



Õiguskantsler

2014 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 2015

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CONTENTS

PART I	5
CHANCELLOR OF JUSTICE AS NATIONAL PREVENTIVE MECHANISM	5
I. INTRODUCTION	6
II. PREVENTION OF ILL-TREATMENT IN PLACES OF DETENTION	15
1. Police detention facilities	15
2. Accommodation Centre for Asylum Seekers	17
3. Prisons	19
4. The Defence Forces	26
5. Providers of rehabilitation services for children with addiction problems	26
6. Providers of involuntary emergency psychiatric care	33
7. Providers of 24-hour special care services	37
8. Providers of nursing care services	41
PART II	45
CHANCELLOR OF JUSTICE AS OMBUDSMAN FOR CHILDREN	45
I. INTRODUCTION	46
II. PROCEEDINGS	48
1. Separation of children from the family, organisation of the life of children separated from the family, and visiting rights of the parents of children separated from the family	49
2. Restriction of the rights of parents in a custodial institution and their children	51
3. Activities of local authorities in organising the life of children in alternative care ...	53
4. Opinion on the Draft Child Protection Act	54
5. Verification of constitutionality of the new Child Protection Act	55
III. INSPECTION VISITS	58
1. The number of staff in families	58
2. Qualification of the staff	58
3. Placement of children in families	59
4. The location and equipment of the living rooms of children	59
5. Catering of children	60
IV. PROMOTING THE RIGHTS OF THE CHILD	61
1. Informational brochure „Bullying-free School“	61
2. Conference „Bullying-free Education“	61
3. „Bullying-free School“ homepage	62
4. Address of the Ombudsman for Children to school managers	62
5. The merit award „With Children and For Children“	62

6.	Discussion groups „Minu esimesed triibulised“ organised by the Ombudsman for Children, the Estonian Children’s Literature Centre and Eduard Vilde Museum	63
7.	Special programme on the rights of the child at the festival <i>Just Film</i>	63
8.	Advisory committee to the Ombudsman for Children	64
9.	Domestic cooperation.....	65
10.	International cooperation	65
11.	Participation in the activities of other institutions.....	65
12.	Homepage and Facebook profile	65
13.	The conference <i>Good School as Values-based School. How to End Bullying in Schools?</i>	66
14.	Lectures, presentations and speeches	66
15.	Articles, opinions, interviews.....	68
PART III		70
THE PRINCIPLE OF EQUALITY AND EQUAL TREATMENT		70
1.	General outline	71
2.	Conformity of legislation of general application with the Constitution	71
3.	General fundamental right to equality, and discrimination.....	73
PART IV.....		76
STATISTICS OF PROCEEDINGS		76
1.	General outline of statistics of proceedings	77
2.	Opinions of the Chancellor of Justice	78
3.	Distribution of cases by respondents.....	83
4.	Distribution of cases by areas of law	84
5.	Distribution of cases by regions	86
6.	Language of proceedings	86
7.	Inspection visits.....	87
8.	Reception of individuals	88

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. In his previous overviews the Chancellor also pointed out that the earlier definition of torture under the Penal Code was not essentially in line with the internationally recognised approach. The absence of a proper definition of torture in the Estonian penal law was also repeatedly criticised by the United Nations as well as the Council of Europe Committee against Torture and other international organisations.³

The Chancellor can note with satisfaction that in 2014 amendments under the Act for amending the Penal Code and the relating legislation were introduced, repealing the previous provision on torture (§ 122 Penal Code). Under the [Penal Code](#) entering into effect on 1 January 2015 the definition of torture conforming to the international concept was established, while also maintaining other definitions of closely related offences (see §§ 290¹, 121, 312, 324). In addition, the definition of torture now also includes causing of mental pain or suffering.

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 five occasions.⁴ In 2014, one more judgment to this effect was made.⁵

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.⁶

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

² See the [Chancellor of Justice 2010 Overview](#), p 6.

³ See, e.g., the opinion of the [UN Committee against Torture](#), para 8 or [Concluding observations of the UN Human Rights Committee](#), para 7.

⁴ 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*; 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*.

⁵ European Court of Human Rights judgment of 13 February 2014 in case No 66393/10, *Tali v. Estonia*.

⁶ On distinctions between places of detention and the so-called open establishments, see the [Chancellor of Justice 2010 Overview](#), p 7.

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 services as well as in the 2011 annual summary of the incidents in nursing care compiled by the Estonian Patient Advocacy Association. Inspection visits by the Chancellor of Justice have 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. Obviously, 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 2014, 37 inspection visits to 49 places of detention were carried out. The number of unannounced inspection visits was 30. In comparison, 40 inspection visits to 38 places of detention were carried out in 2013; 23 visits to 23 places of detention 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 2014 can be categorised as follows:

- 1) police detention facilities – 6 unannounced visits, 18 places of detention inspected;
- 2) accommodation centre for asylum applicants – 1 announced visit, 1 place of detention inspected;
- 3) prisons – 2 unannounced and 1 announced visits, 3 places of detention inspected;
- 4) Defence Forces – 3 announced visits, 3 places of detention inspected;
- 5) providers of rehabilitation services to children with addiction problems – 2 announced visits, 2 places of detention inspected;
- 6) providers of involuntary emergency psychiatric care – 4 unannounced visits, 4 places of detention inspected;
- 7) providers of 24-hour special care services – 6 unannounced visits, 6 places of detention inspected;
- 8) providers of nursing care services – 12 unannounced visits, 12 places of detention inspected.

Experts were involved in 15 inspection visits in 2014. Of these, on three occasions the experts were general practitioners, on one occasion a psychiatrist, on two occasions a child psychiatrist and on nine occasions nursing care specialists. In addition, on three occasions the Chancellor involved a rescue service official and on eight occasions a specialist from the State Agency of Medicines.

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.⁷ 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 translated into [English](#) and since 2015 also into [Russian](#).

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

For example, in his [circular of 11 March 2015](#) the Chancellor drew attention of providers of nursing care services, 24-hour special care services and involuntary emergency psychiatric care to the main shortcomings found in the institutions inspected in 2014.

In particular, the Chancellor drew the attention of the providers of psychiatric care to the requirements for observation and seclusion rooms, documenting of the use of means of restraint, privacy, human dignity, and handling of medications. In the circular sent to the providers of 24-hour special care services, the Chancellor pointed out problems with regard to the handling and administration of medications, the number of activity supervisors, treatment in line with human dignity, locking of the room of clients, safety of the seclusion room and proper seclusion, and smoking. Among the problems found upon the inspection of the providers of nursing care services in 2014, the Chancellor in his circular pointed out shortcomings with regard to the provision of the service without a valid consent, unfounded restriction of the fundamental right to liberty, handling and administration of medications, insufficient staff numbers, use of the nurse call system, and ensuring of human dignity and privacy.

During the reporting year, the Chancellor developed cooperation with the State Agency of Medicines which carries out supervision of medicinal products. On 10 April, a cooperation meeting between the Chancellor's advisers and the Agency took place in Tartu to discuss the inspection of health care and social welfare institutions. In cooperation with the Agency, eight inspection visits to social welfare and health care institutions were carried out during the reporting year⁸ and in the course of the visits the Agency carried out independent inspection and supervision.

On 2 June, the Chancellor's advisers also met with the representatives of Hoolekandeteenused Ltd providing 24-hour special care services, in order to offer feedback on the work of the institution and receive an overview of the development of the services. On 29 October, the Deputy Chancellor of Justice N. Parrest and the Chancellor's advisers A. Aru, K. Muller and M. Allikmets met in the Ministry of Social Affairs with the Deputy Secretary Generals on Health and Social Policy and the relevant officials to provide an overview of the problems found during the inspection visits and obtain information about the government's policy concerning deprivation of liberty of individuals. During the reporting year, the Chancellor's advisers also

⁷ See the [Chancellor's 2010 overview](#), pp 8–9.

⁸ Erastvere Home of Hoolekandeteenused Ltd, nursing care department of Narva Hospital, psychiatric department of Narva Hospital, Narva City Social Welfare Centre, Jõgeva Town Social House, Jõhvi Hospital, Sillamäe Hospital, Narva-Jõesuu Care Home.

participated as experts in the working group on coercive treatment organised under the leadership of the Ministry of Social Affairs. The aim of the group was to review the organisation and procedures concerning coercive psychiatric treatment and forensic psychiatric expert assessment.

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 various complaint mechanisms. Similarly, in order to improve awareness, the Chancellor's homepage contains a special section on the prevention of ill-treatment. 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](#).

The training project in the course of which the Chancellor's adviser R. Sults explained fundamental rights to the conscripts of the Defence Forces also continued in 2014. R. Sults delivered 19 lectures in different battalions and two lectures in the Estonian National Defence College. In addition, the Chancellor's adviser J. Konsa delivered a lecture on the fundamental rights of detained persons to the staff of the police detention centres of the prefectures of the Police and Border Guard Board. Approximately 50 persons representing all the prefectures attended the lecture. On 27 and 28 May, the Chancellor's adviser K. Muller attended and made a presentation at the information days organised by the State Agency of Medicines and the Health Board in Tartu and Tallinn.

In order to raise the overall awareness of society about the prevention of ill-treatment, the Chancellor and the Chancellor's advisers have published both paper and internet articles on issues of ill-treatment. In 2014, the journal *Sotsiaaltöö* published the article by the Chancellor's advisers K. Ploom and R. Järvamägi *Ela ise ja lase teistel ka elada* [Live and let live] on the problems of 24-hour special care services.⁹ The Chancellor of Justice I. Teder also wrote an opinion *Vana olgu vaiki, sant seisku paigal* [The old should keep silent and the disabled should stay put] on the restriction of the fundamental right to liberty in the *Õhtuleht* daily.¹⁰ In addition, in 2014 the *Postimees* daily published two articles by the Chancellor's adviser J. Konsa on the issues of police law: *Politseinike enesekaitse nõuab õigusselgust* [Self-defence by police officers in need of legal clarity]¹¹ and *Eesti politsei – ise teen, ise kontrollin?* [The Estonian

⁹ Ploom, K., Järvamägi, R. *Ela ise ja lase teisel ka elada*. – journal *Sotsiaaltöö*, No 2/2014, pp 44–48. Available online in Estonian: <http://oiguskantsler.ee/et/kristi-ploomi-ja-ralf-jarvamagi-artikkel-ela-ise-ja-lase-teisel-ka-elada>.

¹⁰ Teder, I. *Vana olgu vaiki, sant seisku paigal*. – *Õhtuleht* daily, 30 January 2014. Available online in Estonian: <http://www.ohhtuleht.ee/562759/vana-olgu-vaiki-sant-seisku-paigal>.

¹¹ Konsa, J. *Politseinike enesekaitse nõuab õigusselgust*. – *Postimees* daily, 14 April 2014. Available online in Estonian: <http://www.postimees.ee/2761366/jaanus-konsa-politseinike-enesekaitse-nouab-oigusselgust>.

police – performing supervision over one’s own actions?]¹². The Chancellor’s adviser K. Paron wrote about school bullying in the papers *Õpetajate Leht*¹³ and the *Postimees*¹⁴.

The Chancellor of Justice together with experts also prepared an information brochure *Kool kiusamisest vabaks* [Bullying-free school], containing practical advice for the prevention of bullying and resolving the incidents of bullying at school. The brochure is available in [Estonian](#), [Russian](#) and [English](#).

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

- Seiton, K. *Asenduskodud vajavad puudega laste jaoks paremat arstiabi*. [Substitute homes need better health care for children with disabilities] – *Eesti Päevaleht*, 3 January 2014.
- Roon, M. *Õiguskantsler: laske vahistatutel liikuda ja suhelda*. [Chancellor of Justice: let the detainees move and communicate] – ERR news, 8 January 2014.
- Teder, M. *Õiguskantsler: vangistusseadus on põhiseadusega vastuolus*. [Chancellor of Justice: the Imprisonment Act in conflict with the Constitution] – *Postimees*, 8 January 2014.
- Kangro, K. *Võimusaadikud panid vangide valimiskeelu leevendamisele pidurit*. [Ruling coalition MPs hit brakes on alleviating the voting ban of prisoners] – *Postimees*, 15 January 2014.
- *Õiguskantsler soovib parandada järelevalvet Tallinna kainestusmajas*. [Chancellor of Justice recommends improving supervision in Tallinn sobering-up facility] – BNS, 22 January 2014.
- Kuul, M. *Õiguskantsler: vahistatut koheldakse karmimalt kui süüdimõistetud kurjategijat*. [Chancellor of Justice: persons remanded in custody treated more harshly than convicted criminals] – ERR news, 23 January 2014.
- Randla, S. *Teder avastas puudega laste keskuses rikkumisi*. [Teder found violations in the centre for children with disabilities] – *Õhtuleht*, 24 January 2014.
- *Õiguskantsleri ametnik kiitis lennujaama kinnipidamistingimusi*. [Official from the Office of the Chancellor of Justice praised detention conditions at the airport] – *Postimees*, 26 January 2014.
- Ibrus, K. *Kohus tühistas psüühikahäiretega noormehe kinnipidamise*. [Court overturned detention of a young man with mental disorder] – *Eesti Päevaleht*, 3 February 2014.
- Helend-Aaviku, K. *Hoolduskodu juhataja: kui ma panen hoolealuse luku taha, siis rikun tema inimõigusi*. [Head of care home: if I lock up a service recipient I violate their human rights] – *Õhtuleht*, 5 February 2014.
- Randla, S. *Lennujaama kambris ei saanud pesta*. [No possibility to wash provided in a detention cell at the airport] – *Õhtuleht*, 6 February 2014.
- *Õiguskantsler: kliiniku videovalveks tuleb küsida patsiendi nõusolekut*. [Chancellor of Justice: patient’s consent necessary for video monitoring in a clinic] – BNS, 11 February 2014.

¹² Kõnsa, J. *Eesti politsei – ise teen, ise kontrollin?* – *Postimees* daily, 12 November 2014. Available online in Estonian: <http://arvamus.postimees.ee/2988523/jaanus-konsa-est-i-politsei-ise-teen-ise-kontrollin>.

¹³ Paron, K. *Lõimigem kiusamisvastased programmid kooli väärtuskasvatuse*. [Let’s integrate programmes against bullying in the values-based education at schools] – *Õpetajate Leht*, 17 October 2014. Available online in Estonian: <http://opleht.ee/18317-loimigem-kiusamisvastased-programmid-kooli-vaartuskasvatuse/>.

¹⁴ Paron, K. *Kiusamine koolis – paratamatus või tegemata töö?* [Bullying at school – inevitability or work undone?] – *Postimees* daily, 2 April 2014. Available online in Estonian: <http://arvamus.postimees.ee/2748182/kristi-paron-kiusamine-koolis-paratamatus-voi-tegemata-too>.

- Alliksaar, K. *Õiguskantsler käis eelmise aasta lõpus kontrollimas Tapa erikooli ja Keila hooldushaiglat.* [At the end of last year the Chancellor of Justice inspected Tapa Special School and Keila nursing hospital] – Delfi, 13 February 2014.
- *Õiguskantsler: kinnipeetavat ei peaks tundideks järelevalveta voodijala külge aheldama.* [Chancellor of Justice: a detained person should not be shackled to the leg of the bed for hours] – Delfi, 16 February 2014.
- *Kainestusmajja kambritesse valvekaamerate paigaldamine venib.* [Installing of surveillance cameras in the cells in the sobering-up facility delayed] – BNS, 18 February 2014.
- Rand, E. *Õiguskantsler: Tapa erikool ei saa oma tööga hakkama, olukord on halvenenud.* [Chancellor of Justice: Tapa Special School not coping with its work, the situation has deteriorated] – Delfi, 25 February 2014.
- Interview with Andres Aru about the inspection visit to Tapa Special School – Kuku Raadio, 26 February 2014.
- Ibrus, K. *Riigikohus: inimest ei või sundida psühhiaatrilisele ravile lihtsalt seepärast, et ta on tülikas.* [Supreme Court: a person should not be subjected to psychiatric treatment simply because they are a nuisance] – *Eesti Päevaleht*, 26 February 2014.
- Kukemelk, E-M. *Õiguskantsler: Keila haigla patsiendid elavad ebainimlikes tingimustes.* [Chancellor of Justice: patients in Keila Hospital live in inhuman conditions] – Delfi, 27 February 2014.
- *Pildikesi hooldushaiglast: dementsed patsiendid söövad ära teiste söögi ja heidavad võõrastesse vooditesse magama.* [A glimpse in a nursing hospital: dementia patients eat the others' food and lie down to sleep in other patients' beds] – Delfi, 27 February 2014.
- Polienko, O., Gazizulina, I. *Õiguskantsler kritiseeris olukorda hooldushaiglates.* [Chancellor of Justice criticised the situation in nursing hospitals] – *Aktuaalne Kaamera* (in Estonian and Russian), 28 February 2014.
- Villmann, A-L. *Sillamäe hooldushaigla: riive on vaja vaimsete häiretega patsientidele.* [Sillamäe nursing hospital: bolts are necessary for patients with mental disorders] – ERR news, 28 February 2014.
- Vilgats, E. *Juhataja: Kilingi-Nõmme hooldushaigla lukustab siiani vajadusel patsiente.* [Head: Kilingi-Nõmme nursing hospital still locks up patients in case of necessity] – ERR news, 28 February 2014.
- Kaukvere, T. *Keila hooldushaigla: olukord on paranenud.* [The situation in Keila nursing hospital has improved] – *Postimees*, 28 February 2014.
- Tilk, K. *Õiguskantsler kontrollis Keila haiglat: kord on seal käest.* [Chancellor of Justice inspected Keila hospital: the situation is out of hand] – *Õhtuleht*, 1 March 2014.
- *Õiguskantsler nõuab Tallinnalt kodutute öömajade kohta selgitusi.* [Chancellor of Justice asks explanation about the homeless night shelters from Tallinn City] – BNS, 7 March 2014.
- *Kinnipidamiskeskuses viibivad vietnamlased said õiguse rammusamale toidule.* [Vietnamese persons in the detention centre gained the right for more nutritious food] – Delfi, 17 March 2014.
- *Terviseamet ja PPA arutavad varjupaigataotlejate toidunorme.* [The Health Board and the Police and Border Guard Board discuss standard food portions of asylum applicants] – BNS, 23 March 2014.
- *Hiiu ravikeskus tõrjub õiguskantsleri kriitikat.* [Hiiu treatment centre counters criticism by the Chancellor of Justice] – BNS, 23 March 2014.
- *Kallavare haigla seadis sisse elektroonilise väljakutsesüsteemi.* [Kallavere hospital installed an electronic call system] – BNS, 23 March 2014.

- Tamm, Ü. *Küla saatis Valkla Kodu kohta õiguskantslerile kirja*. [Village sent a letter to the Chancellor of Justice about Valkla Home] – *Sõnumitooja*, 25 March 2014.
- Terase, K. *Juhita hooldekodu tehakse turvalisemaks*. [Care home without manager made safer] – *Harju Elu*, 4 April 2014.
- Randla, S. *Kinnipidamiskeskuse välismaalaste eritoiduks raha pole*. [No money for special diet for aliens in the detention centre] – *Õhtuleht*, 7 April 2014.
- Tamm, Ü. *Õiguskantsleri kantselei saatis Valkla kogukonnale vastuse*. [Office of the Chancellor of Justice sent a reply to Valkla community] – *Sõnumitooja*, 8 April 2014.
- Randla, S. *Õiguskantsler uurib eluaegsete vangide karistuse ülevaatamist*. [Chancellor of Justice looks into review of sentences of life prisoners] – *Õhtuleht*, 24 April 2014.
- *Kodutute öömajad lõpetasid klientide läbiotsimised*. [Homeless night shelters stopped searching of clients] – *Postimees*, 1 June 2014.
- Talve, T. *Kodutuid öömajas enam läbi ei otsita*. [Homeless people no longer searched in the night shelter] – *Õhtuleht*, 4 June 2014.
- Länts, U. *Kodutute öömajades ei tohi enam öömajalisi läbi otsida*. [Homeless people in night shelters may no longer be searched] – Kuku Raadio, 5 June 2014 [beginning from the 18th minute of the programme].
- Randlo, T. *Vangide põrandapinna suurus on põhiseaduspärane*. [The floor space of prisoners is in conformity with the Constitution] – *Postimees*, 25 June 2014.
- Tilk, K. *Kas hooldusravi õed manustavad patsientidele iseseisvalt ravimeid?* [Do nurses in nursing care institutions independently administer medications to patients?] – *Õhtuleht*, 14 July 2014.
- Sommer-Kalda, S. *Õiguskantsler nõuab noortele sõltlastele paremaid tingimusi*. [Chancellor of Justice demands better conditions for young addicts] – *Põhjarannik*, 12 September 2014, No 155.
- Randla, S. *Õiguskantsler uurib teenistusrelvade kasutamist vanglas*. [Chancellor of Justice investigates the use of service weapons in prison] – *Õhtuleht*, 9 October 2014.
- Tilk, K. *Õiguskantsler leidis Jõgeva arestimajas rikkumisi*. [Chancellor of Justice found violations in Jõgeva police detention centre] – *Õhtuleht*, 8 November 2014.
- Alev, M. *Õiguskantsler ei jäänud meie arestikambrite olukorraga rahule*. [Chancellor of Justice was not satisfied with the situation in our detention cells] – *Vooremaa*, 15 November 2014, No 131.
- *Õiguskantsler: uus vangla peab arvestama puuetega kinnipeetavatega*. [Chancellor of Justice: the new prison must take into account the needs of prisoners with disabilities] – *BNS*, 17 November 2014.
- Kaukvere, T. *Õiguskantsler pole rahul kodutute kohtlemisega öömajas*. [Chancellor of Justice not satisfied with the treatment of persons in the homeless night shelter] – *Postimees*, 18 December 2014.
- Veldre, T. *Õiguskantsler soovitas öömajalisi mitte kobada*. [Chancellor of Justice recommended not to pat-search persons arriving at the homeless night shelter] – *Saarte Hääl*, 19 December 2014.
- *Teder: Kuressaare öömajas toimus joobe kontroll seadusliku aluseta*. [Teder: intoxication check at Kuressaare night shelter took place without a legal basis] – *BNS*, 19 December 2014.

