 30 proceedings were initiated on the basis of petitions received from abroad. With regard to 245 cases, the region is unknown, including mostly petitions sent by e-mail.

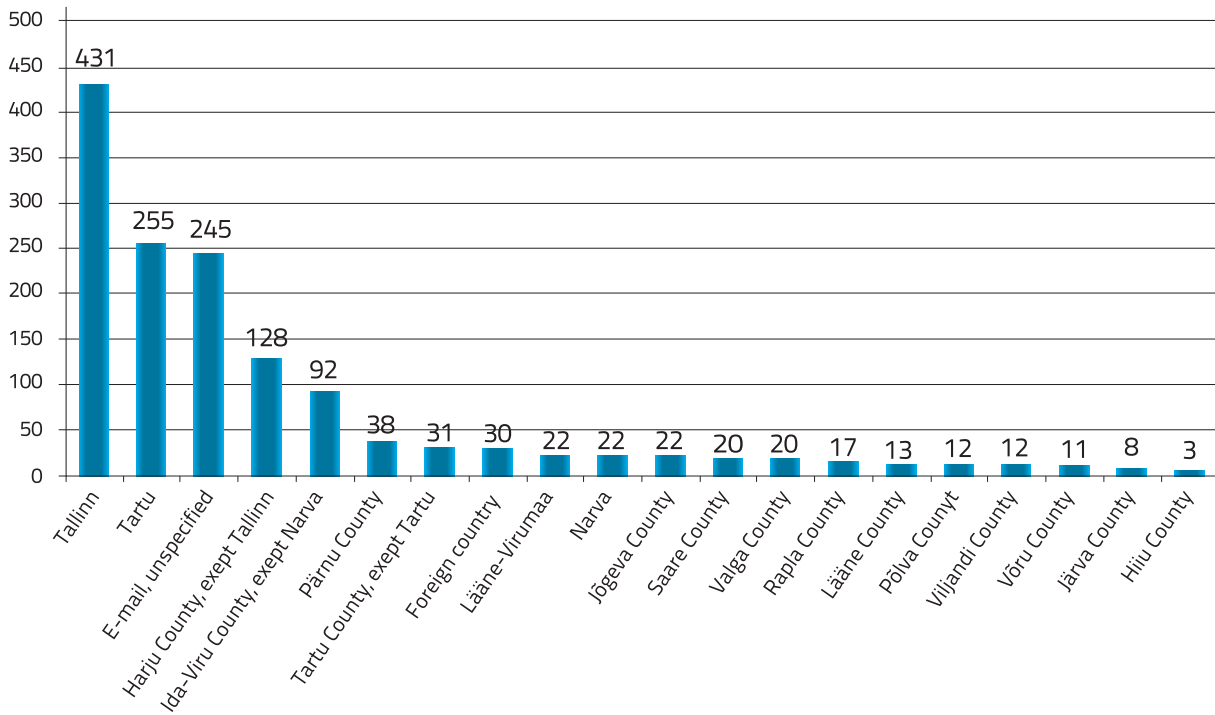


Figure 13. Distribution of cases by location of petitioner

6. Language of proceedings

Most petitions are in Estonian. 1254 cases, i.e. 80.8% of the total number of cases, were opened based on petitions in Estonian (see Figure 14). 187 cases, i.e. 12% of the total number of cases, were opened based on petitions in Russian. The number of petitions in English makes up only 0.8% of the total number of cases opened.

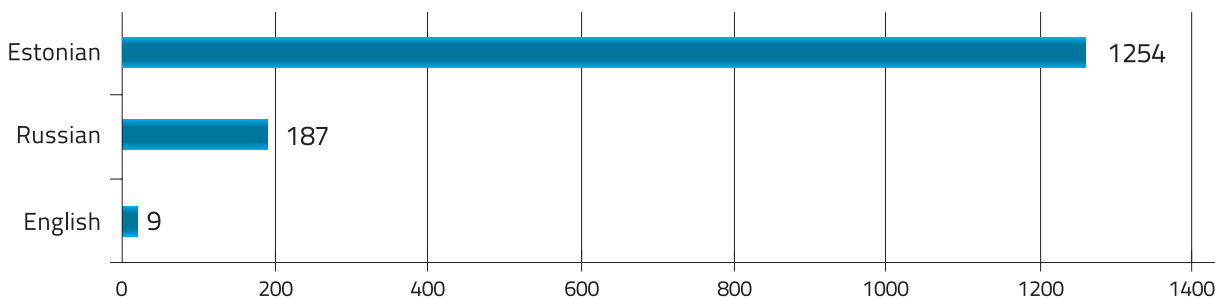


Figure 14. Distribution of cases by language of petition

7. Inspection visits

The Chancellor of Justice is authorised to conduct inspection visits to institutions subject to his supervision. On this basis, the Chancellor may, for example, carry out inspection visits to prisons, military units, police detention centres, expulsion centres, reception or registration centres for asylum seekers, psychiatric hospitals, special care homes, schools for pupils with special educational needs, general care homes, children's homes and youth homes.

Usually the Chancellor notifies the supervised institution well in advance of his upcoming inspection visit and asks the institution to provide the necessary information prior to his visit. The Chancellor is also authorised to conduct unannounced inspection visits about which the supervised institutions are not notified in advance, or they are notified immediately prior to inspection.

The Chancellor as the national preventive mechanism for ill-treatment is obliged to inspect, in addition to national custodial institutions, all other institutions where freedom of individuals may be restricted.