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 and other events on the prevention ill-treatment:

- K. Ploom, R. Järvamägi and M. Allikmets attended the training course „Restraining with medications” on 4 February.
- N. Parrest, M. Allikmets, I-I. Määrits, K. Albi, J. Konsa, M. Sarv, A. Aru, A. Kivioja and K. Muller attended the training course „Means of restraint“ on 30 May.
- M. Allikmets and K. Muller participated in the roundtable discussion organised by the Ministry of Social Affairs on the topic of placement of individuals in a social welfare institution under a court ruling on 4 June.
- N. Parrest, A. Kivioja, M. Allikmets, K. Muller and K. Ploom attended the training course „Dementia and dealing with dementia” on 26 August. Representatives of the Health Insurance Fund, the Ministry of Social Affairs and service providers also attended the training course.
- M. Allikmets, A. Kivioja and M. Sarv participated in the roundtable discussion „Handbook for customer staff to deal with damaging behaviour” on 15 September.
- N. Parrest, A. Kivioja, I-I. Määrits, J. Konsa, K. Albi, K. Žurakovskaja-Aru, R. Sults, A. Aru, A. Kivioja, M. Allikmets, A. Sarapuu and K. Muller attended the training course „Interviewing” on 6 November.
- A. Sarapuu and M. Allikmets attended the training course for psychiatric nursing and care staff on 4–5 November.
- N. Parrest and K. Muller attended the annual conference of the Institute of Human Rights on 10 December.
- A. Sarapuu attended the training course „Work with patients: attitude and communication” on 22 December.

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, and has replied to several queries concerning the work of the NPM. During the reporting year, advisers to the Chancellor attended the following international events:

- R. Sults attended the workshop and the conference organised by the Association for the Prevention of Torture (APT) in Vienna on 9–11 April.
- I. Teder, N. Parrest, A. Aru, K. Muller, J. Konsa, E. Lillemaa, M. Sarv and R. Sults attended the OPCAT related cooperation meeting of the Baltic and Nordic ombudsmen in Vilnius on 12–13 June.
- M. Allikmets attended the seminar “Strengthening the effective implementation and follow-up of recommendations by torture monitoring bodies in the European Union” at Bristol University on 10–11 November.
- M. Allikmets attended the forum “The First South-East European OPCAT Forum” on 27 November and the conference “Preventing Torture and Other Forms of Ill-treatment and Fighting Impunity” on 28 November in Belgrade.

In 2014, on several occasions the Chancellor of Justice analysed the constitutionality of legislation related either directly or indirectly to the prevention of ill-treatment; for example, the restriction of movement of persons held in custody, full search of prisoners in prison, right of self-defence of police officers, and the use of direct coercion.

The Chancellor also continued to pay attention to the issue of prohibition of corporal punishment of children.¹⁵ The Chancellor can note with satisfaction that the new [Child Protection Act](#) passed by the Riigikogu on 19 November 2014 and entering into effect on 1 January 2016 also contains the prohibition of child abuse.

Several proceedings carried out in the framework of the Chancellor's ombudsman competence also relate to the prevention of ill-treatment: for example, the activities of a prison in handing over official letters to prisoners, allowing long-term visits, carrying out expulsion proceedings, living together with one's partner in the detention centre and allowing of communication, application of direct coercion and means of restraint by police officers, funding of the nursing care service. On the basis of the above ombudsman proceedings, the Chancellor has made recommendations, proposals and conclusions for changing administrative practices.

During the reporting year, the Chancellor also asked Tartu University law faculty's penal law lecturer Anneli Soo and the faculty's penal law professor Jaan Sootak to carry out a legal analysis of the role of self-defence and the situation of necessity under penal law as a basis for the restriction of fundamental rights in child care institutions and social welfare and health care institutions.¹⁶ The aim of the analysis was to establish to what extent the staff of these institutions are allowed to intervene physically and to apply coercion in respect of children, clients or patients. The conclusions of the analysis also help to improve the Chancellor's supervision methods as the preventive mechanism for ill-treatment.

The following part contains an overview of the inspection visits made by the Chancellor to different places of detention in 2014, highlighting shortcomings that were detected.

¹⁵ 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.

¹⁶ Available online in Estonian: http://oiguskantsler.ee/sites/default/files/IMCE/oiguslik_analuus_karistusoigusliku_hadakaitse_ja_hadaseisundi_rollist_pohioiguste_piiramise_alusena_lasteasutustes_ning_hoolekande- ja_tervishoiuasutustes_2015.pdf.

II. PREVENTION OF ILL-TREATMENT IN PLACES OF DETENTION

1. Police detention facilities

In 2014, the Chancellor carried out regular inspection visits to cellblocks of police detention centres of public order bureaus of prefectures of the Police and Border Guard Board (PBGB). Similarly to the previous years, the Chancellor also focused on rooms used for short-term detention of individuals, and to this end inspected the constable points of the West and South Prefectures of the PBGB. The Chancellor also continued the annual analysis of death cases of individuals detained in the police detention centres of the PBGB.

The following inspection visits were carried out in 2014:

- 1) inspection visit to Valga and Võru cellblocks of the police detention centre of the public order bureau of the South prefecture of the PBGB ([case No 7-7/140655](#));
- 2) inspection visit to Jõhvi, Rakvere and Narva cellblocks of the police detention centre of the public order bureau of the East prefecture of the PBGB ([case No 7-7/140723](#));
- 3) inspection visit to the constable points of the West and South prefectures of the PBGB ([case No 7-7/140981](#));
- 4) inspection visit to the cellblock of Tallinn City Centre police station of the North Prefecture ([case No 7-7/141124](#));
- 5) inspection visit to Tartu and Jõgeva cellblocks of the police detention centre of the public order bureau of the South Prefecture of the PBGB ([case No 7-7/141221](#));
- 6) inspection visit to Haapsalu and Kuressaare cellblocks of the police detention centre of the public order bureau of the West Prefecture of the PBGB ([case No 7-7/150025](#)).

The Chancellor's visits to the police facilities were unannounced. On one occasion, the Chancellor involved a general practitioner as an expert and on three occasions a Rescue Service specialist in the inspection visits.

1.1. Inspection visits to the cellblocks of the public order bureaus of the prefectures of the PBGB

The shortcomings found during the inspection visits to the cellblocks of the public order bureaus of the prefectures of the PBGB (Valga, Võru, Jõhvi, Rakvere, Narva, Tallinn City Centre, Tartu, Jõgeva, Haapsalu and Kuressaare cellblocks) have been described below.

The detention conditions in the cellblocks in older police facilities (Valga, Võru and Haapsalu) are partly still poor although attempts to modernise them have been made. For example, lighting in cells has been changed, ventilation systems improved and repairs to improve the overall living conditions have been carried out. However, Haapsalu cellblock still lacks an exercise yard and the cells have no windows.

Unfortunately, shortcomings in the detention conditions and in guaranteeing the lawful rights of individuals were also found in cellblocks built only recently. The Chancellor is concerned that Jõgeva and Kuressaare police buildings, which were completed a few years ago and presumably designed specifically in view of the needs of the police, do not have exercise yards to enable detainees spend time outdoors as required. Instead of an exercise yard, detainees are given an opportunity to walk in a cell in which a relatively small window has been opened to

ensure inflow of fresh air. The Chancellor cannot accept such practice in case of police facilities that have been built only recently. In addition, the inspection visit to Jõgeva cellblock revealed that that new police building did not have a telephone intended for use by detainees or a special room for short-term visits. Cells in both Kuressaare and Jõgeva cellblocks have relatively small windows, and therefore natural lighting in cells is modest.

The Chancellor is also concerned that not all the legally established requirements are taken into account when designing new police buildings and, therefore, some of the lawful rights of detainees cannot be exercised or are ensured only to a limited extent. The Chancellor submitted his opinion also to the PBGB and, according to the information available to the Chancellor, the PBGB has drawn up documents for designing police buildings in the future, so as to comply with the legally established requirements for rooms intended for the detention of individuals.

While in the previous years the Chancellor found shortcomings in drawing up documents in relation to detained persons (e.g. keeping record of explaining to individuals their rights and duties or notifying their next of kin), in 2014 no systematic infringements were found upon inspection of the documents. Rather, the shortcomings or inaccuracies that were found were isolated, which allows for a conclusion that keeping documentary records with regard to detained persons has improved.

1.2. Short-term detention

In addition to police facilities where individuals are detained for longer periods, the Chancellor also inspected short-term detention facilities in the area of administration of the police in 2014. According to the Chancellor's definition, short-term detention facilities are rooms where persons are held for up to 48 hours (cells in constable points, border crossing points, border patrol stations, etc). The aim of inspection visits to buildings with such cells is first and foremost to examine the cells intended for short-term detention and establish the average period of stay in such cells.

In 2014, unannounced inspection visits were carried out to the following police buildings of the West and South prefectures of the PBGB where individuals are detained or may be detained for short periods:

- 1) Audru constable point;
- 2) Häädemeeste constable point;
- 3) Kilingi-Nõmme constable point;
- 4) Märjamaa constable point;
- 5) Pärnu-Jaagupi constable point;
- 6) Sindi constable point;
- 7) Karksi constable point;
- 8) Tõrva constable point.

During the inspection visits, no detained persons were staying in the inspected cells. Taking into account the detention conditions in the above constable points in aggregate, as well as the frequency and duration of detaining individuals in them, the Chancellor did not find any significant shortcomings in abstract with regard to the fundamental rights of individuals. Therefore, the Chancellor did not make any recommendations or proposals to the PBGB based on the inspection visits.

1.3. Death cases of detained persons in 2013

With the aim of preventing ill-treatment, it has become customary for the Chancellor of Justice to analyse cases of death of persons detained in police facilities. In 2014, the Chancellor analysed the death cases occurring in 2013.

According to the information received from the PBGB, in 2013 four persons died in the detention cells used by the PBGB, and two persons died immediately prior to taking them to the police facility or after their release. The deaths occurred in the cellblocks in the South and North prefectures of the PBGB. The main cause of death of the detained persons was poisoning.

Once again, the Chancellor had to note that supervision over the detained persons may have been insufficient. Having analysed the death of a person detained in the cellblock of Tallinn City Centre police station of the North Prefecture of the PBGB, the Chancellor found that the officers had not checked the cells with a required frequency. Also the death occurring in the Eastern Harju County police station of the North Prefecture of the PBGB was related to the effectiveness of supervision of the cells – as a result of the analysis it was found that the duties of the client service staff of the police facility with regard to the supervision of detained persons were not clearly regulated.

Previously, the Chancellor has not made any specific recommendation to the PBGB with regard to the interval after which a direct check (e.g. through a peephole in the door) of a detained person in a cell should take place, but has confined himself to emphasising the requirement that the supervision should be effective. The Chancellor repeated the recommendation in the context of the deaths of detained persons occurring in 2013.

The Chancellor also asked the Director General of the PBGB to analyse whether this task is sufficiently clearly defined in the duties of officers carrying out supervision of persons detained in the police facilities of the PBGB and whether it is realistically possible for the officers (taking into account their other tasks and the relevant circumstances) to carry out the supervision in such a manner. In the recommendation sent to the Director General of the PBGB the Chancellor found that, in order to arrange effective supervision, the officers must have a clearly defined duty without any contradictory requirements to carry out the supervision, as well as sufficient opportunities and a realistic capability to perform the supervision alongside their other duties (i.e. the opportunity to quickly and directly check a cell, immediately find assistance for opening the cell, monitor the cell through a video feed, etc).

2. Accommodation Centre for Asylum Seekers

In 2014, advisers to the Chancellor carried out an own-initiative announced inspection visit to the Vao Accommodation Centre for Asylum Seekers ([case No 7-7/140425](#)).

The work of the Accommodation Centre is organised by Hoolekandeteenused Ltd on the basis of a contract under public law. Its duties include organising the service of the reception centre for asylum seekers as well as the service of the reception centre for unaccompanied minors, and assist recipients of international protection subsequent to the receipt of the initial residence permit.

Previously, the reception centre for asylum seekers was located in Illuka rural municipality, and the Chancellor's previous inspection visit to the centre took place in 2010.

2.1. Organisation of the provision of health care services

The inspection visit revealed that no initial health check of the asylum seekers is performed after their admission to the centre. It was found that interpreting was not always provided during the doctor's appointment, and in certain cases the residents of the centre were annoyed by the fact that the head of the centre or other residents interpreted during the appointment. There were also problems with the provision of dental treatment for children.

The Chancellor recommended to the centre to ensure that an initial health check within a reasonable time is arranged for the persons admitted to the centre. In the Chancellor's opinion, in cooperation with the general practitioner it should also be determined which health checks should always be considered. In addition, the Chancellor recommended to conclude a contract for the provision of health care services with a general practitioner, defining the services to be provided to the residents of the centre and the procedure for the provision of the services.

The Chancellor also recommended to organise interpreting into a language understood by a resident during the provision of the health care service and, if possible, involve a professional interpreter at the expense of the centre. The Chancellor also recommended that children should be offered a possibility for a dentist's appointment at the expense of the centre.

2.2. Psychological counselling

The inspection revealed that the centre had not organised psychological counselling. In case of necessity, the centre had arranged the provision of psychiatric care for the residents.

The Chancellor recommended to the centre to organise the provision of psychological counselling services for the asylum seekers. The Chancellor noted that, if possible, the service should be provided regularly on the premises of the centre to ensure its accessibility, and the people should be informed of such a possibility.

2.3. Language learning and activities

The inspection revealed that the residents of the centre felt depressed due to forced inactivity. The centre organised Estonian and English lessons for the asylum seekers twice a week. However, it was found that language learning could be organised more efficiently, because when new people arrive in the centre the language learning essentially begins from scratch and therefore progress is very slow.

With regard to leisure activities, it was found that relatively many and diverse events and activities for spending free time were organised for the residents of the centre, including the possibility to have a garden plot at the centre in summer. However, the residents noted that they wished to have more opportunities to work.

The Chancellor recommended to the centre to consider possibilities how to organise language training more efficiently (including dividing the learners into groups depending on their level of progress). The Chancellor also recommended to the centre to facilitate projects and activities to engage asylum seekers in work and professional activities in order to maintain their work

habits, offer opportunities for work-related activities with practical outcomes and facilitate coping on the labour market.

2.4. Access to the building of the accommodation centre and the provision of services to persons with special needs

The inspection revealed that people with special needs could not independently access the building of the accommodation centre. Residents of the centre also had to resolve all their daily problems themselves.

The Chancellor recommended to the centre to take into account, when reconstructing the building, that people with special needs should be ensured independent access to the building, and asked to notify the Chancellor in which period the centre planned to organise this. In addition, the Chancellor recommended to the centre to analyse how the provision of services for people in need of assistance takes place.

2.5. Other issues

The Chancellor also recommended to the centre to ascertain the possibilities for the children living in the centre to attend kindergarten and how the relevant expenses are covered. The Chancellor also asked to notify the parents about this.

2.6. Good practice

As an example of good practice, the Chancellor pointed out a very open and helpful attitude of the staff of the centre to the residents. The Chancellor also recognised the centre for teaching English to the residents in addition to the statutory requirement of teaching Estonian, and acknowledged the contribution of the centre and NGOs to creating different opportunities for the asylum seekers for spending free time.

3. Prisons

In 2014, the Chancellor carried out an unannounced inspection visit to Tallinn Prison ([case No 7-7/141246](#)), an announced visit to Viru Prison ([case No 7-7/141492](#)) and an unannounced follow-up visit to the Harku imprisonment department of Harku and Murru Prison ([case No 7-7/140144](#)). A medical expert was involved in the inspection visit to Viru Prison.

The prisons visited in 2014 are all very different penal institutions. While the buildings of Viru Prison are rather new and built in line with the modern requirements for the execution of imprisonment, Tallinn Prison and the Harku imprisonment department of Harku and Murru Prison are rather depreciated and mostly camp-type prisons.

As the Chancellor's activities for the prevention of ill-treatment also include making observations and recommendations with regard to closed institutions still in the stage of planning, in 2014 the Chancellor sent to the Ministry of Justice a recommendation in connection with the detention conditions in the new planned buildings of Tallinn Prison. The Chancellor paid particular attention to the fact that the conditions of detention in the new planned closed institutions should take account of the needs of vulnerable groups (especially women, minors and people with disabilities).

The following part describes the main shortcomings found during the inspection visits to prisons and partly also the issues which the Chancellor covered in the letter to the Ministry of Justice in connection with the detention conditions in the future new buildings of Tallinn Prison.

3.1. Opportunities to take care of personal hygiene

A continuing problem persisting for years relates to poor opportunities of the detained persons to take care of their personal hygiene in Tallinn Prison and the Harku imprisonment department of Harku and Murru Prison. Unfortunately, shortcomings with ensuring the opportunities to take care of personal hygiene for detained persons were also found in Viru Prison.

Advisers to the Chancellor found that the shower room of the E1 building of Tallinn Prison was depreciated and during several minutes not enough hot water was coming from the shower head. The detained persons claimed that they could take a shower once a week during 20 minutes. Four to five persons at the same time are taken to the washing room. According to the detained persons, not all showers can be turned on at the same time because then problems with drainage of water appear. The persons also noted that during the allocated 20 minutes it was complicated to wash both oneself and the dirty clothes.

The Chancellor recommended to Tallinn Prison to analyse the practice of using shower rooms in the E1 accommodation building and, if necessary, take measures to ensure that detained persons have a realistic opportunity to take care of their personal hygiene which is essential for exercising the right to life in line with human dignity in prison. The Chancellor also recommended to consider renovation of the shower rooms and the hot water system in the E1 building. Tallinn Prison explained in its reply that the renovation of shower rooms in the E1 accommodation building was planned for 2015. Unfortunately, Tallinn Prison was of the opinion that in order to ensure the opportunity for all detained persons to wash at least once a week it was not possible to offer additional times or longer washing periods for the detained persons.

In 2011, the Chancellor recommended to Tallinn Prison to create hot water supply in the accommodations buildings of convicted prisoners.¹⁷ In the autumn of 2014, renovation of the washing rooms and installing of hot water boilers in the accommodation buildings of convicted prisoners was started.

During the visit to Tallinn Prison, a female prisoner talking to the Chancellor's advisers claimed that on the day prior to the inspection visit she did not have toilet paper with her when arriving in the prison from the police detention centre and, despite having asked for toilet paper from the prison service, she had not been given any toilet paper in the past 24 hours. The Chancellor recommended to Tallinn Prison to pay attention to issuing personal hygiene articles (first and foremost toilet paper, soap, feminine hygiene products and other essentials) to persons newly admitted to prison, and ensure a possibility for such detained persons to receive or obtain hygiene products within a reasonable time. The Chancellor emphasised that in such a situation a reasonable time, for example for providing toilet paper, is not days or weeks. The prison agreed that the detained person should have been provided with toilet paper at the first opportunity and not only after 24 hours. Tallinn Prison affirmed that it would change its

¹⁷ See the summary of the Chancellor's [2011 inspection visit to Tallinn Prison](#).

practice, so that detained persons arriving in prison are provided with missing personal hygiene articles upon their admission to the prison.

The follow-up visit to the Harku imprisonment department of Harku and Murru Prison revealed that the prison had partly complied with the Chancellor's recommendations made after the inspection of 2013.¹⁸ The prison had installed hair-dryers in the living quarters of the accommodation building of prisoners. However, according to the prison service there were no possibilities nor the need to build new rooms for taking care of personal hygiene in the accommodation building or its immediate vicinity. The Chancellor promised to keep an eye on the use of rooms intended for personal hygiene procedures in the Harku imprisonment department of Harku and Murru Prison also in the future and furthermore recommended to the prison to regularly analyse the use of these rooms to prevent occurrence of any new problems and, if necessary, consider building new rooms for taking care of personal hygiene. Harku and Murru Prison informed the Chancellor that it would take account of the Chancellor's repeated recommendation.

The living conditions in Viru Prison are significantly better than in Tallinn Prison or in the Harku imprisonment department of Harku and Murru Prison. Nevertheless, in Viru Prison the problem was the lack of possibilities for drying laundry in the cells in the departments E2, E3, E4 (remand prisoners) and P1 and P2.

Detained persons staying in the cells almost round the clock explained that at the risk of receiving a disciplinary sanction they were forced to improvise how to dry the laundry (e.g. by making ribbons, hanging the clothes on the edges of metal beds) thus often hampering visual supervision. According to the Chancellor's information, the departments of Viru Prison in which detained persons do not have the right to freely move around within their department have lacked the possibilities for drying laundry already since the opening of the prison in 2008. The Chancellor recommended to the prison to create immediately possibilities for all detained persons for drying their personal laundry (e.g. by attaching drying racks, which can be folded to save room, to the walls of the cells).

In addition, the detained persons in the departments P1 and P2 (mostly locked cells and punishment cells) of Viru Prison complained that they could have a shower twice a week on Mondays and Wednesdays. They were not satisfied with the situation because even though access to the shower was ensured twice a week the number of days between the designated times was not proportionate. The Chancellor noted that access to the showers in the departments P1 and P2 complied with the statutory minimum but nevertheless proposed to Viru Prison to analyse the schedules for using showers in the departments P1 and P2 and, if necessary, make the intervals between access to the shower more equal.

In connection with the detention conditions in the future new building of Tallinn Prison, the Chancellor recommended to the Ministry of Justice to create conditions which allow female detainees, detained minors as well as mothers and children in prison free access to the sanitary and washing rooms, while taking into account the need for privacy of these persons. The Chancellor recommended to create the conditions adjusted to the needs of detained persons with disabilities, while taking into account their human dignity and the need for privacy (including sanitary and washing rooms adjusted to the needs of detained persons with disabilities).

¹⁸ See the summary of the Chancellor's [2013 inspection visit to the Harku territory](#) of Harku and Murru Prison.

3.2. Clothing of detained persons

During the inspection visit to Viru Prison, almost all the detained persons who talked to the Chancellor's advisers complained that the clothing provided to them was too thin and in late autumn and winter it was cold to wear it outdoors. In addition, several remand prisoners (including minors) talking to the Chancellor's advisers claimed that they had not been outdoors for several weeks because they lacked personal warm clothing needed for this.

The Chancellor recommended to Viru Prison to ensure that all the detained persons (including remand prisoners, if necessary) are provided with sufficient clothing which is seasonally appropriate and conforms to the persons' state of health and opportunities for movement. The Chancellor also recommended to analyse the appropriateness of the clothing provided by the prison to the detained persons and, if necessary, change the practice of the provision of clothing (i.e. offer clothes which are appropriate).

3.3. Outdoor exercise

The follow-up visit to the Harku imprisonment department of Harku and Murru Prison revealed that the recommendation made by the Chancellor after the inspection in 2013 to provide benches and take measures against inclement weather in the areas intended for outdoor exercise had been partly complied with (a roof covering the walking yard had been installed but in the new areas used for outdoor exercise there were not enough opportunities to find shelter from poor weather).

The Chancellor made a repeated recommendation to Harku and Murru Prison to provide walking areas (i.e. walking areas at both ends of the accommodation building and the walking yard) with an opportunity to find shelter from poor weather and have rest if necessary (the latter is particularly important for elderly detainees). Harku and Murru Prison replied to the Chancellor that the prison had provided additional facilities for rest in the walking area for prisoners and promised to deal with the issue of finding shelter from poor weather. Unfortunately, the prison still did not see a possibility to build a wall in the walking yard for prisoners.

Viru Prison also had problems with outdoor exercise. In particular, it was found that the persons detained in departments E2, E3, E4 (remand prisoners) and P1 and P2 (locked cells and punishment cells) could not return from the walk to their cell before the scheduled time (the guards are occupied with other duties at the same time). Exercise yards did not have call buttons or other means to signal to the guard or attract attention to oneself in case the person does not feel well or starts feeling cold and wishes to return from the exercise yard before the end of the scheduled hour or before the time agreed with the guard.

The Chancellor made a recommendation to Viru Prison to provide all the exercise yards with the relevant means (e.g. call buttons, video surveillance), so that the detained persons could get in touch with a prison officer or attract attention to oneself. The Chancellor also recommended to Viru Prison to proceed in its work from the principle that persons should be escorted back from the walking area to their cell within a reasonable time after expressing the relevant wish.

In case of exercise yards in the departments E2, E3 and E4 and also P1 and P2, as well as exercise yards in the open departments, the Chancellor found that the roofs above the exercise

yards were too narrow, i.e. they offered shelter from poor weather but did not at the same time provide enough space to sufficiently move around or train. Also, not all the exercise yards had benches for rest. The Chancellor recommended to Viru Prison to provide sufficiently wide roofs in the exercise yards, so as to allow detained persons to actively move around or train also in poor weather. The Chancellor also recommended to provide each exercise yard with a resting facility and, depending on the number of persons in each exercise yard, provide it with a bench or benches.

Additionally, it was found that the walking time designated for juvenile detainees in Viru Prison was mostly at unreasonably early hours (6.00 to 7.00 in the morning) and therefore they often did not make use of it. The Chancellor found that the exercise of the right to be outdoors by juvenile detainees should be not only a theoretical possibility but it should be possible to realistically make use of it. Scheduling the time for outdoor exercise for early hours in the morning is not in line with the principle under which good conditions for promoting and supporting the development of minors should also be ensured in prison conditions. The Chancellor recommended to Viru Prison to review the time schedule for outdoor exercise for minors and, if necessary, change it so that spending time outdoors would be reasonably possible for them.

In connection with the detention conditions in the new buildings of Tallinn Prison, the Chancellor recommended to the Ministry of Justice to create conditions suitable for female detained persons, minors and persons with disabilities for daily physical activity and training both outdoors and indoors. In the opinion of the Chancellor, small children staying in prison should also be ensured playing and training conditions appropriate for their age both indoors and outdoors.

3.4. Visits

The inspection of Tallinn Prison raised a question whether the room on the second floor of the accommodation building E1 was suitable for confidential communication. According to the prison service, the room was also used for meetings with the lawyers and counsel. The Chancellor recommended to Tallinn Prison to take measures to ensure that conversations in the room could not be easily overheard in the storeroom next to it. In its reply Tallinn Prison said it was looking for a solution how to prevent the sound from the room reaching the neighbouring storeroom.

The convicted prisoners who talked to the Chancellor's advisers during the inspection visit to Viru Prison complained that although it would be most convenient for their next of kin to come for a visit on Saturday they could often not use this possibility due to too early visiting hours assigned for this. The Chancellor recommended to Viru Prison to review the Saturday's time schedule for short-term visits for convicted prisoners (also taking into account the schedules of public transport arriving in Jõhvi from other towns) as well as the organisation of the visits, and change the practice so as to allow as many people as possible to realistically have short-term visits with convicted prisoners.

In their conversations with the Chancellor's advisers many detained persons in Viru Prison also pointed out an inconvenient environment for short-term visits. They said it was particularly inconvenient for children coming for a visit, because it was very difficult for the children to be in a small room separated by a glass and without any opportunity for establishing physical contact with their parent or for playing or joint activity. The Chancellor noted that a prison's

positive attitude to the visits of detained persons with their family members is extremely important and recommended to Viru Prison to take all the necessary and possible measures to make such visits as convenient and pleasant as possible for the visitors and the detained persons.

The Chancellor found that short-term visits without separating the detained persons from their visiting family members, in particular children, should be a rule rather than an exception. The Chancellor also recommended to Viru Prison to organise short-term visits of detained persons with their family members, in particular with minor children, as often as possible without separating them from the visitors. The Chancellor recommended taking into account the needs of children coming for the visits, for example ensure the availability of means and facilities for playing or joint activity.

The Chancellor made the same recommendation in the letter to the Ministry of Justice in connection with the detention conditions in the new buildings of Tallinn Prison. The Chancellor emphasised that children coming for visits (including short-term visits) in prison should be ensured a possibility to establish a physical contact with their parent.

3.5. Catering

During the inspection of Viru Prison, the detained persons claimed that the prison food was of satisfactory quality and taste but it was not sufficient. In their opinion, the interval between the dinner and breakfast was too long and, as according to the detained persons usually a meal offered for dinner was lighter (e.g. soup), they felt very hungry by the morning. In particular, juvenile detainees complained that they often felt hungry late in the evening and early in the morning. The juveniles described that the additional food portion usually consisted of a couple of slices of white bread. However, this was also not given to everybody but only to those in respect of whom the prison healthcare worker had issued a relevant prescription.

The Chancellor noted that there was a relatively long interval (14 hours) between the dinner and breakfast in the daily schedule of detained persons. If the person cannot buy additional food in the prison shop, in the opinion of the Chancellor the feeling of an empty stomach is probable to appear even if the person receives an additional food portion. In the Chancellor's opinion, Viru Prison should start paying particular attention to the catering of juvenile detainees because sufficient, diverse meals appropriate for a child's age are one of the key components for ensuring their physical well-being which significantly affects the development of cognitive functions (e.g. perception, memory, attention) of the child.

The medical expert participating in the visit to Viru Prison noted that medical records of juveniles and young persons contained a reference to being underweight but at the same time there was no information on their height or weight to calculate the body mass index (BMI). The expert proposed to Viru Prison to regularly monitor the height and weight (BMI) of all the juveniles and young persons every three months and, if necessary, provide them with additional food with reasoned calorific value and content.

The Chancellor recommended to Viru Prison to analyse the calorific value of the provided meals, and on account of the long interval between the dinner and breakfast offer a more calorific meal for dinner or a snack in the evening. The Chancellor also recommended taking into account the observations and proposals made by the expert.

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

During the tour of Tallinn Prison and Viru Prison the advisers to the Chancellor checked the possibilities for internet access to the legislation databases and registers of court decisions. Unfortunately, the advisers to the Chancellor could not access the internet on the computers checked by them.

The Chancellor recommended to Tallinn and Viru Prisons to ensure the functionality of the computers adjusted for use by detained persons in the accommodation building E1 in Tallinn Prison and the accommodation department S17 in Viru Prison. In order to ensure smooth and convenient access to the internet for the detained persons to the extent allowed for them, the Chancellor recommended to Viru Prison to check at certain intervals the functionality of the computers adjusted for use by detained persons.

The follow-up visit to the Harku imprisonment department of Harku and Murru Prison showed that the prison had complied with the Chancellor's recommendation made after the inspection visit in 2013 and on the day of the follow-up visit it was possible to access the legislation and court decisions via the computer in the prison library.

3.7. 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 inspection visit to Viru Prison and the follow-up inspection of the Harku imprisonment department of Harku and Murru Prison, 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.

Upon the inspection of the reports in Viru Prison, on several occasions it was impossible to ascertain whether and who of the medical staff had examined a person after the use of force, special equipment, weapon or means of restraint. The examined reports also revealed that on several occasions the note made by the health care staff regarding the health of a restrained detainee was very general or the date and time of the examination was missing. There was also no reference in the reports to indicate that the more detailed information on the examination of the health of the detainee would be available in another document, for example a health card. Upon the follow-up inspection of the Harku imprisonment department of Harku and Murru Prison, some problems with the examined reports could still be found.

The Chancellor emphasised once again the importance of properly documenting the use of physical force, service weapon, special equipment or means of restraint in respect of a detained person, which 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 Chancellor recommended to Viru Prison in the future to record in the report on the use of physical force, service weapon, special equipment or a means of restraint the result of the examination by health care staff as specifically as possible and also note in the report the data concerning the check (the exact time of the health check, i.e. the date and time; the name and signature of the health care staff). The Chancellor also made a similar repeated recommendation to Harku and Murru Prison. The prison agreed with the criticism and affirmed that an additional explanation of the issues relating to recording the data of the health check carried out by health care staff had been given to officers.

3.8. The conditions of detention of minors

In the letter sent to the Ministry of Justice in connection with the detention conditions in the future new buildings of Tallinn Prison, the Chancellor analysed in detail the conditions of detention of minors and more specifically the issues relating to the physical environment of detaining minors.

During the inspection of Viru Prison the conditions of detention of minors in that prison were checked. The Chancellor recognised the prison for continued efforts to execute the imprisonment of minors as well as possible within the means available to the prison. However, the Chancellor had to note that the physical environment in Viru Prison did not conform to the international requirements for the detention of minors and undermined the positive actions taken by the prison.

The Chancellor is firmly convinced that separate institution(s) for the detention of minors should be created, or in a situation where minors are placed in the same prison with adults a special accommodation building or buildings for them should be created which are physically separated from the accommodation building(s) of the adults and the physical environment in which contributes to the aims of rehabilitation and ensures the physical and mental well-being of the minors. Therefore, the Chancellor proposed to the Ministry of Justice to consider establishing separate institution(s) for detaining minors, so that the environment of detention would serve the rehabilitative purposes and ensure the physical and mental well-being of the minors.

4. The Defence Forces

In 2014, advisers to the Chancellor carried out an announced inspection visit to the Naval Base ([case No 7-7/140382](#)) and Viru Infantry Battalion ([case No 7-7/150018](#)). No violations were found during either of the visits and, therefore, the Chancellor did not make any recommendations or proposals to the Naval Base or Viru Infantry Battalion.

The Chancellor's advisers also carried out an announced inspection visit to the Logistics Battalion ([case No 7-7/150095](#)). The inspection revealed that the battalion had some problems with the reception of visitors of conscripts. The Chancellor recommended to the battalion to take measures to ensure that the conscripts can receive visitors in the rooms appropriate for the weather.

5. Providers of rehabilitation services for children with addiction problems

During the reporting year there were two closed institutions in Estonia offering rehabilitation services for children with addiction problems: Tallinn Children's Shelter administered by Tallinn Social Welfare and Health Board, and OÜ Corrigo's Jõhvi Youth Treatment and Rehabilitation Centre.

On 27–28 November 2014, the Chancellor's advisers carried out an announced inspection visit to Tallinn Children's Shelter. The Chancellor's advisers checked the activities of the shelter in providing the rehabilitation service for children and young people with behavioural problems. A child psychiatrist participated in the inspection as an expert. At the time of drawing up the

report, the summary of the inspection visit was being prepared. The summary will be published on the Chancellor's homepage under the section [Inspection visits](#).

On 27–28 March 2014, the Chancellor's advisers carried out an announced inspection visit to Jõhvi Youth Treatment and Rehabilitation Centre ([case No 7-9/140744](#)). The Chancellor has inspected the centre also previously, the latest inspection took place on 16 February 2010.¹⁹

A child psychiatrist was involved in the inspection visit as an expert and examined the treatment documents of children, gave an assessment of the appropriateness and sufficiency of the health care and rehabilitation services provided to children, and assessed the conformity of the living conditions in the centre to the needs of the children.

Even though the Chancellor in his presentation²⁰ already more than four and a half years ago drew the attention of the Riigikogu to the fact that Estonia lacked a state-level concept for the rehabilitation service and statutory requirements for the providers of rehabilitation services, the situation today has not changed.²¹

It is still not regulated what kind of assistance children who have been referred to a rehabilitation service (health care services, rehabilitation services, education, etc) are entitled to receive. There are also no mandatory requirements for the providers of the rehabilitation service (requirements for the territory and rooms, staff, the number of children participating in the programme or receiving the service, etc). And it is still not regulated whether and to what extent the provider of the rehabilitation service may restrict the fundamental rights of children during the provision of the service if it is indispensable in view of the successfulness of the rehabilitation process.²² Also the situation where a child himself or herself refuses to go to the rehabilitation institution is insufficiently regulated.²³

¹⁹ See the [summary of the inspection visit](#).

²⁰ See the [Chancellor's presentation No 1 of 15 September 2009](#) in Estonian.

²¹ On 23 January 2012, the Government submitted to the Riigikogu a Draft Act for amending the Mental Health Act, the Health Services Organisation Act and the Code of Civil Procedure, by which it wished to regulate this area but for some reason the proceedings of the Draft Act have stalled in the Riigikogu.

²² Also during the current inspection visit to Jõhvi Youth Treatment and Rehabilitation Centre an issue of the constitutionality of the restrictions applied in respect of the children arose. For example, performing security checks in respect of children, placing children in the so-called reflection room, restricting the communication of children, checking the correspondence and telephone communication of children, compulsory urine sample upon return to the centre from home. In the opinion of the staff of the centre, such restrictions are indispensable for successfulness of the rehabilitation, and similar restrictions have been applied in the centre for more than ten years, however no legal basis for applying such restrictions exists.

²³ The existing rehabilitation institutions (Tallinn Children's Shelter and Jõhvi Youth Treatment and Rehabilitation Centre) are closed institutions from which children are not allowed to leave at will. Thus, the placement of children in the institution on the basis of a decision of a juvenile committee amounts to deprivation of liberty in the meaning of § 20 of the Constitution. § 20 of the Constitution allows restricting the fundamental right to liberty only in the cases and pursuant to a procedure provided by law under the grounds exhaustively listed in clauses 1 to 6 of § 20(2) of the Constitution. The grounds established by law must proceed from solid objectives listed in the Constitution, whereas the grounds for the restriction of liberty under § 20(2) of the Constitution must not be interpreted extensively to the detriment of the person enjoying the respective fundamental right. Currently, children are referred to receive the rehabilitation service mostly on the basis of the decisions of juvenile committees. However, the law has not given the juvenile committees the right to restrict the liberty of children with the aim of subjecting them to the rehabilitation service. Also a child's own consent for the receipt of the rehabilitation service does not legitimise the deprivation of liberty without a legal basis.

Because of these problems, supervision over the providers of rehabilitation services is extremely complicated. Also, several specific problems in the work of rehabilitation centres are either directly or indirectly related to the absence of legal bases.

The shortcomings found during the inspection have been described in more detail below.

5.1. Living conditions

The inspection revealed that despite some improvement of the living conditions as compared to 2010 they still do not completely meet the needs of the children.

The centre lacks a fenced territory which the children staying there could use for physical outdoor exercise, playing or other activities. The territory of the centre lacks the necessary means and equipment for sporting or playing (playground, climbing trees, field for ball games, swing, etc).

The planning of the living rooms for boys does not allow the staff of the centre to keep a constant eye on the activities of the children, resulting in possible safety problems.²⁴ In order to better monitor the activities of the boys the staff of the centre have removed the doors from the rooms. However, this measure has not eliminated the safety risk arising from unsuitable room plans²⁵ and is also not appropriate in view of the teenage boys' need for privacy. For example, international experts have criticised Estonia for removing doors from wards in a psychiatric hospital, considering it a violation of privacy of the patients.²⁶ International experts have stressed that other solutions should be found to ensure adequate supervision of the patients without causing such intensive interference in their privacy.

The department for girls has a shortage of space. The plan of the rooms and the number of children in the rooms does not ensure sufficient possibilities for the girls to be on their own.²⁷

Several of the bedrooms did not have curtains, the rooms did not have the necessary furniture for children (table, chair, wardrobe or a cupboard for clothes and other personal belongings). In summary, the furnishing of the rooms was random and scarce, the rooms were not cosy. According to the expert participating in the inspection, such furnishing and room plans may create a stressful environment.

Although the current legislation does not establish specific requirements for the rooms and territory of treatment and rehabilitation centres, this does not mean that the centre should not take account of the needs of children in designing the living environment and furnishing the rooms. The planning of the rooms and the territory of the centre should support the substantive

²⁴ Conversations with children revealed that physical fights between boys had occurred in the rooms.

²⁵ Conversations with children revealed that physical fights occurred despite the absence of doors in the rooms. To improve safety, instead of removing the doors, the presence of at least two adults in the group during the awake time of children could be considered.

²⁶ See the [2012 Report to the Estonian Government by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment](#) (CPT), p 46 para 112.

²⁷ The lack of opportunities to spend time on one's own is also demonstrated by the fact that on several occasions some girls have asked for an opportunity to spend time in the so-called reflection room which the centre uses for secluding a child who has become aggressive from others. Conversations with children also showed that the atmosphere in the centre was tense and quarrels, mocking, humiliating or physical conflicts occurred almost daily.

activities of the centre and not constitute an additional risk factor to the mental health of the children.

By analogy, health protection requirements for child social welfare institutions²⁸ or for providers of the substitute home service²⁹ could serve as an example, establishing specific requirements for the territory and furnishing of the institutions. The general requirement is that children having reached the compulsory age of school attendance are provided with places for study and rooms with no more than two beds. In terms of furnishing of the rooms it is important that the furniture in a social welfare institution must be appropriate for children and take into account the special needs of the child. For example, the health protection requirements for child social welfare institutions establish that every child at least three years old in 24-hour care should have a separate bed, wardrobe or part of it, a nightstand, bookshelf or part of it, a table and a chair. Health protection requirements for child social welfare institutions also establish that only shelters may be without a separate territory. Residential educational institutions, youth homes and support homes must have their own separate territory. In the case of the substitute home service, the requirements for the rooms and the territory are even more specific than for other child social welfare institutions.

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 centre³⁰ 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.³¹

On this basis, the Chancellor of Justice recommended to the coordinator of Jõhvi Youth Treatment and Rehabilitation Centre, in cooperation with the management of OÜ Corrigo, to ensure for the children in the centre living conditions corresponding to their needs. The Chancellor recommended that in the future the centre should admit only the number of children to whom they can realistically ensure the living conditions corresponding to their needs. The Chancellor also recommended to the coordinator of the centre, in cooperation with the management of OÜ Corrigo, to create a fenced territory by the centre which children could use for physical exercise, playing or other activities.

The representative of the management of OÜ Corrigo replied that the centre had procured new furniture in the rooms of children and had relocated the furniture in the rooms so as to improve the living conditions of the children. The centre also submitted a proposal to the National Institute for Health Development to change the contracted volume of the service, i.e. reduce the

²⁸ 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>.

²⁹ 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>.

³⁰ Under the UN Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), a place of detention is an institution 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. 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. Thus, Jõhvi Youth Treatment and Rehabilitation Centre is a place of detention in the meaning of the OPCAT.

³¹ See the [CPT standards](#), p 24, para 29.

number of places for young people as from the school year 2014/2015. The Institute agreed in principle and since the school year 2014/2015 no more than 16 young people are admitted to the centre, which would ensure availability of living rooms with no more than two beds for the children.

5.2. Opportunities for spending free time and the shortage of staff

The inspection revealed that the children at Jõhvi Youth Treatment and Rehabilitation Centre did not have sufficient opportunities for recreational or other meaningful free time activities corresponding to their age and contributing to their development. Physical fitness related intervention necessary for maintaining physical health was also insufficient. The Chancellor identified the same problem in the work of the centre in 2010. Although in the meantime the centre has created some additional opportunities for recreational activities for children (handicraft room and an attic room for physical activity), the needs of the children are still not sufficiently taken into account.

An obstacle in providing meaningful activities for spending free time and taking account of the needs of children is the shortage of staff having direct contact with the children. Staff schedules show that on the weekends as well as in the evenings and at night (from 16.00 to 08.00) there is usually only one carer at work in either group. The Chancellor pointed out this problem also after his 2010 inspection. The shortage of staff having a direct contact with children could be one reason why the centre has problems with violence between children.

Although it is currently not regulated how many staff members per certain number of children should be at work in the rehabilitation centre at one time, the number of staff in the centre at any time should be sufficient to ensure the rights of children under the international and national legislation. Currently, there is a suspicion that the shortage of staff having a direct contact with the children³² prejudices the safety of the institution as well as the opportunities of the children for recreational and other meaningful free time activities corresponding to their age and contributing to their development.

In the opinion of the expert participating in the inspection visit, at least two adults could work with children in either group at one time. This would allow for a more substantive and safer contact with the children.

On this basis, the Chancellor recommended that the coordinator of Jõhvi Youth Treatment and Rehabilitation Centre, in cooperation with the management of OÜ Corrigo, should create additional opportunities for the children for spending free time and for recreational activities conducive to their development, including regularly offering for all the children at the centre the necessary physical fitness related intervention in order to maintain their physical health.

The Chancellor also recommended to the coordinator of the centre, in cooperation with the management of OÜ Corrigo, to ensure that at any time regardless of the hour of the day or the day of the week there are a sufficient number of staff at the centre to guarantee the rights of all the children in the centre.

³² In the opinion of the expert participating in the inspection visit, in addition to the shortage of staff the problem is also the lack of specific professional training and in-service training of the carers. The lack of the relevant special education (either in pedagogical or social work speciality) and non-participation in refresher courses could also be a reason why the staff have sometimes had problems with providing meaningful free time activities for the children.