Inspection visits are divided into three categories, depending on the agency or institution inspected:

- inspection of closed institutions – institutions where individuals are staying involuntarily and where their freedom may be restricted;
- inspection of open institutions – institutions where individuals are staying voluntarily (schools, children's homes);
- inspection of administrative authorities – national or local government agencies, in respect of which compliance with good administrative practice is verified.

During the reporting year, the Chancellor made 49 inspection visits, of which 17 were to closed institutions, 31 to open institutions, and 8 to administrative authorities (see Table 6). There were 26 unannounced inspection visits.

Table 5. Inspection visits conducted by the Chancellor of Justice

	2008	2009	2010	2011	2012	2013
Inspection visits to closed institutions	19	25	27	33	23	17
Inspection visits to open institutions	10	17	6	14	13	24
Inspection visits to administrative authorities	4	7	9	6	8	8
Total inspection visits	33	49	42	53	44	49
of which, unannounced inspection visits	8	4	13	29	19	26

8. Reception of individuals

In 2013, 94 individuals came to a reception in the Office of the Chancellor of Justice, which is 85 people less than in 2012 (see Figure 15).

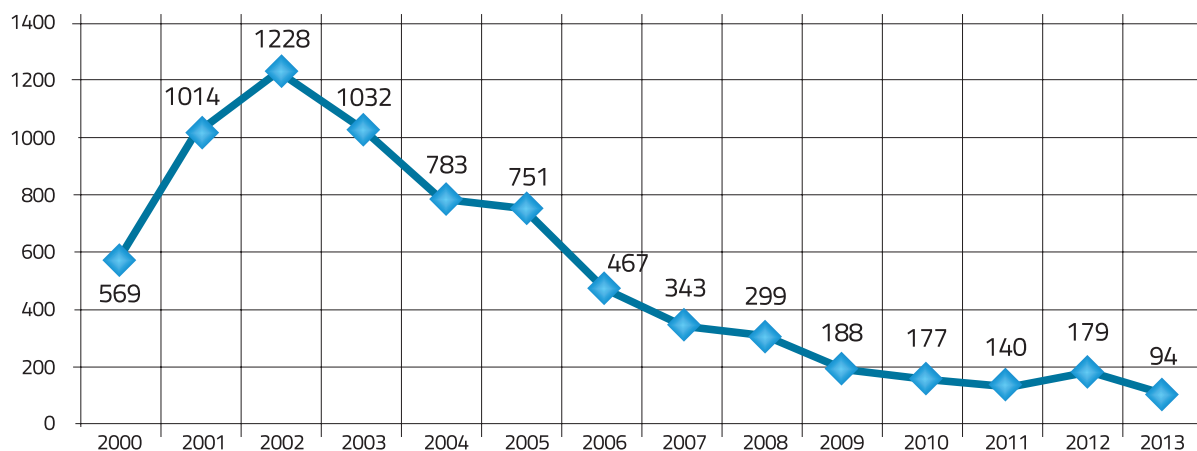


Figure 15. Number of persons coming to reception with the Chancellor in 2000–2013

Similarly to the previous years, the largest number of people coming to a reception were from Tallinn and Harju County (70 and 11 people respectively).

Questions raised during the receptions most frequently concerned issues relating to family law and pre-trial criminal procedure (9 persons both), followed by issues of civil court procedure (8 persons), social insurance law and enforcement procedure law (5 persons both).

Mostly, people coming to receptions needed clarification concerning legislation, and legal advice.

9. Conclusion

Similarly to 2012, the number of petitions received by the Chancellor of Justice decreased during the reporting year. In 2013, the Chancellor received 1901 petitions, which is 6.8% less than in the previous year. In total, the Chancellor opened 1552 cases, which is 3.6% less than in the previous year.

During constitutional review proceedings, in 10 cases (i.e. 7.4% of the total number of review proceedings) the Chancellor found a conflict with the Constitution or an Act. As a result of ombudsman proceedings, the Chancellor found a violation of the principle of good administration and lawfulness in 84 cases (i.e. 50% of the total number of ombudsman proceedings), of which 8 were resolved by the institution in the course of the proceedings.

Periodic decrease of the number of cases opened could also be seen in the previous years (see Figure 1). No significant changes have occurred in the distribution of the types of cases. As a particular development in the reporting year, only a certain increase in the share of the ombudsman proceedings could be pointed out.

Most cases were still opened based on petitions by prisoners to resolve issues relating to criminal enforcement procedure and imprisonment law falling within the area of government of the Ministry of Justice. In the majority of these cases (78.9%), no substantive supervision proceedings were initiated.

The distribution of proceedings by areas of law has been rather similar over the years. The largest number of proceedings still relate to criminal enforcement procedure and imprisonment law. A significant increase has occurred in issues relating to social welfare law and family law.

By regional distribution, the largest number of cases were again based on petitions received from Tallinn and Tartu. With regard to counties the picture is also the same as in the previous year. Among counties, Ida-Viru County still holds the first place.

The proportion of cases opened based on petitions in Estonian remained on the same level in comparison to the previous year, making up 80.8% of the total number of cases opened. The number of cases opened based on petitions in Russian has increased, making up 12% of the number of cases. The number of petitions received by e-mail was 1112 in 2013, which is 58.5% of the total number of petitions received.

The number of inspection visits in 2013 was higher than in 2012. During the reporting year, 49 inspection visits were carried out, of them 17 to supervise closed institutions, 31 to open institutions, and 8 to administrative authorities.

In 2013, 94 individuals came to a reception for a consultation. The questions raised most frequently concerned issues relating to civil court procedure, pre-trial criminal procedure and social welfare law.