The representative of the management of OÜ Corrigo replied that the centre had made a proposal to the National Institute for Health Development to amend the contract so as to increase the number of staff. Three additional positions of a carer were requested. According to the representative of the management, the centre would organise its work in a way as to ensure the constant presence of at least three adult staff members with the young people. In addition, the representative of the centre promised to improve the opportunities of the children for recreational and other meaningful free time activities corresponding to their age and contributing to their development.

5.3. Right to the confidentiality of messages and privacy

Conversations with the children and staff revealed that the range of people with whom children communicate during their stay at the centre is significantly limited, in most cases involving only a few family members. The range of people with whom children are allowed to communicate during their stay at the centre has been agreed with the child's legal representative. Moreover, all the phone calls that children have with their next of kin take place in the presence of the staff. Many children with whom the Chancellor's advisers spoke during the visit admitted that the presence of a member of staff during the phone call was annoying and they could not freely talk with their next of kin.

The wish of the centre to prevent children from having contacts with persons who could harm their well-being and the need to check, for that purpose, that the conversations are not harmful for the children is understandable. However, these objectives can be achieved by other measures which are less intrusive in terms of the rights of the child. For example, it would be possible to check at the beginning of the call with whom the child is talking and during the call observe the child from a distance or from behind a soundproof glass in order to assess the child's emotional state and interfere if necessary. As regards letters, it is possible to check that the letter is not addressed to a person with whom the child is not allowed to communicate. As regards internet communication, checking the identity of a conversation partner without checking the content of the message might be more complicated but certainly not impossible. For example, it is possible to create a separate communication environment where only certain person can communicate, or use other similar solutions.

Jõhvi Youth Treatment and Rehabilitation Centre lacks a legal basis to restrict the confidentiality of messages and privacy of children. Already in 2010 the Chancellor proposed to the head of the centre to stop restricting the children's right to the confidentiality of messages and to privacy without a legal basis. In justified cases, the Chancellor recommended to conclude a separate agreement with the children and their guardians for restricting the correspondence of the children.

Under § 126(2) of the Family Law Act, the right of custody over person includes the right to determine which third persons can have access to the child. A decision of a parent is binding on third persons whose access to the child has been prohibited by the parent. Thus, if a parent (or other legal representative of the child who has the right of custody over the child) finds that it is in the interests of the child to restrict the child's communication with third persons, the conclusion of the relevant agreement with the centre may be justified. However, it should be considered on a case by case basis and the restriction on communication with third persons should not be a general rule.

At the same time, supervising the content of the messages (e.g. being present during the phone call, reading the letters sent to or by the child) without the child's consent is not justified, in particular taking into account that communication with unwanted persons can be restricted upon agreement with the child's legal representative. Complete control by the staff of the centre over the messages sent by the children also significantly hinders the possibility of the children to submit a complaint against the centre if they so wish.

On this basis, the Chancellor proposed to the coordinator of Jõhvi Youth Treatment and Rehabilitation Centre to end the situation where the right of children to the confidentiality of messages and to privacy is violated, and apply different measures to check that the children do not communicate with third persons with whom communication has been restricted upon agreement with the child's legal representative and that the conversation does not have a negative effect on the child.

The representative of the management of OÜ Corrigo replied that the centre had changed the guidelines for the staff and found a possibility for ensuring privacy of conversations.

5.4. Restricting outdoor exercise as a sanction

The inspection revealed that on more than one occasion the prohibition to walk outdoors during a certain period had been applied as a sanction in respect of children who had left without an authorisation and had been returned to the centre.³³

It is understandable that certain sanctions sometimes need to be used in order to guide the behaviour of the children at the centre. It is also understandable that if a child has once left the centre without an authorisation the risk of the child's unauthorised departure is higher if they are taken outside for a walk as compared to prohibiting the child to go outdoors. In a situation where only one carer accompanies the children during the walk in the morning, the risk of unauthorised departure is high.

At the same time, the Chancellor considers it necessary to note that the opportunity of being outdoors is very important from the point of view of the children receiving the service and, as a rule, this opportunity should be ensured daily. Outdoor exercise should not be restricted with the aim of using it as a disciplinary sanction. This opinion has also been affirmed by the Council of Europe Committee of Ministers in its recommendation.³⁴ Thus, in a situation where the institution does not have a fenced territory and the main opportunity to spend time in open air means walking in the streets in the vicinity of the institution, the centre must ensure the presence of a sufficient number of staff to provide all children an opportunity to walk outdoors, including those in case of whom the risk of unauthorised departure is higher.

On this basis, the Chancellor proposed to the coordinator of Jõhvi Youth Treatment and Rehabilitation Centre not to restrict, as a disciplinary punishment, the opportunities of children

³³ Some children claimed that the prohibition of going for outdoor walks with others has been applied even for a period of one month.

³⁴ Under the Council of Europe Committee of Ministers [Recommendation CM/Rec\(2008\)11](#) on the European Rules for juvenile offenders subject to sanctions or measures, para 81, all juveniles deprived of their liberty shall be allowed to exercise regularly for at least one hour in the open air. In the comments to these rules, the Committee of Ministers has explained that the prohibition of exercise in open air should not be used as part of a disciplinary punishment (p 34).

to be in open air and to ensure for each child in the centre who so wishes an opportunity to spend time in open air every day.

6. Providers of involuntary emergency psychiatric care

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

- Tartu University Hospital Foundation ([case No 7-9/140630](#))
- Wismari Hospital Ltd ([case No 7-9/141043](#))
- North Estonia Medical Centre Foundation ([case No 7-9/141289](#))
- Narva Hospital Foundation ([case No 7-9/150158](#))

The inspection visits to providers of involuntary psychiatric care were unannounced.

The Chancellor involved a psychiatrist as an expert in the visit to the North Estonia Medical Centre. The expert did not find any signs of ill-treatment of the patients and concluded that the psychiatric care in general complied to the requirements. However, upon assessment of the circumstances in aggregate the expert reached an opinion that psychiatric care was provided in an outdated building not suitable for the provision of modern intensive psychiatric care.

In all the four inspected institutions problems with the appropriateness of the rooms used for restraining and with ensuring human dignity of the patients were found. In addition, the Chancellor identified once again shortcomings with regard to the lack of privacy³⁵ and insufficient documentation of the use of means of restraint³⁶.

In the following part, the main above shortcomings and the Chancellor's recommendations for remedying them are described in more detail. The inspected institutions have taken steps to remedy most of the problems pointed out by the Chancellor.

6.1. Appropriateness of the observation and seclusion room

During the reporting year, there were still problems with the conformity of the rooms used for restraining by the providers of involuntary emergency psychiatric care. In case of three institutions, there was a suspicion that a restrained patient could remain in the range of vision of other patients.³⁷ Two institutions lacked a seclusion room.³⁸ In one of them, patients were secluded in the observation room which had beds and radiators attached to the wall, and therefore the safety of seclusion could not be ensured.

In one hospital³⁹ both the restrained patients and patients under supervision who were not restrained stayed in the observation room; in another hospital⁴⁰ the route of taking patients to the observation room was not sufficiently safe in the opinion of the Chancellor, as it involved movement through several rooms (including a narrow corridor) where, inter alia, loose objects

³⁵ Tartu University Hospital, North Estonia Medical Centre, Narva Hospital. See also the [Chancellor's 2013 Overview](#), p 31.

³⁶ Tartu University Hospital, Wismari Hospital, Narva Hospital.

³⁷ Wismari Hospital, Narva Hospital, North Estonia Medical Centre.

³⁸ Tartu University Hospital, North Estonia Medical Centre.

³⁹ Wismari Hospital.

⁴⁰ North Estonia Medical Centre.

could be found which could be used for injuring oneself and others. In one institution⁴¹ the department was overcrowded and, therefore, both the seclusion and observation room were used as an ordinary ward. Therefore, the safety of the restrained person was not ensured because the furniture in the room was not fastened and the room could not be fully observed. Moreover, there was a risk of the restrained patient getting in the range of vision of other patients. The observation room was a small, dark, windowless room which did not provide a calming environment and felt inhuman.

The Chancellor continues to be of the opinion that the safety of the patient and the staff must be ensured in the course of restraining, including on the way to the seclusion or observation room. The room intended for restraining should have a safe and calming environment in which persons cannot injure themselves. Therefore, the Chancellor still believes that the use of a restraining room as an ordinary ward endangers the safety of the patients.⁴² It should also be taken into account that restraining should not be visible to other patients.

On this basis, the Chancellor recommended to the institutions to ensure the existence of an appropriate and safe observation and seclusion room, and use these rooms only for the intended purpose and ensure the safety of restraining. The Chancellor also recommended to ensure that restraining takes place outside the range of vision of other patients and that the route to the observation or seclusion room is safe both for the patient and the staff.

6.2. Threat to human dignity

As one of the major problems among the providers of involuntary emergency psychiatric care inspected during the reporting year, the issue of ensuring human dignity of the patients arose. During two inspection visits⁴³ it was found that the patients were not given sufficient explanations about the treatment, in one institution⁴⁴ the wards lacked any furnishing besides the bed, in one institution⁴⁵ the right to wear personal clothing was not ensured and in two institutions⁴⁶ there were problems with free time activities and ensuring the opportunity of outdoor exercise.

Section 10 of the Constitution gives rise to the principle of human dignity, which is one of the fundamental principles enshrined in the Constitution.⁴⁷ 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.⁴⁸

⁴¹ Narva Hospital.

⁴² See also the [Chancellor's 2013 Overview](#), p 31.

⁴³ Wismari Hospital, Narva Hospital.

⁴⁴ Tartu University Hospital.

⁴⁵ North Estonia Medical Centre.

⁴⁶ North Estonia Medical Centre, Narva Hospital.

⁴⁷ 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.

⁴⁸ 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.

In the opinion of the Chancellor, giving explanations about the treatment and about the rights and obligations of the patients is essential in order to treat patients as subjects and not as objects. The possibility of storing personal belongings and creation of a pacifying environment through the furnishings of the ward is important for ensuring human dignity of the patients.⁴⁹ It is also incompatible with the principle of human dignity if patients are not allowed to wear personal clothing⁵⁰ or if insufficient attention is paid to offering them free time activities. Lack of activity and boredom may make patients passive towards their life, make them feel as objects of hospital treatment whose life is not meaningful, and cause restlessness in them, which ultimately also has a negative effect on the recovery of the patients. The Chancellor also found that the situation where patients, health permitting, cannot regularly spend time in open air may diminish their well-being, and constant stay indoors may cause the feeling of the deprivation of liberty.⁵¹

On this basis, the Chancellor recommended to provide more information to the patients about their rights and obligations and about the treatment, allow the patients to wear personal clothing, ensure the daily opportunity to spend time in open air as well as opportunities for spending free time and for therapeutic activities.

6.3. Keeping records of the use of means of restraint

During the reporting year, the Chancellor paid more attention to keeping records of the application of means of restraint. Problems with sufficiently thorough and precise documentation were found in two institutions.⁵² In all of them the explanations concerning the situation prior to the application of the means of restraint, i.e. justification of restraining, and the need for continuation of restraint were scant or in some cases completely absent.

In one institution⁵³ the forms on restraint were filled out inadequately, the justification for ending the restraint was not recorded and, for example, the name and signature of the doctor deciding to end the restraint were absent. In most cases, the activities subsequent to the application of the means of restraint had not been documented. In another institution⁵⁴ the documents did not provide a sufficient overview of the restraint that had taken place because there was no record of the supervision of the patient by the doctor, notes by the nurse were inadequate, in some cases the time of the end of the restraint was absent, and in one case the name of the doctor deciding the restraint and the names of the persons participating in

⁴⁹ Austerity of the rooms and absence of the storage space for keeping personal belongings at the providers of psychiatric care has also been pointed out by the CPT. See the [CPT Report No CPT/Inf \(2014\) 1](#), para 112. The CPT has stressed also before that psychiatric hospitals should offer living conditions which are conducive to the treatment and welfare of patients. In psychiatric terms this is called a therapeutic environment. Therefore, particular attention should be given to the decoration of both patients' rooms and recreation areas. In the opinion of the CPT, the provision of bedside tables and wardrobes is highly desirable, and patients should be allowed to keep certain personal belongings (photographs, books, etc). The CPT also underlines the importance of providing patients with lockable space in which they can keep their belongings. The failure to provide such a facility can impinge upon a patient's sense of security and autonomy. See „[The CPT Standards. Substantive sections of the CPT's General Reports](#)“, p 50.

⁵⁰ The CPT has stressed that wearing hospital clothes is not conducive to strengthening personal identity and self-esteem of the patients, and individualisation of clothing should form part of the therapeutic process. Therefore, the CPT has made [a recommendation to Estonia](#) to take steps to ensure that patients are entitled to wear their own clothes (para 113).

⁵¹ The CPT has also underlined the importance of access to the open air, and made the relevant recommendation to Estonia. Ibid., para 114.

⁵² Tartu University Hospital, Wismari Hospital, Narva Hospital.

⁵³ Tartu University Hospital.

⁵⁴ Wismari Hospital.

restraining were missing. On several occasions it had not been recorded whether the person sustained any injuries in the course of restraining, and the steps following the application of the means of restraint were not documented either. In the third institution⁵⁵ some of the forms on restraint lacked records on the supervision of the restraint.

In the opinion of the Chancellor, the form on restraint should be filled out in a way as to offer sufficient information about the justification of the restraint, any injuries sustained, supervision of the patient and any explanations provided. Records should be sufficiently thorough so that after the restraint it is possible to establish clearly the circumstances and reasons constituting the grounds for restraint. Complying with the duty of documenting is an important prerequisite for ensuring the fundamental rights of persons. If restriction of the fundamental right to liberty in the form of restraint is not sufficiently documented, the Chancellor of Justice or other competent supervisory authorities cannot adequately assess compliance with the fundamental rights and freedoms of the restrained patients and lawfulness of the restraint.

Therefore, the Chancellor recommended to record the use of means of restraint in a way that complies with the applicable requirements and, inter alia, allows verifying the justifications for applying the means of restraint (including the situations prior to restraining and inappropriateness of alternative measures), frequency of supervision of the restrained person, substantive need for continuation of restraint (including continuing inappropriateness of using any alternative measures), and explanation of the need and reasons for restraint to the patient.

6.4. Guarantee of privacy

As a recurring problem, privacy of the patients was identified during the reporting year. In one institution⁵⁶ both the department for men as well as women had only one washing room; in the men's washing room washing took place in the range of vision of other patients in the room; washing always took place in the presence of the staff; the doors of the toilets and the washing rooms could not be locked, the door of the men's toilet had an opening which allowed observing what was taking place in the room; access to the women's washing room was only through a ward which was in use; there was no possibility to be on one's own in the department, including no possibility to be in silence, close the door of the ward or use a screen in the ward. In another institution⁵⁷ there were no separate clearly marked toilets for women and men; one of the toilets had no door; the department did not have a room where a patient could talk to their visitors without being disturbed; there were no possibilities to be on one's own.

The Chancellor understands that providers of health care services must pay closer attention to persons in an acute mental state in order to ensure their safety. This presumes sufficient supervision of the persons. At the same time, as regards the choice of measures for ensuring sufficient supervision, the providers of psychiatric care must assess whether the measure to be applied is of the kind which least interferes with the privacy of the person while helping to ensure the protection of the rights of patients. In addition, it should be assessed how intensively the measure interferes with the privacy of the person. In the opinion of the Chancellor, when assessing all the facts in aggregate, such an intensive interference with the privacy of the patients was not proportionate to the desired aim and could endanger the human dignity of the patients. Therefore, the Chancellor recommended to take steps for ensuring the privacy of the patients.

⁵⁵ Narva Hospital.

⁵⁶ North Estonia Medical Centre.

⁵⁷ Narva Hospital.

In one institution⁵⁸ extensive video surveillance was used for monitoring the patients in the rooms in one department, including in all the wards. Similarly to 2013, the Chancellor found that such extensive restriction of human dignity and the right to privacy without a person's consent and without consideration of 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 on a case-by-case basis.⁵⁹ The institution did not agree with the Chancellor's recommendations concerning video surveillance.

7. Providers of 24-hour special care services

In 2014, the Chancellor inspected six providers of 24-hour special care services:

- Valkla Home of Hoolekandeteenused Ltd ([case No 7-9/140773](#))
- R pina Hospital Ltd ([case No 7-9/140420](#))
- NGO Paunk la Care Centre ([case No 7-9/140418](#))
- Imastu residential educational institution of Hoolekandeteenused Ltd ([case No 7-9/140852](#))
- Erastvere Home of Hoolekandeteenused Ltd ([case No 7-9/141288](#))
- Narva-J esuu Care Home Foundation ([case No 7-9/150129](#))

All the inspection visits to the providers of 24-hour special care services were unannounced. The Chancellor found no shortcomings in R pina Hospital.

In the inspection visit to Erastvere Home of Hoolekandeteenused Ltd a general practitioner was involved as an expert to assess the conformity with the statutory requirements for the 24-hour special care service and the accompanying independent nursing care service provided by the institution. Inter alia, the expert had to assess and give a reasoned opinion with regard to ill-treatment, the situation of the clients as well as quality and documentation of the nursing care and its availability. The expert found no signs of ill-treatment but pointed out that constant presence of a staff member with special medical training should be ensured when providing the service for clients with special needs, because an activity supervisor without specialised training is not competent to dispense medications and assess medical interference.

Some institutions⁶⁰ were visited repeatedly within a short period by the Chancellor's advisers, including unannounced visits in the evening, in order to verify compliance with the Chancellor's recommendations.

In 2014, the Chancellor in his visits to providers of 24-hour special care services paid particular attention to the handling and administration of medications and found problems in this respect in three institutions. During the reporting year, one of the problems in the special care homes was also the risk of violating human dignity and unlawful restriction of the fundamental right to liberty of the recipients of special care. Insufficient number of activity supervisors continued to be a concern during the reporting year.

⁵⁸ Tartu University Hospital.

⁵⁹ 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 within a specific period after which it should be reviewed.

⁶⁰ Valkla Home and Erastvere Home of Hoolekandeteenused Ltd.

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

7.1. Handling and administration of medications

Problems with the handling of medications were found in two special care homes. In one institution⁶¹ no records of medications were kept. Therefore, it was impossible to establish what quantity of medications should be available in the care home, for whom they were prescribed and to whom they were actually administered.⁶² In another institution⁶³ in principle all the staff had access to the nurse's office where all the medications, including prescription medications, were kept. It was also found that medications were not kept in conformity with the requirements⁶⁴, the medications were in different departments in unlocked cupboards and the institution kept medications which were no longer administered to the clients. Also a suspicion arose that the departments kept prescription medications prescribed to the patients who had left, and such medications were administered to other clients whenever necessary.

As the principles for the handling of medications were not in line with the requirements, the Chancellor found that such a practice of handling could endanger the health and life of the clients.⁶⁵ The practice where there is no real control over the existence, quantity and records of prescription medications may also lead to the misuse of medications. Therefore, the Chancellor recommended to ensure that the handling of medications takes place in conformity with the requirements and that third parties have no access to the medications.

With regard to the administration of medications, in several institutions⁶⁶ a suspicion arose that the medications were administered to the clients against their will. In two special care homes⁶⁷ also a suspicion arose that the administration of medications had been left for the activity supervisors to decide.

In the opinion of the Chancellor, the providers of 24-hour special care services must ensure compliance with the client's treatment scheme with the help of measures whereby the persons voluntarily take the medications prescribed for them. This means that if a resident of a special care home refuses to take medications they cannot be forced to do this. Administration of medications involuntarily and as not part of the treatment scheme may amount to restraint by means of medications which is not allowed in the provision of 24-hour special care services. However, according to the Chancellor's assessment it is conceivable that a person does not have to take medications constantly but only, for example, when the illness becomes more acute.

⁶¹ Narva-Jõesuu Care Home.

⁶² In addition to the fact that there were no daily records on which medications were dispensed to the departments for administering to the persons, there was also no clear and traceable documentation as to which medications and under which treatment scheme the doctor had prescribed to the clients.

⁶³ Erastvere Home of Hoolekandeteenused Ltd.

⁶⁴ For example, during the inspection there was a medication in the nurse's office which should be kept in a fridge, and despite the remark made by the representative of the State Agency of Medicines, the medication had not been placed in the fridge by the time of the evening inspection.

⁶⁵ Administering of a prescription medication to a person to whom it has not been described may endanger their right to the protection of the health as it may happen that the medication is not suitable for the particular person due to their state of health or is incompatible with other medications prescribed to the person.

⁶⁶ Paunküla Care Centre, Erastvere Home of Hoolekandeteenused Ltd, Valkla Home of Hoolekandeteenused Ltd.

⁶⁷ Valkla Home of Hoolekandeteenused Ltd and Erastvere Home of Hoolekandeteenused Ltd.

However, it should be possible to verify the justifications for the administration of a medication and it should be ensured that the need to administer a medication is assessed by a medical staff, not by an activity supervisor who lacks the relevant competence.

On this basis, the Chancellor proposed to stop the administration of medications to the clients against their will and ensure that records of the medications administered according to the need are kept in a way that it is clear under which client's treatment scheme the medication was administered and for what reason. In addition, the Chancellor proposed to ensure that administering of medications is decided by health care staff who have received the relevant training and that it is documented in way as to maintain an effective and realistic possibility to verify retroactively the activities of a health care staff who is not a doctor.

7.2. Threat to human dignity

Inspection visits to special care homes during the reporting year revealed that the clients might not always be treated in line with human dignity in these institutions. For example, in a department in one special care home⁶⁸ the washing room was cold and damp and in another department the sanitary facility had not been cleaned. Also a bathtub with a broken and sharp edge had been given at the disposal of the clients for washing. Conversations with the staff also revealed that the quantity of the food provided was not always sufficient for the clients. In another special care home⁶⁹ several clients complained of boredom which made the Chancellor ask whether the institution paid sufficient attention to providing opportunities for spending free time for the clients.

Therefore, the Chancellor proposed to ensure good repair of the equipment and cleanliness in the sanitary facilities and to assess the sufficiency of the food provided. In addition, the Chancellor recommended to ensure that the opportunities for spending free time and therapeutic activities offered to the clients are of the kind which take account of the specificity of the clients. In this regard, the Chancellor also found that in order to contribute to achieving the aims of the service (including personal development), it should be analysed what kinds of free time activities should be provided to the clients and how to find opportunities to involve clients in joint activities (inter alia, the age, gender and other specific features of the clients should be taken into account).

7.3. Restriction of the liberty of persons

Similarly to the inspection visits in 2012 and 2013, it was found that in some special care homes the clients' fundamental right to liberty could be unlawfully restricted. During the tour of one institution⁷⁰ it was found that in the evening at least two clients using the service under a court ruling had been locked in their rooms. In another institution⁷¹ one client had been locked in their room during the inspection visit and the doors of several rooms had locking devices which allowed locking of the doors from the outside without the possibility to unlock them from the

⁶⁸ Valkla Home of Hoolekandeteenused Ltd.

⁶⁹ Erastvere Home of Hoolekandeteenused Ltd.

⁷⁰ Valkla Home of Hoolekandeteenused Ltd.

⁷¹ Paunküla Care Centre.

inside.⁷² In the third institution⁷³ the department for persons with mental problems has a room which could be locked from the outside with a key without the possibility of opening it from the inside.

The Chancellor is still of the opinion that seclusion of a client of 24-hour special care services in their bedroom or another room adjusted for that purpose is inadmissible. In order to prevent arbitrary restriction of the liberty of service recipients the Chancellor proposed to stop locking clients in their rooms, use seclusion only when all the conditions for seclusion are fulfilled and, should a need for seclusion appear, seclusion should take place only in a specially designated seclusion room.

In addition, the Chancellor recommended to analyse which lawful measures can be taken to ensure the safety of a client who may quickly become violent as well as other clients at night and, in order to ensure safety, take measures which, in proportion to the threat, cause least interference with the rights of the clients and also raise the awareness of the staff about the admissibility of restricting the clients' fundamental right to liberty.

7.4. The number of activity supervisors

Insufficient number of activity supervisors in special care homes continued to be a problem during the reporting year. In two special care homes⁷⁴ only one activity supervisor was on duty at night. During the evening tour of one of the institutions it was found that none of the activity supervisors on duty were constantly present in the department and thus the department had been left unsupervised.

In the Chancellor's opinion, the number of activity supervisors significantly affects the quality of special care services. Inspections carried out during the reporting year give reason for a concern that providers of 24-hour special care services are still unable to ensure the statutory minimum number of activity supervisors. Moreover, the Chancellor is also of the opinion that, for example, in view of the location and arrangement of the rooms of an institution and the distribution of the clients between the departments, the nature and severity of mental problems of the clients, even compliance with the minimum requirements might sometimes not be sufficient.

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, taking account of their condition and skills, the Chancellor proposed to guarantee that at any time the institution has at least the required number of activity supervisors on duty and that service recipients are not left without supervision in any situation.

⁷² The staff member conducting the tour for the Chancellor's advisers did not have doubts about the admissibility of locking the door. The staff claimed that the client was preventively locked in their room for their own protection, and explained further that the staff locked service recipients in their rooms for ensuring the clients' own safety.

⁷³ Narva-Jõesuu Care Home.

⁷⁴ Erastvere Home of Hoolekandeteenused Ltd and Valkla Home of Hoolekandeteenused Ltd.

8. Providers of nursing care services

During the reporting year, the Chancellor inspected 12 institutions providing the nursing care service:

- Hiiu Treatment Centre Foundation ([case No 7-9/140310](#))
- Põlva Hospital Ltd ([case No 7-9/140419](#))
- Tartu University Hospital Foundation ([case No 7-9/140843](#))
- Võnnu Hospital Foundation ([case No 7-9/140842](#))
- Vändra Health Centre Foundation ([case No 7-9/140629](#))
- Järva County Hospital Ltd ([case No 7-9/140943](#))
- Pärnu-Jaagupi Care Home Foundation ([case No 7-9/140968](#))
- Pärnu Hospital Foundation ([case No 7-9/140969](#))
- Kuressaare Hospital Foundation ([case No 7-9/141290](#))
- Narva Hospital Foundation ([case No 7-9/150130](#))
- Jõhvi Hospital Foundation ([case No 7-9/150117](#))
- Sillamäe Hospital Foundation ([case No 7-9/141488](#))

All the inspection visits were unannounced. A nursing care expert was involved in nine of the inspection visits to assess the quality of nursing care, signs of ill-treatment, compliance with the requirements for treatment documents of the patients, physical shape of the patients, skills of the staff, availability of the doctor, and the medical equipment and supplies of the institution.

The most acute problems found concerned the provision of the nursing care service without a valid consent, shortcomings with the handling and administration of medications, and failure to ensure privacy. These issues are described in more detail below. In addition, problems with unfounded restriction of the fundamental right to liberty of the service recipients⁷⁵, insufficient number of staff⁷⁶, use of the nurse call system⁷⁷, ensuring of human dignity⁷⁸ and overcoming the language barrier⁷⁹ were found at the providers of nursing care services during the reporting year.

8.1. Consent for the provision of nursing care services

Similarly to 2013, 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 seven⁸⁰ of the inspected institutions.

In some cases, a consent of the patient or their legal representative was completely missing and on other occasions a signature confirming the consent or the name of the person signing was missing. In some cases, the carer or a social worker had given the consent on behalf of the patient instead of the legal representative. In addition, in some cases there was a suspicion that the consent for the provision of the service had been given by a dementia patient who was essentially unable to assess all the circumstances required for giving the consent. As on several occasions a written record of the consent for the provision of nursing care services was absent

⁷⁵ Narva Hospital, Põlva Hospital.

⁷⁶ Sillamäe Hospital, Jõhvi Hospital.

⁷⁷ Vändra Health Centre, Kuressaare Hospital, Võnnu Hospital.

⁷⁸ Järva County Hospital, Hiiu Treatment Centre.

⁷⁹ Hiiu Treatment Centre.

⁸⁰ Hiiu Treatment Centre, Järva County Hospital, Kuressaare Hospital, Pärnu-Jaagupi Care Home, Narva Hospital, Pärnu Hospital, Vändra Health Centre.

and no explanations with regard to the person's incapacity to decide had been given, the Chancellor had doubts whether a legally required consent had been obtained from all the recipients of nursing care services or their legal representatives.⁸¹

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 provision of health services affects a person's body and mind 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 recommended that in providing nursing care services to patients in case of whom there is reason to doubt their ability to give a knowledgeable consent it should be ensured that the patients (in case they are capable for this) coming to receive the 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.

8.2. Handling and administration of medications

Similarly to the inspection of providers of 24-hour special care services, when inspecting the providers of nursing care services in 2014 the Chancellor paid more attention to the aspects concerning the handling and administration of medications. Problems with this were found in five institutions⁸².

In several institutions⁸³ it was not ensured that the patients or third parties do not have access to the medications; some institutions⁸⁴ kept the medications of the patients who had left the institution, in one case⁸⁵ shortcomings with the record-keeping of medications were found and in one institution⁸⁶ the handling of medications had not been documented in a way as to ensure a clear overview of the medications used in the department.

Incorrect handling of medications may lead to negative consequences for the health of the person, endangering their right to the protection of health and life. As nursing care services are also provided to patients who due to their condition are unable to understand the consequences of misuse of medications, incorrect handling of medications may lead to a situation where a patient gets hold of medications not intended for them, and upon administering such medications the health or life of the patient is endangered. Such keeping of medications may also result in a loss of the overview of the existing medications and may raise an issue of whether medications to the patients have been administered correctly. Moreover, such a practice

⁸¹ 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.

⁸² Hiiu Treatment Centre, Järva County Hospital, Jõhvi Hospital, Kuressaare Hospital, Narva Hospital.

⁸³ Narva Hospital, Kuressaare Hospital, Hiiu Treatment Centre, Järva County Hospital.

⁸⁴ Jõhvi Hospital, Kuressaare Hospital, Järva County Hospital.

⁸⁵ Kuressaare Hospital.

⁸⁶ Jõhvi Hospital.

may lead to misuse of medications as there is no real control over the existence, quantity and records of prescription medications.

On this basis, the Chancellor found that the principles of handling medications did not conform to the established requirements. Therefore, the Chancellor recommended to ensure that the handling of medications takes place in line with the established requirements and that third parties cannot access the medications.

With regard to the administration of medications, in case of two institutions⁸⁷ there was also a suspicion that the hospital was administering prescription medications of the patients who had left the hospital to other patients for whom they had not been prescribed. As such a practice endangers the right of the patients to the protection of health (for example, the medication is not suitable for the patient due to their health condition or is incompatible with other medications prescribed to the person) and may lead to misuse of the medication, the Chancellor recommended to ensure that prescription medications are only administered to patients for whom they have been prescribed.

In two institutions⁸⁸ on some occasions the doctor had given the nurse an advance permission to administer sedative medications. The Chancellor explained that if the doctor has authorised the nurse to administer medications to a patient should a need arise, the nurse when assessing the need and administering the medication should document it in a way as to enable the health care service provider subsequently to verify for what reason the nurse decided to administer the medication at the particular time and in the particular quantity. Documenting and the subsequent control are necessary to avoid misuse of medications. Otherwise, there is a danger that a patient is administered medications without an indication corresponding to the aim of the treatment and, instead, the medications are administered for another (inadmissible) purpose. This may have serious or simply undesired consequences for the patient because a health care worker who is not a doctor and lacks the right to prescribe medications is not necessarily able to assess all the health risks.

Therefore, the Chancellor recommended to ensure that health care workers make decisions within the boundaries of their acquired speciality when administering medications to patients or when making other nursing care related decisions, and if necessary they should also assess a patient's condition personally and directly. The Chancellor also recommended to ensure that in a situation where a doctor has authorised a health care worker (nurse) lacking the competence of a doctor to administer a medication to a patient, the doctor maintains an effective and realistic opportunity to retrospectively verify the activities of the authorised worker.

8.3. Privacy

Similarly to psychiatric hospitals, upon the inspection of providers of nursing care services during the reporting year the Chancellor found problems with ensuring privacy of the patients. In three institutions⁸⁹ it was found during the tour that the department did not use screens for ensuring the privacy of the patients during their hygiene procedures, and in one of them patients were received in a room into which passers-by could freely see.

⁸⁷ Jõhvi Hospital, Järva County Hospital.

⁸⁸ Järva County Hospital, Narva Hospital.

⁸⁹ Tartu University Hospital, Järva County Hospital, Võnnu Hospital.

In the opinion of the Chancellor a situation where a person has to carry out their personal hygiene procedures or tolerate them being carried out in view of other patients cannot be considered to be in line with the principle of human dignity as it infringes upon the dignity of the person, and therefore such situations should be avoided. Therefore, the Chancellor recommended to ensure that screens or other means helping to ensure the privacy of the patient are used when carrying out hygiene procedures or other intimate procedures, and that the window of the reception room should be covered.

In one institution⁹⁰ the full names of the patients present in the centre during the inspection visit were revealed by placing their name plates on the wall next to the doors of the wards. In the opinion of the Chancellor, such an activity interferes with the patient's right to privacy because this way third persons can read the names of the patients and obtain an overview of who is receiving the nursing care service at the particular moment. This constitutes disclosure of personal data in the meaning of the Personal Data Protection Act and, therefore, the institution is obliged to process personal data only in conformity with the objective of the processing and to the smallest extent possible.⁹¹ Therefore, the Chancellor recommended to stop disclosure of full names of the patients without consent.

Both Tartu University Hospital and Järva County Hospital had installed extensive video surveillance for monitoring of the patients. Similarly to the psychiatric hospitals, the Chancellor found that such extensive restriction of human dignity and the right to privacy without a person's consent and without consideration of 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 on a case-by-case basis.⁹²

⁹⁰ Väandra Health Centre.

⁹¹ See also the [Chancellor's 2010 Overview](#), p 17-18.

⁹² 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 within a specific period after which it should be reviewed.

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 2011.⁹³

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 committee to the Ombudsman for Children has been established at the Office of the Chancellor of Justice. Members of the advisory committee 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.

⁹³ See [the Chancellor of Justice Act](#), § 1(8).

The mission 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 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, comprising total five staff positions and having a staff of three during the reporting year.

The following part of the overview describes the main proceedings concerning the rights of children in 2014, as well as inspection visits to children's institutions and activities relating to promoting the rights of children.

II. PROCEEDINGS

In 2014, the Chancellor opened 134 cases concerning the rights of children. Of these, 62 were substantive proceedings and 72 proceedings 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 seven 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 Children's Rights Department of the Chancellor's Office also provided explanations about the rights of the child by telephone.

During the reporting year, the Chancellor opened 15 cases to verify the constitutionality of legislation concerning children. Of these, two cases were opened on the Chancellor's own initiative and 13 on the basis of a petition. During the reporting year, the Riigikogu adopted the new [Child Protection Act](#) which enters into force on 1 January 2016. This is a framework Act regulating the organisation of the system of child protection in Estonia, and therefore the Chancellor kept a close eye on the proceedings of the Act.

The Chancellor also expressed an opinion on the Draft Act from the point of view of the rights of the child during its proceedings and also analysed the constitutionality of some of the provisions of the adopted Act based on petitions. These cases are described in more detail below.

To verify the lawfulness of activities of persons and agencies exercising public authority, the Chancellor initiated 37 proceedings, of these 11 on his own initiative and 26 based on a petition. In addition, during the reporting year the Chancellor expressed an opinion on 4 pieces of draft legislation concerning children and submitted his recommendations to the drafters.

Similarly to the previous reporting year, the Chancellor received several petitions concerning the issues of the right of custody and visiting rights in respect of children. The petitioners mostly complained about the activities of child protection workers of rural municipality or city authorities in the process of separating a child from the family, in organising the life of the child after separation and in restricting communication between the child and the parents.

The continuing large number of petitions and telephone calls concerning the right of custody and visiting rights in respect of children is an indication of ongoing topicality of problems in organising the life of children after separation from the family.

During the reporting year, the Chancellor established on several occasions that local government child protection officials had violated the rights of the child and of the parents. There had been cases where the local government officials had separated a child from the family based on wrong considerations or restricted the visiting rights of the parent without the court's approval. On several occasions, violation of the visiting rights occurred in situations where a parent was in a custodial institution. In those cases, local government officials had failed to establish whether and under which conditions it would be in the interests of the child to communicate with the parent in the custodial institution and, instead of having recourse to the court for restricting the visiting rights, the officials had restricted the visiting rights merely because the parent was in a custodial institution.

Interference of the state in the right of custody and visiting rights of the parents would be in conformity with the rights of the child if a thorough impact analysis is carried out in each proceeding concerning children to establish all the protection and risk factors affecting the well-being of the particular child and to analyse the impact of various possible solutions on the child's well-being. Moreover, in each such case the child's own opinion should be established if the child's level of development enables them to express it, and the child's opinion should be taken into account in making the decision. This way it is possible to make a decision based on the best interests of the child.

In addition, several petitions received during the reporting year also revealed the problem that after the divorce parents did not take sufficient account of the interests and opinion of the child in organising the child's life. The petitions revealed that often the parents were occupied only with their own problems and were not able to act in the interests of the child. Poor relationship between the parents often significantly damaged the well-being of the child.

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. It is important to support parents so that they are able to offer a safe and supporting environment for the child also after separation.

Problems with taking account of the interests of the child in executing court rulings concerning visiting rights also continued to be topical during the reporting year.⁹⁴

The following part contains an overview of the selected proceedings in 2014.

1. Separation of children from the family, organisation of the life of children separated from the family, and visiting rights of the parents of children separated from the family

The competence of the Chancellor of Justice as the supervisory body in verifying the activities of local authorities in separating a child from the family is limited because the Chancellor cannot prescribe to a local authority how exactly it should have assessed a particular situation or what kind of a decision it should have made. Assessment of the situation of the child and deciding the need for intervention is a discretionary decision of each local authority and the Chancellor, similarly to a court, when examining the decision may only verify whether any significant errors of discretion occurred when making the decision.

Moreover, when a petition concerning the separation of a child from the family is submitted to the Chancellor a court dispute over custody rights is often pending. The Chancellor may not give an assessment on issues in respect of which court proceedings are ongoing. Thus, the

⁹⁴ 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.

Chancellor can verify the activities of local authorities which took place prior to the separation of the child from the family, as well as the activities in organising the life of children separated from their family, in the meaning of § 25(2) of the Social Welfare Act.

On the basis of a petition, the Chancellor verified the activities of Tallinn Mustamäe City District Government in organising the life of children after their separation from the family. In this case, the local authority had separated the children from the family, the parent's right of custody had been suspended under a court ruling and the local authority had been appointed as the guardian of the children. Thus, in addition to the obligation under § 25(2) of the Social Welfare Act to organise the life of the children after separation from the family, the city district government now also had the obligation under the court ruling and § 179(1) of the Family Law Act to take care of the petitioner's children and organise their care and raising. The Chancellor was contacted by a biological parent of the children who was dissatisfied with the local authority's activities in organising the life of the children, more specifically with the fact that the children were not given an opportunity to attend kindergarten and that the children were separated from each other.

As a result of the proceedings, the Chancellor found that the local authority had violated the principle of acting in the best interests of the child under § 3 of the Republic of Estonia Child Protection Act in combination with the requirements of § 25(2) of the Social Welfare Act as it failed to ensure the opportunity for the child separated from the family to continue attending the kindergarten, and as a result failed to ensure continuity in the organisation of the child's life for a period of three months as of the child's separation from the family, and also failed to provide reasoning why it was in the interests of the child not to attend kindergarten. In the opinion of the Chancellor, the local authority also violated its obligation under § 25(3) of the Social Welfare Act to keep children originating from the same family together upon separation from the family, and failed to justify why it was in the interests of the children to be separated. The Chancellor explained to the local authority that failure to comply with this obligation could not be justified with the wish of a biological parent of the children to place the children in different shelters, in particular taking into account that according to the local authority's own assessment the biological parent of the children was unable to ensure the interests of the children and the local authority had been appointed as the guardian of the children.

In this case, also the issue of restricting the visiting rights arose. The local authority restricted the visiting rights of the parent during the first weeks of the child's stay in the shelter. The Chancellor found that the local authority had restricted the visiting rights of the mother and child without a legal basis. Under § 143(3) of the Family Law Act only the court may restrict the visiting rights. The Chancellor also explained that visiting rights are a separate legal institution as compared to the right of custody, and restriction, suspension or deprivation of the right of custody does not affect the visiting rights of the parent in respect of the child.

Prompted by a petition concerning separation of a child from the family, the Chancellor also made an unannounced visit to Tallinn Children's Home shelter for small children in order to assess the living conditions of children separated from their families.

The Chancellor was contacted by a biological parent of the children who complained about living conditions in the shelter for small children of Tallinn Children's Home, in particular the fact that the children could not sleep in their own beds.

As a result of the proceedings, the Chancellor found that the petitioner's children had been ensured with beds in conformity with the requirements of the legislation during their stay in the shelter. In the course of the inspection visit, the Chancellor's advisers also examined the life and conditions in the shelter in general and talked to carers and two of the older children. During the conversations no complaints about the living conditions were made and the advisers also did not notice any other shortcomings with regard to the care and living conditions of the children.

2. Restriction of the rights of parents in a custodial institution and their children

During the reporting year, on several occasions the Chancellor analysed the conformity of the restriction of the rights of parents in a custodial institution and their children with the principle of guaranteeing fundamental rights and freedoms. For example, in a case where Tartu City Government separated a child only for the reason that the child's parent with the right of custody was staying in a custodial institution, the Chancellor found that Tartu City Government had made a significant error of discretion.

The city government separated the child from the family because due to the arrest and stay in a custodial institution the parent with the right of custody could no longer take care of the child. The city government separated the child for this reason regardless of the fact that the parent with the right of custody had given the child to the care of a foster family before going to the custodial institution.

The Chancellor found that the judgment of discretion by Tartu City Government did not conform to § 135(4) of the Family Law Act under which separation of a child from the family by a local authority may only be based on a threat to the child's health or life. In the opinion of the Chancellor, Tartu City Government made a significant error of discretion when separating the petitioner's child from the family.

On this basis, the Chancellor recommended to the City Government to comply with the requirements of the law when deciding separation of children from the family in the future. In this case it is also worth pointing out the Chancellor's conclusion that in separating a child from the foster family the local authority should apply the same provision as in separating a child from the biological family, i.e. § 135(4) of the Family Law Act under which a child may be separated from the foster family only if the local authority believes that the child's health or life is endangered.

In the same case, the issue of restriction of visiting rights of close relatives in respect of the child arose. The Chancellor drew the attention of the city government to the fact that the legal basis for restricting the visiting rights depends on whether the parent's right of custody has been preserved or not. In this case, the petitioner's right of custody had been fully preserved and thus the petitioner could decide which third parties were allowed access to the child. If in such a situation the city government had considered it necessary to restrict contacts between the child and the child's next of kin, it should have had recourse to the court (§ 143(3) of the Family Law Act) for restriction/deprivation of the parent's right of decision with regard to the issue of access of third parties to the child. Further, the Chancellor explained that in organising communication between the child and the child's close relatives, the local authority must proceed from § 28 of the Child Protection Act under which a child who is separated from one or both parents has the

right to maintain personal relations and contact with both parents and close relatives, except if such relations harm the child.

In another case, a father staying in a custodial institution challenged the lawfulness of Tallinn Lasnamäe City District Government in restricting his visiting rights in respect of his daughter.

In this case, the child had been separated from the family and was staying in a shelter. Court proceedings were pending to restrict the petitioner's right of custody in respect of his child. No court proceedings had been initiated with regard to the issue of visiting rights. The petitioner complained to the Chancellor that the local authority officials had not enabled him to meet with his daughter during his stay in the custodial institution and had restricted their communication by telephone.

As a result of the proceedings, the Chancellor concluded that Lasnamäe City District Government had violated the right of the petitioner and his daughter to the inviolability of family life, in particular the visiting rights under § 143(1) of the Family Law Act, when it refused to create possibilities for communication between the petitioner and his daughter without having recourse to the court for restricting the petitioner's visiting rights in respect of his daughter. In addition, the Chancellor found that Lasnamäe City District Government had violated the petitioner's right to the inviolability of family life, in particular as regards the right of custody under § 116(2) of the Family Law Act, when it restricted the parents' right of custody without a court decision within a period of one year and failed to comply with the obligation under § 135(4) of the Family Law Act to submit an application to the court for restricting the rights of the parent in respect of the child immediately after the child's separation from the family.

The main issue in a complaint against Loksa Town Government was also concerned with the lawfulness of the town government in separating a child from the family and organising the communication between the parent in a custodial institution and the child.

Also in this case the local authority restricted communication between the parent in a custodial institution and their child as it found that the communication was not in the best interests of the child but had failed to have recourse to the court for restricting the visiting rights.

In this case, the Chancellor also concluded that Loksa Town Government had violated the fundamental right of the petitioner and their daughter to the inviolability of family life, specifically the visiting rights under § 143(1) of the Family Law Act, when it restricted for a period of several months the communication between the petitioner and their daughter without having a court authorisation. In addition, the Chancellor established that Loksa Town Government had violated the principle of guaranteeing the fundamental rights and freedoms of the petitioner as it had recourse to the court more than a month after the child's separation from the family, and not immediately as required under § 135(4) (second sentence) of the Family Law Act.

In conclusion of the above cases, it could be noted that on several occasions local government officials were not familiar with the provisions of the Family Law Act concerning visiting rights or interpreted them erroneously. On several occasions the officials also failed to comply with the requirement to have recourse to the court for restricting the parents' right of custody immediately after the child's separation from the family.

3. Activities of local authorities in organising the life of children in alternative care

The organisation of visiting rights in a situation where the child lives in a substitute home in Estonia while the parent lives abroad arose as a separate issue during the reporting year. The Chancellor was contacted by a parent living abroad whose right of custody in respect of the child living in Estonia had been restricted by the court while the visiting rights had not been restricted. The petitioner wished that the child would stay with them during the school holidays. Kohtla-Järve City Government as the guardian and organiser of the welfare of the child did not allow the child to a foreign country without a written reasoned opinion of child protection workers of the parent's country of residence.

The main issue was whether Kohtla-Järve City Government may impose conditions on the child's going abroad or to prohibit it in a situation where the court has not restricted the visiting rights of the parent in respect of the child.

As a result of the supervisory proceedings the Chancellor found that in deciding whether to allow the child on a visit to the parent Kohtla-Järve City Government acted within its competence under the legislation. A child's guardian and legal representative may decide the child's place of stay and, thus, decide whom the child may visit. The obligation to ask the guardian's consent for taking a child to the family does not constitute violation of the visiting rights of the parent.

The wish of Kohtla-Järve City Government to receive an opinion of the child protection workers of the parent's country of residence was also lawful. For the exercise of the visiting rights, a parent should request a permission from the local authority of their place of residence. If the parent's residence is not in Estonia, they have to ask the permission from the competent authority of the foreign country. The Chancellor explained to the petitioner that such international cooperation concerning child protection is regulated by the [Convention on Jurisdiction, Applicable, Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children](#) and in Estonia the coordinator of the cooperation is the Ministry of Justice.

The Chancellor also verified lawfulness of the activities of local authorities in connection with the reorganisation of alternative care in respect of a child. The Chancellor was contacted by a minor receiving the substitute home service whom Tartu City Government decided to transfer from the substitute home to a shelter. Neither prior nor subsequent to the decision Tartu City Government tried to contact the petitioner. Therefore, the petitioner was not aware of the change of their residence, the location of their documents or whether their rights upon starting independent life after the stay in a shelter would be the same as after the stay in the substitute home.

As a result of the proceedings, the Chancellor found that Tartu City Government had violated the duty to involve the petitioner who was a minor in the reorganisation of their alternative care, including informing the petitioner, hearing their opinion and preparing them for the changes in the organisation of their life.

On this basis, the Chancellor recommended to Tartu City Government to explain to the petitioner their rights, as well as the duties of the city government, upon the attainment of the age of majority by the petitioner, and explain which of the petitioner's documents were at the possession of Tartu City Government. The Chancellor also recommended to Tartu City

Government in the future to take reasonable efforts in line with the principle of good administration for involving people in resolving welfare related issues concerning them, inter alia by using different channels and modes of communication for obtaining contact with the persons.

Tartu City Government replied that after starting to live in the shelter the petitioner was provided extensive counselling and given recommendations for future organisation of life.

4. Opinion on the Draft Child Protection Act

On 19 November 2014, the Riigikogu adopted the new [Child Protection Act](#) which enters into force on 1 January 2016.⁹⁵ With the entry into force of the new Child Protection Act the old Republic of Estonia Child Protection Act passed in 1992 will become invalid. The need for a new law regulating child protection has been talked about for years. In 2003, one of the critical remarks made by the UN Committee on the Rights of the Child in its final conclusions in respect of Estonia was that the current Child Protection Act was not sufficiently implementable. The current Act has been criticised by various interest groups and the need for its amendment has also been expressed by the Chancellor of Justice. Thus, the adoption of the new Child Protection Act is a major step forward in creating a legal framework to better guarantee the well-being of children.

The adoption of the new Act was preceded by a long consultation and involvement period. In the preparatory stage of the new Draft Child Protection Act, the Ministry of Social Affairs involved different interest groups and organised public debates since 2011. Appendix 3 (“Overview of the involvement process for preparing the new Draft Child Protection Act in 2011–2014”) to the explanatory memorandum to the Act contains a detailed overview of the involvement of interest groups and the relevant involvement events.

At the request of the Ministry of Social Affairs, PriceWaterhouseCoopers also carried out a baseline analysis on the revision of the organisation of child protection. The final report by PriceWaterhouseCoopers points out the shortcomings in the organisation of child protection in Estonia and contains recommendations for improving the system.

The Children’s Rights Department of the Office of the Chancellor of Justice was also involved in preparing the Draft Act and submitted its observations and proposals. On 30 January 2014, the Chancellor submitted to the Minister of Social Affairs an opinion on the Draft Child Protection Act. The Chancellor in his opinion highlighted the following strengths of the Draft Act:

1. The Draft Act harmonises the regulative framework under the Child Protection Act, the Family Law Act and the Social Welfare Act concerning child protection. For example, the Draft Act eliminates discrepancies between the Family Law Act and the Social Welfare Act concerning separation of the child from the family.
2. The Draft Act establishes the principle of cross-sectoral cooperation in the field of child protection, which should ensure that in the future all the issues concerning the rights and well-being of children are resolved in a uniform manner, regardless of whether the

⁹⁵ § 19 of the Act (requirements for child protection officials) enters into force on 1 January 2020.

particular issue is within the area of government of the Ministry of Social Affairs, the Ministry of Education and Research, the Ministry of Justice, or any other ministry.

3. On the basis of the Draft Act, the child protection council as a Government committee will be established, which should have a key role in ensuring cross-sectoral child protection and in harmonising all the draft legislation and national strategies concerning child welfare.
4. The Social Insurance Board will establish child protection related competence (a child protection unit) and the Board's child protection officials will be counselling local government child protection workers in resolving cases of child protection.
5. The Draft Act establishes the bases for regular employment counselling of child protection workers of local authorities and the obligation to provide them training courses on the national level.
6. The Draft Act remedies the shortcomings in the regulative provisions concerning separation of the child from the family by specifying certain aspects so as to ensure a more uniform implementation practice in local authorities as regards separation of children from their families.

The Chancellor of Justice also found several weaknesses in the Draft Act but their detailed description hereby would not be practicable. Therefore, only some of the problems have been highlighted below, and a more detailed analysis of them can be found in the Chancellor's opinion. For example, the Chancellor pointed out that the principles of prevention established by the Act are too general and declarative and they do not essentially oblige the local authorities to carry out specific prevention with regard to children and families. In the opinion of the Chancellor, the Act should have contained more specific provisions on prevention. The Chancellor also found that the requirement that a local authority should establish a staff position of a child protection official only "if necessary" is insufficient – the Act provides for very important measures the implementation of which depends on the existence of a child protection official. If a local authority does not have such a staff position, the quality of child protection work in that local authority will suffer. Also, in the opinion of the Chancellor the Act should have established more clearly the issues concerning separation of the child from the family; some confusion is caused by the provision concerning separation of the child from the family when the parent does not voluntarily agree to place the child with a service provider. The parent's right of complaint could also be established more clearly in the Act.

5. Verification of constitutionality of the new Child Protection Act

During the reporting year, the Chancellor also received a petition for verification of constitutionality of the new Child Protection Act which has not yet entered into. As a result of the proceedings, the Chancellor found that the provisions of the Act mentioned in the petition, to the extent pointed out by the petitioner, were not in conflict with the Constitution or the UN Convention on the Rights of the Child.

With regard to appreciation of the family, the Chancellor explained that § 7 of the new Child Protection Act establishes, *expressis verbis*, that the natural environment for the development and growth of the child is the family and the primary liability for ensuring the child's rights and well-being lies with the parent or with the person raising the child. The Chancellor also explained with regard to the child's right to know his or her parents that this right arises from § 27(3) of the Constitution and § 116 of the Family Law Act. The parent's duty to raise their child and care for the child arising from § 27(3) of the Constitution as well as § 116(2) of the

Family Law Act ensures the right of the child to receive care from his or her parents. In order to ensure the right of the child to know his or her parents, § 143 of the Family Law Act also establishes the right of the child to maintain personal contact with his or her parents and the right and duty of the parents to maintain personal contact with their child.

With regard to contesting the activities of a child protection official, the Chancellor found that a reply to the question under which procedure the activities of a child protection official should be contested can be found in the Administrative Procedure Act and the Code of Administrative Court Procedure, and depending on the legal nature on the contested activity also in the Code of Civil Procedure. The Chancellor explained the competence of civil and administrative courts and found that with regard to the choice of the court it is of decisive importance what specifically is being contested. If the person contests the activity or omission of a child protection official within administrative proceedings, for example finding that the statutory deadline for assessing the need for assistance was violated or the concerned person was not heard in the process of issuing an administrative act, they should have recourse to the administrative court. However, if the person contests interference in his or her own parental right of custody, for example finding that the child was separated without justification, it is a matter of custody rights and the person should have recourse to the civil court.

With regard to § 33(1) of the new Child Protection Act which gives child protection officials the right to restrict the communication between the child and the parent for 72 hours in case of separation of the child from the family, the Chancellor found that the Child Protection Act is a *lex specialis* in relation to the Family Law Act as regards the competence of the child protection official in the case of separation of the child from the family. The Chancellor emphasised that restriction of the right of communication is a temporary and exceptional measure – the child protection official may determine the procedure of communication between the child and the parent for a maximum of 72 hours, after which the official should have recourse to the court. Establishing any more permanent restrictions on the visiting rights and determining the procedure of communication will still remain within the competence of the court under § 143 of the Family Law Act.

§ 33(1) clause 2 of the new Child Protection Act establishes that a child in danger may be temporarily separated from the family if he person exercising the right of custody over the child refuses the temporary placement of a child with a service provider. The Chancellor found that this provision should be interpreted in combination with § 32(4) of the same Act, which establishes that a child in danger shall be placed in safety at a social, health care or educational institution or person providing such service (i.e. service provider) or at a person who is safe for the child depending on the child's needs and the situation. As in the case of separation of the child from the family it is inevitable that the child is placed in an institution providing the relevant service, it is obvious that by allowing, in case of existence of the bases provided for in § 135(4) of the Family Law Act, separation of the child from the family without a court's authorisation the law should also allow the placement of the child in the necessary institution (e.g. a shelter, hospital) without the court's authorisation. At the same time, the Chancellor expressed the opinion that § 33(1) of the new Child Protection Act could be worded more clearly and in its present form it is confusing. In the opinion of the Chancellor, § 33(1) clauses 1 and 2 of the new Child Protection Act lack an independent regulative effect because the legal basis for a child's separation from the family is the danger to the child's life or health as established in § 33(1) (first sentence) of the same Act.

With regard to the petitioner's criticism that the Riigikogu Social Affairs Committee did not involve the petitioner in the processing of the Draft Act, the Chancellor found that the petitioner as the natural person had been able to present her views to the Riigikogu Social Affairs Committee and she had been heard at the meeting of the Committee.

In conclusion, the Chancellor drew the attention of the petitioner to the fact that this a new Act which has not yet entered into force and it is not ruled out that not all the legal provisions in it will begin to function in a manner and way as intended by the legislator. Therefore, it is possible that in the future some problems in practice may arise which may also lead to unconstitutionality.

III. INSPECTION VISITS

During the reporting year, the Chancellor made four inspection visits to child care institutions. Two of the visits were announced and two were unannounced. The Chancellor's visit to Jõhvi Youth Treatment and Rehabilitation Centre was described in more detail in Part I of the Overview.

In addition, the Chancellor visited three substitute homes: Tilsu Children's Home; Imastu Residential Educational Institution and Lasnamäe Centre of Tallinn Children's Home.

Similarly to the previous years, during the reporting year the Chancellor paid special attention to the activities of providers of the substitute home service in ensuring the fundamental rights and freedoms of children separated from the family. For this, the Chancellor conducted inspection visits to Tilsu Children's Home and Imastu Residential Educational Institution and a follow-up visit to Lasnamäe Centre of Tallinn Children's Home. The first of the visits was announced and the other two unannounced. The following part contains an overview of the main problems found upon the inspection.

1. The number of staff in families

All three substitute homes had problems with complying with the requirements for the substitute home service as regards the number of educational staff in families. Tilsu Children's Home and Imastu Residential Educational Institution only had one member of staff on duty for several families although according to the law each family should have at least one staff member. In addition, all three substitute homes had families with children with a severe or profound disability in which only one staff member was present during the day although according to the law there should be at least two staff members on duty. In Tallinn Children's Home the Chancellor found the problem of shortage of staff already during the previous inspection visit and drew the attention of the substitute home to it already in 2013 but the situation had not improved as compared to the previous visit.

The Chancellor explained to the substitute homes that even if the statutory requirement may seem too harsh in certain situations, this cannot be a justification for not complying with the law. The legislator has established specific requirements in order to ensure the well-being of each child, i.e. sufficient care, complete safety and individual attention. In any activities concerning children the best interests of the child should always be placed first. Thus, the underlying presumption should be what is best for the child in view of the child's individual situation, and not what is most convenient in terms of organisation of work.

On this basis, the Chancellor proposed to the substitute homes to comply with the requirements established by law with regard to the required number of educational staff on duty.

2. Qualification of the staff

Tilsu Children's Home and Imastu Residential Educational Institution also had shortcomings in complying with the qualification requirements for educational staff. In Tilsu Children's Home four staff members on duty at night did not have any qualification for educational work. Two

families in Imastu Residential Educational Institution lacked a staff member corresponding to the qualification of the carer.

Under the qualification requirements established by the law, educational staff are divided into the following categories: assistant carers, junior carers, carers and senior carers. Lowest qualification requirements apply for assistant carers and the highest for senior carers. Each family of a substitute home must have at least one staff member having the qualification of carer.

The Chancellor explained to Tilsi Children's Home that even at night in each family there must be a staff member having the qualification of at least an assistant carer. In case of Imastu Residential Educational Institution the Chancellor pointed out that a staff member having the qualification of at least a carer is necessary due to their wider knowledge and experience in order to give advice and support to other carers with lower qualifications in taking care of the children. Staff without sufficient qualification are not necessarily able to resolve more complicated educational 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 substitute homes to ensure that all the people taking care of children in substitute home families comply with the qualification requirements established by the law.

3. Placement of children in families

Both in Tilsi Children's Home and Imastu Residential Educational Institution children had sometimes been transferred from one family to another. In Tilsi, for example, upon attainment of a certain age children had been moved to a family with older children. In Imastu, transfers had occurred, for example, in case of arrival of a new child in the family.

The Chancellor drew the attention of the substitute homes to the importance of creating family-like conditions and the consistency of alternative care. The organisation of life in a substitute home should resemble family life as much as possible. Transfer of children from one family to another does not contribute to the creation of family-like relationships in a substitute home. Transfer of children from one family to another interrupts the relationships established between the children and carers in the current family, and the children must get used to new children and staff which does not provide a good basis for maintaining trust-based relations. The establishment of permanent affection-based relationships should be the main aim of a substitute home, helping to compensate the intimate bonds necessary for the development and life of children deprived of their family.

On this basis, the Chancellor recommended to the substitute homes not to transfer children from one family to another, except when this is in the best interests of the child.

4. The location and equipment of the living rooms of children

In Imastu Residential Educational Institution, the Chancellor was also concerned about the location and equipment of the children's living rooms. Rooms of one of the families in the substitute home were located between the lift and the living rooms of adult clients receiving the

special care service, and therefore those clients regularly passed through the family of the children. In another family the living room had a door with bars and the room of one child only had a mattress. According to the staff, such an arrangement was due to the alleged bouts of rage of one child.

The Chancellor explained that the general location of living rooms has an important role in ensuring family-like conditions, security and privacy. The provision of the service for children in separate rooms allows shaping the environment so that it corresponds to their age and development and helps to avoid threats to the well-being of children arising from third party adults. Family rooms of a substitute home are the children's home which should not be passed through by neighbours. Inter alia, children should be ensured the right to privacy, so that the family and the children could be on their own without interference. The threat to the safety of the children should also be ruled out: the right of the child to safety is violated not only when the child has been hurt but also when the potential risks have not been mitigated.

The Chancellor also noted that empty and barred rooms do not create a home-like environment. Of course, it should be taken into account that the furniture and design should meet the needs of the children and be safe. Thus, it is understandable if the furniture in family rooms differs depending on the special needs of the children. However, experts believe that even in case of children with behavioural problems a normal living environment contributes to changing their behaviour towards the desired outcome. Therefore, instead of bars and removal of the furniture a solution should be found which ensures that the furniture is safe and home-like at the same time (e.g. furniture from break-resistant material, curtains attached with a snap) and that children are given repeated opportunities to get used to the furniture.

In conclusion, the Chancellor recommended to organise the provision of the substitute home service in a way that the clients receiving others kinds of services do not pass through the living rooms of the substitute home, and to consult with specialists on how to furnish the living rooms so that they are safe and home-like at the same time.

5. Catering of children

The main purpose of the follow-up visit to Lasnamäe Centre of Tallinn Children's Home was to get an overview of how the substitute home had complied with the recommendation given in 2013 to ensure the right of children to sufficient, varied and fully nutritional food. At that time the food portions did not differ according to the age group of the children, they did not meet the food energy need of the children and did not meet the Estonian food or nutritional requirements.

Based on the results of the follow-up inspection, the Chancellor could note with satisfaction that the provided food corresponded to the daily energy needs of children of different ages. However, it was found that the intervals between meals were longer than allowed and the food contained somewhat more fats and less carbohydrates than required. Therefore, the Chancellor recommended to the substitute home to comply in the future with the health protection requirements established for catering.

IV. PROMOTING THE RIGHTS OF THE CHILD

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. The following part contains an overview of the activities aimed at promoting the rights of the child during the reporting year: the events organised, the materials published, public addresses, training courses, lectures, articles, and other activities.

1. Informational brochure „Bullying-free School“

The Ombudsman for Children together with experts prepared an informational brochure „[Bullying-free School](#)“, containing practical advice for the prevention of bullying and resolving incidents of bullying for pupils, teachers and parents. For example, the part of the brochure intended for pupils contains advice for those being bullied as well as bullies. Teachers find advice on how to prevent bullying, how to create a positive atmosphere in a classroom and how to resolve incidents of bullying. Parents are given explanations on, for example, how to understand whether their child is being bullied or is a bully, and what to do in such situations.

The authors of the brochure on bullying are Triin Kahre, head of the Estonian Association of School Psychologists, Ly Kasvandik, head of the Family Centre You and I, Jürgen Rakaselg, school safety expert at the Ministry of Education and Research, and Kristiina Treial, University of Tartu lecturer and chairman of the supervisory board of the Foundation Against Bullying.

The informational brochure „Bullying-free School“ is available in an online version both in Estonian, English and Russian.

2. Conference „Bullying-free Education“

The Children’s Rights Department of the Chancellor’s Office in cooperation with the Estonian Union for Child Welfare organised a conference „Bullying-free Education“ [*Kiusamisvaba haridustee*] on 2 April, introducing the existing programmes and materials for creating a bullying-free learning environment. The conference was opened by Her Royal Highness Danish Crown Princess Mary and the wife of the President of the Republic of Estonia Evelin Ilves.

Presentations at the conference were delivered by recognised international experts Christina Salmivalli from Finland and Lars Stilling Netteberg from Denmark, as well as experts from Estonia: Margit Sutrop from the University of Tartu Centre for Ethics, Sirje Piht from Tallinn University Institute of Educational Sciences, and Kristiina Treial from the University of Tartu. Among the topics discussed was also the pilot project of the Foundation Against Bullying (KiVa) and the project of the Estonian Union for Child Welfare „Bullying-free kindergarten and school“.

Heads of the school and the kindergarten participating in programmes against bullying shared their experiences at the conference. A joint debate was held on how a bullying-free study environment contributes to the pupils’ educational achievements and general well-being, and the participants exchanged experiences and jointly outlined future plans.

At the conference the informational brochure „[Bullying-free School](#)“ prepared in cooperation between the Ombudsman for Children and experts was introduced for the first time.

3. „Bullying-free School“ homepage

Under the guidance of the Ombudsman for Children, the homepage „[Bullying-free School](#)“, was prepared, offering practical advice for preventing bullying and resolving incidents of bullying.

The website explains what bullying is and what can be done against it, and also offers advice on creating a safer school environment. Individual advice is given for pupils, teachers, school managers, parents and support specialists. The homepage also contains references to different programmes against bullying and topical websites, and also includes a list of useful literature. The homepage is in Estonian and Russian and is compatible with smartphones.

4. Address of the Ombudsman for Children to school managers

The Ombudsman for Children Indrek Teder in his address at the beginning of the school year drew the attention of school managers to the importance of their role in shaping the school environment and values. He encouraged school managers to make a safe and bullying-free school environment a priority for their schools, because a school environment which is safe both physically and mentally, as well as friendly and supporting relationships, is a precondition for successful learning.

The Ombudsman for Children in his address also found it necessary to remind school directors that the schools should pay closer attention to the health protection requirements established by the Minister of Social Affairs, in particular the requirements for arranging tests.

In his address, the Ombudsman also informed the school managers about the new website „[Bullying-free School](#)“ and the online version of the informational brochure „[Bullying-free School](#)“. In addition, the Ombudsman encouraged school managers to make more active use of programmes against bullying.

5. The merit award „With Children and For Children“

At a festive event held in the Chancellor’s Office on the international Day for Protection of Children, recognition was given to persons who with their new initiatives or long-term activities had significantly contributed to the well-being of children.

Awards were presented in six categories. The recognition „Lapse suur tegu“ [Child’s noble deed] was given to the pupil of Keeni school, Jaagup Hinn, for daily assistance to his disabled schoolmate. The award in the category „Elutöö“ [Lifetime achievement] was given to Leelo Tungal whose literary production and activities have affected many children. Trauma therapist Maire Riisi was recognised with the title „Muutuste looja“ [Creator of change] for her long-term work with families with grieving children. The compilation „Ohutusraamat koolilapse vanematele“ [Safety book for parents of school children] brought recognition to the author and

leader of the project „Aasta tegu“ [Deed of the year], chief of the West Prefecture’s prevention service, Liilia Mänd. The title „Aasta pere“ [Family of the year] was given to the family Mikk, whose large and close family has passed on love for music to many people from generation to generation. The favourite of the children and young people was reading dog Susi and its master Maarja Tali.

The initiators of the merit award „With Children and For Children“ are the Estonian Association of Substitute Home Workers, NGO the Estonian Union for Child Welfare, NGO the Estonian Association of Large Families, NGO Oma Pere, NGO SEB Charity Fund, Foundation Dharma, and the Office of the Chancellor of Justice. The merit awards were presented by the Chancellor of Justice and Ombudsman for Children Indrek Teder and the Minister of Social Affairs Helmen Kütt.

6. Discussion groups „Minu esimesed triibulised“ organised by the Ombudsman for Children, the Estonian Children’s Literature Centre and Eduard Vilde Museum

In the reporting year, 110 years passed from the first publication of the children’s story „Minu esimesed triibulised“ [My first stripes] by Eduard Vilde. On this occasion, the Ombudsman for Children in cooperation with Eduard Vilde Museum and the Estonian Children’s Literature Centre organised a topic week „Minu esimesed triibulised“.

In the framework of the topic week, on 14, 15 and 17 October discussion groups in the Estonian Children’s Literature Centre were organised for 3rd and 4th grade pupils. During the events, passages from Vilde’s story were read, problem situations were analysed and discussions with children were carried out on the issues of equality, justice, punishment, noticing, and violence-free childhood. Advisers from the Children’s Rights Department of the Chancellor’s Office also explained the rights and duties of the child for children, and drew their attention to connections between the situations described in the story and the incidents happening nowadays. Discussion groups ended with a striped creative assignment.

7. 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.

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 fourth consecutive year. This year’s programme was dedicated to the 25th anniversary of the UN Convention on the Rights of the Child.

The special programme that was shown on 14–23 November consisted of nine 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. The choice of films within the programme was very diverse: there were films from Cuba, Russia, Poland, Nordic countries and the United States. This time the central topic was children and young people who have had to take on a heavier

responsibility for taking care of themselves and their close ones than would be appropriate for their age.

The special film programme on the rights of the child also included debates in the cinema hall with participation of different experts on child issues as well as young people concerned by the topics of the films.

8. Advisory committee to the Ombudsman for Children

An advisory committee 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 committee 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 committee is regulated by a statute.

Members of the advisory committee are children under 18 years old, representing different children's and youth organisations. The advisory committee includes representatives from the following organisations: youth assembly of the Estonian Guides Association, the Estonian National Youth Council, the Estonian Scouts Association, *Eesti 4H*, Girls' corps "Home Daughters" of the Estonian Defence League, 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 2014, members of the advisory committee met once. The debate focused mostly on school safety as this is an important topic for young people. A safe childhood is one of the priorities for the Ombudsman for Children and in the promotional work during the reporting year the focus was precisely on the issues of bullying-free education.

The discussions also revealed that in the worst cases bullying may last for years. This is also confirmed by surveys. Disconcerting was the assertion by young people that many children do not tell about bullying to their parents, or even if they do the parents often do not dare, do not know how or do not want to interfere. The young people found that if parents were prepared to interfere this often had a result and the bullied child got help. In the opinion of the young people discussing and counselling helps. Furthermore, they added that in case of problematic children it is important to see their positive qualities and to support them – in this regard a lot depends on the dedication of teachers.

The ideas and opinions expressed by young people gave inspiration to the Ombudsman for Children in preparing the informational brochure and the website „Bullying-free School“. The young people also helped in preparing the conference „Bullying-free Education“ for school and kindergarten managers. Members of the youth association *Eesti 4H* belonging to the Advisory Committee prepared video footage based on observations by pupils about bullying and recommendations to help make the school environment safer. The summary of the video footage was also presented at the conference „Bullying-free Education“, with participation of the authors of the video material.

9. Domestic cooperation

For protecting and promoting the rights of children, advisers to the Ombudsman for Children also cooperated with several non-profit associations and organisations in addition to state and local government bodies during the reporting year: youth association *Eesti 4H*, University of Tartu Centre for Ethics, the Estonian Children's Literature Centre, Eduard Vilde Museum, Family Centre You and I, the Estonian Association of School Psychologists, the Estonian School Student Councils' Union, Just Film, the Estonian Union for Child Welfare, NGO SEB Charity Fund, the Foundation Against Bullying, the Estonian Association of Substitute Home Workers, NGO the Estonian Association of Large Families, NGO Oma Pere, the Foundation Dharma, NGO youth association TORE, and others.

10. International cooperation

In spring 2014, the second meeting of the ombudsmen for children of Baltic countries was held in Vilnius. The Polish ombudsman for children was also invited to the meeting, and he was interested in cooperation with Baltic ombudsmen for children and expressed the wish to attend the annual meetings also in the future. The two-day meeting organised by the Lithuanian ombudsman for children was used to share best practice and exchange experiences, to discuss common problems and future cooperation opportunities. It was agreed that in 2015 the colleagues would be hosted by the Polish ombudsman for children. The tradition of organising annual meetings began in 2012 on the initiative of the Estonian Ombudsman for Children.

The Deputy Chancellor of Justice Nele Parrest and head of the Children's Rights Department of the Chancellor's Office Andres Aru attended the [General Assembly and Annual Conference of the European Network of Ombudspersons for Children \(ENOC\)](#) in Edinburgh in October 2014. In 2014 the main topic of ENOC annual conference was *The Impact of Austerity on the Realization of Children's Rights*. At the annual conference, ENOC members adopted a [position statement](#), emphasising the particular vulnerability of children and the need to analyse the impact of austerity measures on children and to prevent children from falling into poverty. The statement, inter alia, calls on all European countries to adopt national plans of action to combat child poverty and social exclusion and to collect regular data on the situation of children and on the financial resources allocated for children in the national budgets.

11. Participation in the activities of other institutions

In 2014, staff of the Children's Rights Department also participated in the activities of other institutions. Margit Sarv participated in the work of the hobby grant committee of the NGO SEB Charity Fund, in the jury of the creative competition *Miks ma vajan perekonda* [Why I need a family] of the Child Advocacy Chamber, and in the selection committee of the merit award of the Estonian Association of Substitute Home Workers. Kristi Paron participated in the work of the movement „Bullying-free Education“.

12. 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.

13. The conference *Good School as Values-based School. How to End Bullying in Schools?*

On 10–11 December the 7th values-based education conference *Good School as Values-based School. How to End Bullying in Schools?* was held in Tartu, organised jointly by the University of Tartu Centre for Ethics, the Ministry of Education and Research, the Estonian Union for Child Welfare, the NGO TORE, the Foundation Against Bullying, and the Office of the Chancellor of Justice.

The conference focused on the safe school environment and good relationships at school. Presentations were given by several recognised experts: Christina Salmivalli, Suvianna Hakalehto-Wainio, Kristi Liiva, Anna Markina, Piret Visnapuu-Bernadt, Halliki Harro-Loit, Margit Sutrop, and many others.

The conference was opened by the Chancellor of Justice and Ombudsman for Children Indrek Teder and the panel discussion „Bully-free education – how to achieve it?“ was led by Kristi Paron, the adviser of the Children’s Rights Department.

14. 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.

14 January. I. Teder, welcome speech at the presentation of the compilation „Laste heaolu“ [Child welfare] by Statistics Estonia at the Office of the Chancellor of Justice.

14 January. A. Reinomägi, presentation at the presentation of the compilation „Laste heaolu“ by Statistics Estonia at the Office of the Chancellor of Justice.

14 February. A. Aru, K. Paron, M. Sarv introduced the rights and duties of the child for pupils at Tondi Basic School.

13 March. M. Sarv, presentation at the seminar in Valga County Government introducing the compilation „Laste heaolu“ by Statistics Estonia.

16 March. M. Sarv, presentation at the seminar „Õigused ja kohustused“ [Rights and duties] of the NGO the Estonian Association of Substitute Home Children, in Tartu.

19 March. A. Aru, introducing the work of the Ombudsman for Children for the organisers of the penal reform in Moldova.

26 March. A. Aru, presentation „Laste kaasamine kohaliku elu korraldamisse“ [Involvement of children in organising local life] at the 10th day of cities and rural municipalities in Tallinn.

02 April. I. Teder, welcome speech at the conference „Bullying-free education“ at the Tallinn Teachers' House.

15 April. M. Sarv, presentation „Asenduskodude järelevalvest ja soovitud maavanematele“ [Supervision of substitute homes, and recommendations for country governors] at the information day for child protection officials of county governments at the Ministry of Social Affairs.

24 April. M. Sarv, presentation „Lapse õigused ja heaolu Eestis ja Euroopas“ [Rights of the child and child welfare in Estonia and Europe] for the candidates in European Parliament elections in Tallinn.

12 May. M. Sarv, presentation „Kohalike omavalitsuste rollist asenduskoduteenusel olevate laste hoolekande korraldaja ja eestkostjana“ [The role of local authorities as organisers of social welfare and guardians of children in alternative care] for child protection officials of Pärnu County local authorities at Pärnu Children's Village.

14 May. A. Aru, presentation „Lapse õigused asendushooldusel“ [Rights of the child in alternative care] at the seminar „Asendushoolduse tulevik Eestis“ [The future of alternative care] in Tallinn.

22 May. A. Aru, presentation on the rights of custody and visiting rights in respect of children at the seminar for child protection officials.

23 May. A. Aru, M. Sarv, introducing the rights and duties of the child at Keila-Joa Sanatorium Boarding School.

29 May. A. Aru, introducing the work of the Ombudsman for Children for the representatives of the Azerbaijani organisation Center for Innovations in Education.

01 June. I. Teder, welcome speech at the merit awards event „Lastega ja lastele“ [With children and for children] at the Office of the Chancellor of Justice.

11 June. A. Aru, M. Sarv, introducing the work of the Ombudsman for Children for youth workers from Australia.

11 August. A. Aru, M. Sarv introduced the rights and duties of the child for the participants at the summer camp of the youth association *Eesti 4H*.

16 August. K. Paron led the debate „Vaeslapsest talutüdrukaks: kuidas tegeleda laste vaesusega?“ on child poverty at the Festival of Opinion Culture in Paide.

28 August. A. Aru, presentation „Tänane õpilane – homne otsustaja?“ [Today's pupil is tomorrow's decision maker] at the education conference „Õpetaja – tuleviku kujundaja“ [Teachers shaping the future] in Valga.

01 September. I. Teder, address on the beginning of the school year.

11 September. I. Teder, welcome speech at the Praxis conference „Noor täna ja aastal 2030“ [Youth today and in 2030] in Tallinn.

15 October. A. Aru, presentation at Tartu County Government information day.

16 October. A. Aru, presentation „Lastega seotud teemade käsitlemine erinevate kaasuste kaudu lapse õiguste tagamisel“ [Coverage of child related issues based on various case studies in ensuring the rights of the child] at the seminar „Lapsed meedias“ [Children in the media] at Tallinn University Baltic Film and Media School.

31 October. M. Sarv, speech at the conference „Õigus väärikusele – euroopaliku sotsiaalpoliitika nurgakivi“ [The right to dignity – the cornerstone of European social policy] in the discussion panel on poverty and dignity of children.

26 November. A. Aru, introducing the work of the Ombudsman for Children for social workers from Armenia.

26 November. M. Sarv, presentation on the rights and duties of the child for pupils of Jüri Upper Secondary School.

05 December. I. Teder, opening speech at the conference „Laste ja noorte heaolu parandamine ning sotsiaalse tõrjutuse ennetamine“ [Improving the well-being of children and young people and prevention of social exclusion] in Tallinn.

05 December. A. Aru, participation in the panel discussion „Millele tugineb laste ja noorte heaolu ja toimetulek?“ [What is the basis for the well-being and coping of children and young people] at the conference „Laste ja noorte heaolu parandamine ning sotsiaalse tõrjutuse ennetamine“ in Tallinn.

05 December. N. Parrest, welcome speech at the session of the youth parliament in the Riigikogu.

10 December. K. Paron, led the panel discussion „Kiusamisvaba haridustee – kuidas sinna jõuda?“ [Bully-free education – how to achieve it?] at the conference „Hea kool kui väärtuspõhine kool. Kuidas tagada kiusamisvaba haridustee?“ [Good School as Values-based School. How to Ensure Bully-free Education?] in Tartu.

10 December. I. Teder, welcome speech at the conference Good School as Values-based School. How to Ensure Bully-free Education? in Tartu.

15. Articles, opinions, interviews

Tramm, K. [interview with Indrek Teder, Andres Aru and Andra Reinomägi]. Kus on see vaene, kurb ja üksildane Eesti laps? [Where is that poor, sad and lonely Estonian child?] – *Maaleht*, 23 January 2014.

Paron, K. Mida teha vanemliku hoolitsuseta laste heaks? [What should be done for children without parental care?] – *Eesti Päevaleht*, 06 January 2014.

Kivioja, A. Kui kooli tuleb uusimmigrandi laps. [When the child of a newly arrived immigrant comes to school] – *Õpetajate Leht*, 14 March 2014.

Paron, K. Kiusamine koolis – paratamatus või tegemata töö? [Bullying at school – inevitability or work undone?] – *Postimees*, 02 April 2014.

Kivioja, A., Sarv, M. Kuhu hääbub rahulolematust? [Where does dissatisfaction fade?] – *Postimees*, 02 June 2014.

Aru, A., Reinomägi, A. Laste kaasamisest kohaliku elu korraldamisse laste pilgu läbi. [Involvement of children in organising local life through the eyes of children] – *Sotsiaaltöö* No 3, 2014, pp 21–23.

Reinomägi, A., Sinisaar, H. On aeg vaadata laste heaolu laiemalt. [Time to take a wider look at child welfare] – *Sotsiaaltöö* No 3, 2014, pp 42–46.

Ibrus, K. [interview with Indrek Teder and Andres Aru]. Õiguskantsler: omavalitsused peaksid laste surmajuhtumeid uurima ja oma vead välja selgitama. [Chancellor of Justice: local authorities should investigate deaths of children and identify their mistakes] – *Eesti Päevaleht*, 08 September 2014.

Paron, K. Lõimigem kiusamisvastased programmid kooli väärtuskasvatusse. [Let's integrate programmes against bullying in the values-based education at school] – *Õpetajate Leht*, 17 October 2014.

Aru, A., Sarv, M. Lapsed, kellele on pandud liiga suur koorem. [Children who have had to take on a too heavy burden] – *PÖFF* magazine 2014, pp 100–101.

Aru, A. Lapse õiguste konventsioon – tööriist lapsesõbralikuma ühiskonna ehitamisel. [Convention on the Rights of the Child – a tool for building a more child-friendly society] – *Märka Last* No 9, 2014.

Gornischeff, K., Hainas, K., Sarv, M., Leps, A. Vastutust võtta on tähtis, aga mitte lapse- ja noorpõlve hinnaga. [It is important to take responsibility but not at the cost of childhood and

youth] – *Just Leht* (special paper of the Just Film festival, published as an insert of *Postimees* daily), 13 November 2014.

Advisers of the Children's Rights Department gave ten television interviews on the topic of the rights of the child in 2014. Five television interviews with Andra Reinomägi were made on the issues concerning the compilation „Laste heaolu“ [Child welfare]. Andres Aru in the Kanal 2 programme *Reporter* and Kristi Paron in the TV 3 programme *Seitsmesed uudised* talked about bullying. Margit Sarv was interviewed twice for the ETV programme *Aktuaalne kaamera* on the topics of the special programme on the rights of the child, and in the ETV programme *Terevisoon* she spoke about the merit award „With Children and For Children“.

In the reporting year, five radio interviews with the Ombudsman for Children and advisers of the Children's Rights Department were made. The Ombudsman for Children Indrek Teder in an interview to Kuku Raadio talked about his address to school managers on the beginning of the school year and introduced the new website on school bullying. On the Day for the Protection Children, Vikerraadio made an interview with Andres Aru who talked about the rights and duties of children and about the merit award „With Children and For Children“. Andres Aru also gave an interview for the Põlva County local radio station Raadio Marta, in which he introduced the work of the Ombudsman for Children, and in an interview for Kuku Raadio Andres Aru spoke about the inspection visit to Tapa Special School. Andra Reinomägi spoke on Kuku Raadio about the compilation „Laste heaolu“.

PART III
THE PRINCIPLE OF EQUALITY AND EQUAL TREATMENT

1. General outline

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.

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 2014, the Chancellor was contacted on 51 occasions in connection with the issues of equal treatment. Of these, 34 cases concerned the general fundamental right to equality and 17 concerned discrimination. In 28 proceedings, the matter concerned conformity of a legal act with the Constitution (i.e. the constitutional review proceedings).

2. Conformity of legislation of general application with the Constitution

With regard to the constitutional review of legislative acts, on 4 July 2014 the Chancellor submitted a memorandum to the Minister of Internal Affairs, as he found that the obligation of a person who provides housing for an alien or concludes a commercial lease agreement with an alien to verify the legal basis for the alien's stay in Estonia was contrary to the Constitution. The Chancellor noted that § 289(1) and § 305 of the Aliens Act disproportionately interfered with the fundamental right to ownership in combination with the right to the inviolability of family life and privacy, as well as the general fundamental right to equality. With regard to the principle of equal treatment, the Chancellor noted that the additional obligations and inconveniences arising in connection with the conclusion of a lease agreement with a person not holding Estonian citizenship may induce the lessor to refrain from concluding an agreement with such an alien, which may lead to indirect discrimination on grounds of ethnicity in terms of availability of housing.

The Chancellor sent a memorandum to the Minister of Education and Research concerning the conditions for applying for a study loan. The Chancellor assessed the conformity of § 15(1) of the Study Allowances and Study Loans Act with the Constitution, because under the Act a person staying in the country on the basis of a temporary residence permit or right of residence cannot apply for a study loan. The Chancellor found that such a restriction was contrary to § 37(1) in combination with § 12(1) of the Constitution. The Chancellor found that it is possible to distinguish situations of staying in the country on the basis of a temporary residence permit where the purpose of moving to Estonia was of permanent nature, and to delimit the grounds for applying for a temporary residence permit which cannot be equated with the cases of applying for a study loan.

The Chancellor also received three petitions requesting review of constitutionality of legislation concerning compliance with the principle of equal treatment on grounds of sex, but the Chancellor did not find the existence of discrimination.

One petitioner raised the issue of constitutionality of § 9(1) of the Unemployment Insurance Act regulating the calculation of the unemployment insurance benefit of a parent who worked to a small extent during their parental leave, because in a situation where the insured person has worked to some extent during the parental leave they may find themselves in a disadvantaged position as regards the calculation of the benefit in comparison to the parent who did not work during the parental leave.

The Chancellor noted that according to the explanations by the Ministry of Social Affairs the neutral formula for the calculation of the benefit under the Unemployment Insurance Act (i.e. the remuneration paid during the latest period of employment is used as a basis for everybody) ensures, on the one hand, that the basis for the calculation of the insurance benefit is the same for all the applicants and, on the other hand, that the applicants for the insurance benefit cannot arbitrarily choose a basis for the calculation of the benefit which is more favourable for them.

The Chancellor found that if, instead of a neutral formula for the calculation of the benefit, a different formula would be introduced which takes into account the objective reasons for earning a lower than usual income it would inevitably lead to an unjustified different treatment of other groups. This would happen, inter alia, because it is almost impossible to distinguish objective reasons from the subjective reasons as to why one or another person during a certain period of their life earns less or more than their habitual income. This, in turn, could lead to an unjustified unequal treatment of all the applicants for the benefit. On this basis, the Chancellor concluded that the current situation was in conformity with the Constitution.

In another case, the petitioner asked to verify whether the Military Service Act was in conformity with the Constitution to the extent that it establishes the national defence obligation only for male citizens of the Republic of Estonia. The Chancellor found that under § 124 of the Constitution the legislator could in principle establish the national defence obligation only for male Estonian citizens. Complying with the national defence obligation as a constitutional duty brings about a restriction of various fundamental rights. In establishing the national defence obligation, the legislator must keep in mind that the number of persons having to bear the obligation should be optimal. Imposing the national defence obligation on absolutely all Estonian citizens for purposes of national defence might not be necessary. The Riigikogu in establishing the national defence obligation has found that for purposes of effective national defence it is sufficient if the obligation applies to men. The choice for men may be due to the reason that performing of the tasks arising from the national defence obligation is more feasible for men in comparison to women, in view of physiological peculiarities of the sexes.

In addition, the Chancellor was asked to verify whether the Health Insurance Act was compatible with the principle of equal treatment to the extent that a referral is required to get an appointment with an andrologist at the expense of the Estonian Health Insurance Fund unlike in case of an appointment with a gynaecologist where no referral is needed. The Chancellor found that in establishing the requirement of a referral as a matter of health care administration the legislator has a rather wide margin of discretion and the Chancellor cannot assess its practicability. Therefore, the Chancellor found that in view of factual gender differences and the diversity of the health care services provided within either speciality, the different conditions for getting an appointment with these specialist doctors cannot be considered as evidently unjustified.

In addition, the Chancellor was asked to verify whether the regulation defining school Christmas holidays was in conformity with the Constitution. The Chancellor found that nowadays the words “Christmas”, “Christmastime” or “Christmas holidays” do not have the meaning of a religious holiday in the context of state and municipal schools, rather it is a holiday based on popular traditions aimed at celebrating the winter solstice, and in Estonian schools Christmas is also celebrated in this meaning. The Chancellor found that no matter what religious beliefs a child or their family hold, a public school must be neutral and impartial with regard to the issues of church and religion. Moreover, the Chancellor noted that the legislator has established a flexible legal basis for school holidays as under § 24(7) of the Basic Schools and Upper Secondary Schools Act, on the basis of a proposal of the head of the school and with the approval of the board of trustees, the owner of a school may establish school holidays different from those established by the Minister of Education and Research.

Within his ombudsman function, the Chancellor also analysed how people with a mobility, hearing and visual impairment are ensured the right to use the services of a notary. On 26 September 2014, the Chancellor made recommendations to the Minister of Justice and the Chamber of Notaries, as he found that people with a mobility, hearing and visual impairment might not be ensured sufficient access to the services of notaries.

The Chancellor recommended to the Chamber of Notaries (1) to assess the accessibility of its homepage (for people with a visual impairment) and to publish on its homepage, in a manner accessible for people with a visual impairment, information on how the services of notaries are provided for people with a mobility, hearing and visual impairment, and to recommend notaries to publish the relevant guidelines in the same way on the websites of their offices; (2) to consider in cooperation with the Ministry of Justice drawing up a plan of action on how to make notaries’ offices accessible for people with a mobility, hearing and visual impairment; (3) to consider drawing up advisory guidelines for notaries on the choice of location of a notary’s office and providing services to people with a mobility, hearing and visual impairment, involving the relevant organisations of people with disabilities in preparing the guidelines; (4) to consider, in cooperation with the Ministry of Justice and competent sign language interpreting specialists, defining of objective criteria (e.g. the extent of the hearing loss and the corresponding level of disability, a test to establish the reading or writing ability, etc) for assessing the need for the involvement of a sign language interpreter, and preparing the relevant guidelines; (5) to ask that in the provision of notarial services to deaf people notaries should prefer using a certified sign language interpreter when the need for interpreting services appears.

The Chancellor also made recommendations to the Ministry of Justice to analyse the conformity of rules established under the Notarisation Act with the needs of people with a hearing or visual impairment as well as deafblind persons, and to prepare the relevant plans of action and guidance materials.

3. General fundamental right to equality, and discrimination

In addition, the Chancellor dealt with a few petitions in which he verified whether the activities of public authorities were in conformity with the principle of equal treatment. The Chancellor did not find any violations of the rights.

For example, the Chancellor received a petition from a university student who found that they had been discriminated due to their special needs when applying to participate in job shadowing, as they used the assistance of a guide dog. The Chancellor found that even though the petitioner had been treated differently due to their special needs, it did not constitute discrimination, taking into account the process of applying to become a job shadow.

The Chancellor also received a petition concerning the study opportunities of a child with special needs in a vocational school. The Chancellor noted that the school has to consider adapting its existing possibilities to a person's special needs but the school is not required to make unreasonable efforts to ensure that everyone could study any speciality that they wish.

The Chancellor also received a petition concerning the age restrictions for participation in the national dance celebration. The Estonian Song and Dance Celebration Foundation explained that optional approximate age ranges for the candidates were established for some types of dance groups in view of the different level of preparation of the groups and the concept of the celebration because at the 2014 dance celebration each type of dance group had been assigned a role in a family. The Foundation assured that the candidates admitted to the dance celebration were chosen in the course of preliminary rehearsals based on their dancing skills. Therefore, the Chancellor had no basis to consider the procedure for participation in the dance celebration as discriminatory. However, the organisers of the dance celebration noted that after the dance celebration, inter alia, the justification for establishing the age ranges of the groups will be reviewed.

The Chancellor was also contacted by a person with a request for an explanation concerning the application of the principle of gender equality in connection with an incident at school. At a nationwide competition children had received prizes which were handed over to boys with ceremony while the girls had to perform additional tasks to get the prizes and instead of being handed over the prizes were placed on the floor.

In 2014, the Chancellor received a few complaints concerning the alleged discriminating behaviour of private persons, but the Chancellor did not adopt a substantive position on these issues. For example, a person complained that they had been discriminated based on their ethnicity when renting a point of sale. However, the petitioner decided to have recourse to the Equality Commissioner for an opinion, and therefore the Chancellor did not initiate proceedings. In another case the petitioner noted that professional associations treated them less favourably as a foreign citizen because Estonian was used as the language of communication.

Thus, no conciliation proceedings were carried out in 2014 and the Chancellor has still not approved any agreements reached in conciliation proceedings.

In the Chancellor's previous overviews, the Chancellor's memorandums concerning gaps in legal regulation or failure to implement the existing provisions had also been explained. In this connection it is worth mentioning that on 9 October 2014 the Riigikogu adopted the Registered Partnership Act but the implementing legislation still needs to be passed.

Unfortunately, the Equal Treatment Act has still not been revised. Previously, the Chancellor has drawn 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).⁹⁶

In 2011, the Chancellor also submitted a memorandum to the Minister of Social Affairs with regard to the implementation of the Gender Equality Act. 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. The Ministry of Social Affairs presented the relevant regulation for an approval round at the beginning of 2015 but so far the regulation has not yet been adopted.

⁹⁶ On 19 June 2008, the Chancellor submitted his opinion on the Draft Equal Treatment Act (262 SE I) to the Riigikogu Constitutional Affairs Committee and on 9 May 2011 a memorandum to the Minister of Social Affairs.

PART IV
STATISTICS OF PROCEEDINGS

1. General outline of statistics of proceedings

1.1. Petition-based statistics

In 2014, the Chancellor of Justice received 1945 petitions. In comparison to 2013, the number of petitions has increased by 2.3%.

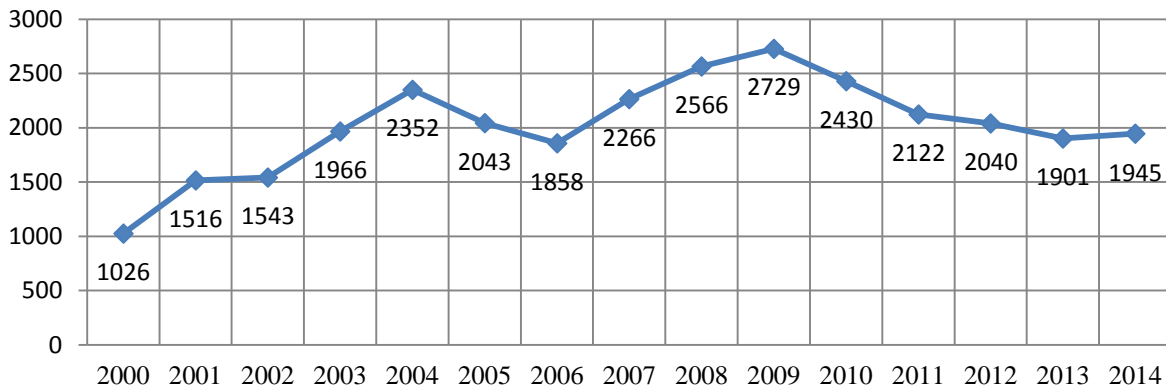


Figure 1. Number of petitions 2000–2014

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 1465 cases, which is 6% less than in 2013. As at 19 January 2015, 1308 of the cases had been completed and 157 cases were still being investigated. In 452 cases substantive proceedings were conducted, and in 1013 cases no substantive proceedings were initiated for various reasons. 84 cases were opened on the Chancellor’s own initiative, and 61 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	2014
Cases accepted for proceedings, including	480 24.7%	449 22.1%	480 24%	395 22.7%	296 18.4%	411 26.5%	452 31%
constitutional review proceedings	151 7.8%	124 6.1%	168 8.4%	127 7.3%	98 6%	136 8.8%	151 10.3%
ombudsman proceedings	258 13.3%	231 11.4%	214 10.7%	186 10.6%	109 6.8%	168 10.8%	194 13.2%
special proceedings	71 3.7%	94 4.6%	98 4.9%	82 4.7%	89 5.5%	107 7.0%	107 7.3%
Non-substantive proceedings of cases	1464 75.3%	1584 77.9%	1523 76%	1344 77.3%	1314 81.6%	1140 73.5%	1013 69.1%
Total cases, including	1944	2033	2003	1739	1610	1552	1465
own-initiative proceedings	66 3.5%	82 4%	75 3.7%	72 4.1%	52 3.2%	92 5.9%	84 5.7%
inspection visits	33	49	42	53	44	49	60

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.

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

In 2014, the Chancellor opened 151 cases to review the constitutionality and legality of legislation of general application, which makes up 10.3% of the total number of cases and 33.4% of the total number of substantive proceedings of cases. Of these, 140 were opened on the basis of petitions and 11 on own initiative.

Within constitutional review proceedings the following were scrutinised:

- conformity of Acts with the Constitution (110 proceedings, of these 102 based on petitions by individuals and 8 on own initiative);

- conformity of regulations of local councils and rural municipality and city governments with the Constitution and Acts (25 proceedings, of which 23 based on petitions by individuals 2 on own initiative);
- conformity of regulations of Ministers with the Constitution and Acts (8 proceedings, of these 7 based on petitions by individuals and 1 on own initiative);
- conformity of Government regulations with the Constitution and Acts (7 proceedings based on a petition by an individual);
- conformity of other legislation with the Constitution and Acts (1 proceeding based on a petition by an individual).

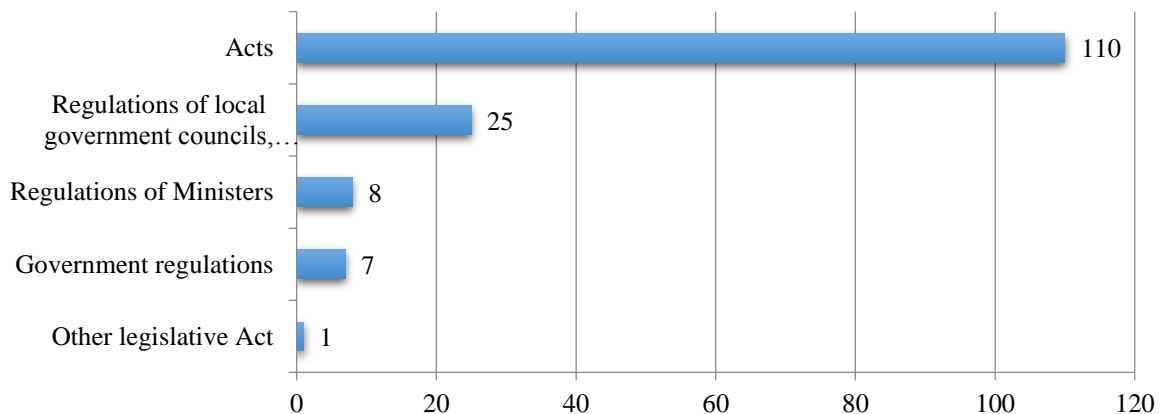


Figure 2. Distribution of constitutional review proceedings

The Chancellor's opinions reached as a result of review of the constitutionality and legality of legislation of general application can be seen in Figure 3.

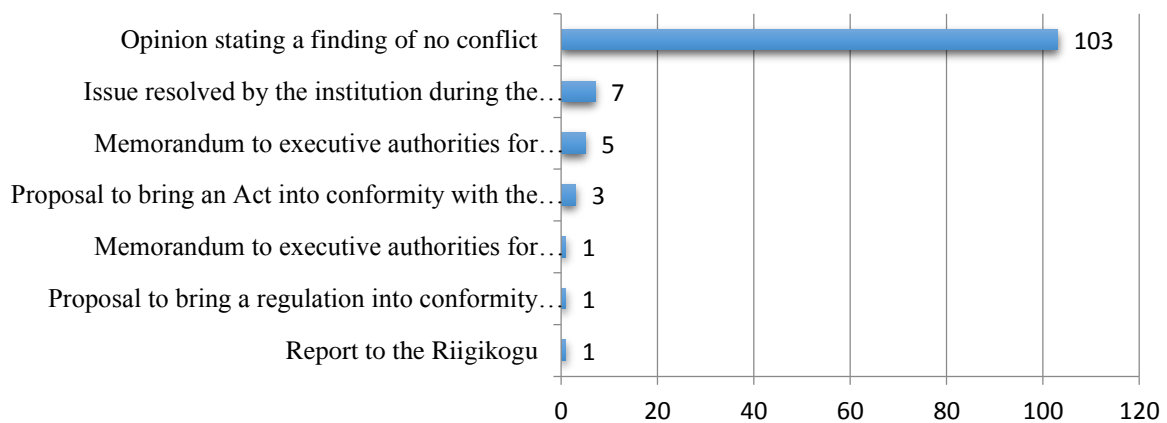


Figure 3. Chancellor's opinions upon review of conformity with the Constitution and Acts

In case of proceedings for review of conformity with the Constitution and Acts, the Chancellor found conflict with the Constitution or an Act in 7.3% of the cases. In 2013, the indicator was 9%.

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

The Chancellor initiated 194 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 13.2% of the cases opened and 42.9% of the total

number of substantive proceedings. Of these, 121 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 (97 proceedings, of these 73 based on petitions by individuals and 24 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 (50 proceedings, of these 12 based on petitions and 38 on own initiative);
- activities of a local government body or agency (47 proceedings, of these 36 based on petitions and 11 on own initiative) (see Figure 4).

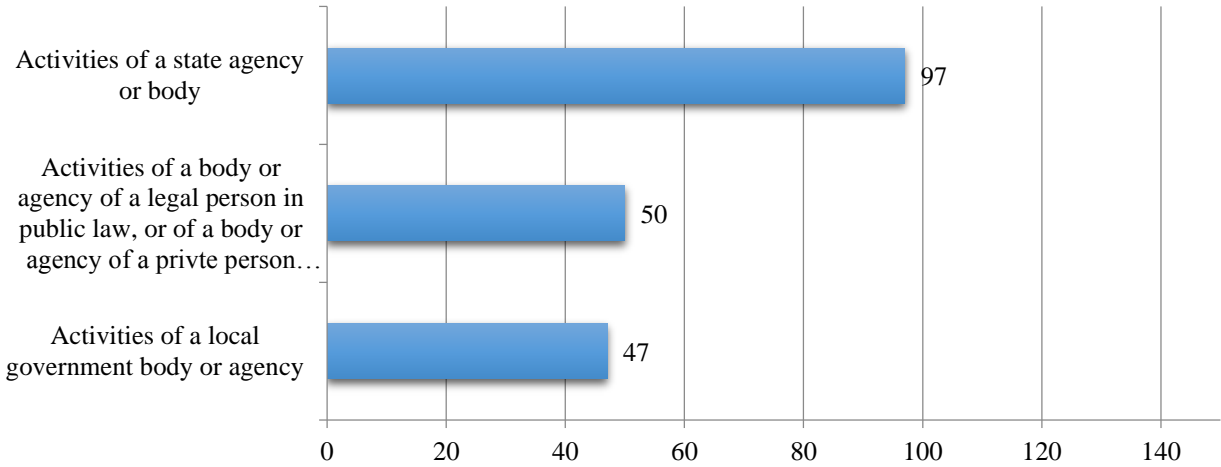


Figure 4. Distribution of cases opened for scrutiny of activities of persons, agencies, and bodies

The Chancellor’s opinions reached upon supervision of activities of agencies and institutions performing public functions can be seen in Figure 5.

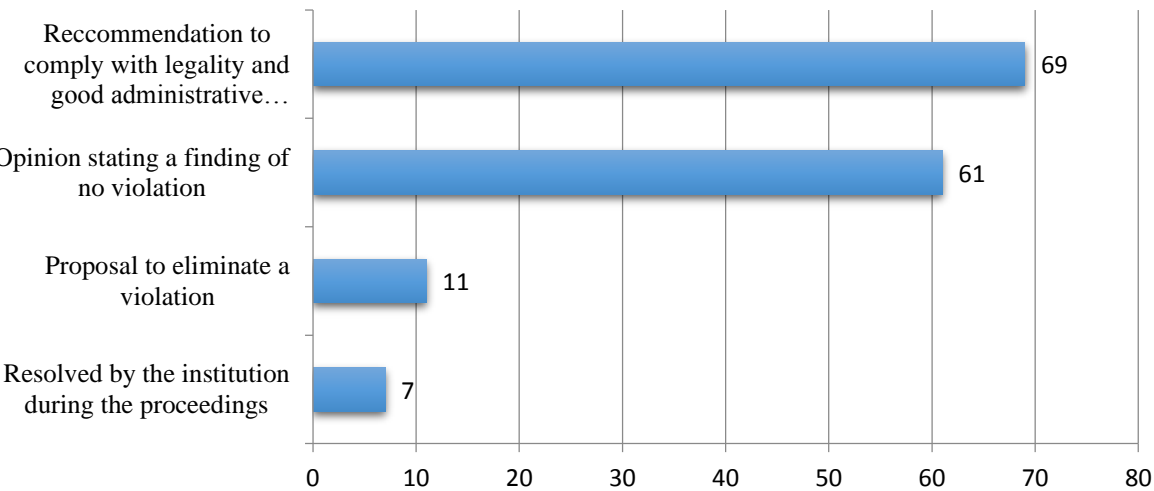


Figure 5. Chancellor’s opinions upon scrutiny of activities of agencies and institutions performing public functions

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 41.2% of the cases. In 2013, the indicator was 50%.

2.3. Special proceedings

There were 107 special proceedings during the reporting year, i.e. 7.3% of the total number of cases opened and 23.7% of the total number of substantive proceedings (see the distribution of special proceedings in Figure 6).

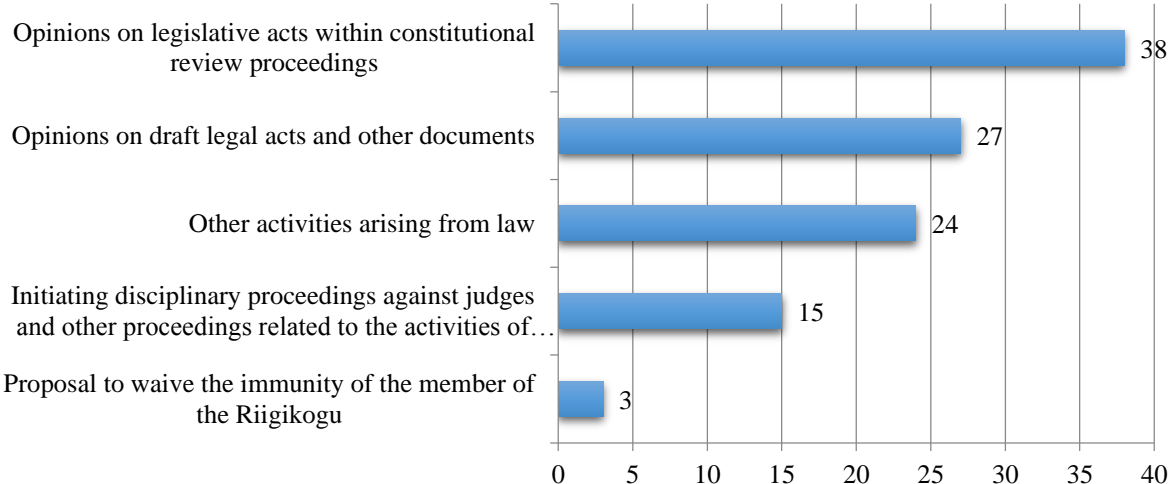


Figure 6. Distribution of special proceedings

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 2014, the Chancellor declined to open substantive proceedings in 1013 cases, which makes up 69.1% of the total number of cases. The reasons for not opening the proceedings can be seen in Figure 7.

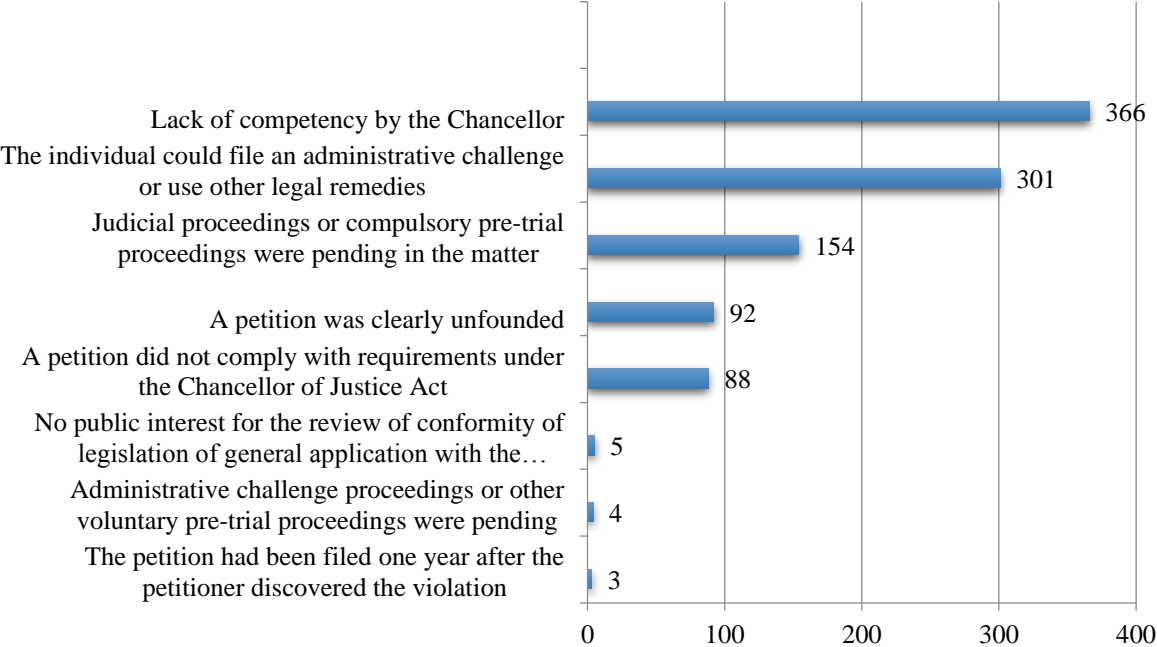


Figure 7. Reasons for declining to initiate proceedings of petitions

In case of petitions declined for proceedings, the competence of the Chancellor, Acts and other legislation were explained to the petitioners (see also Figure 8).

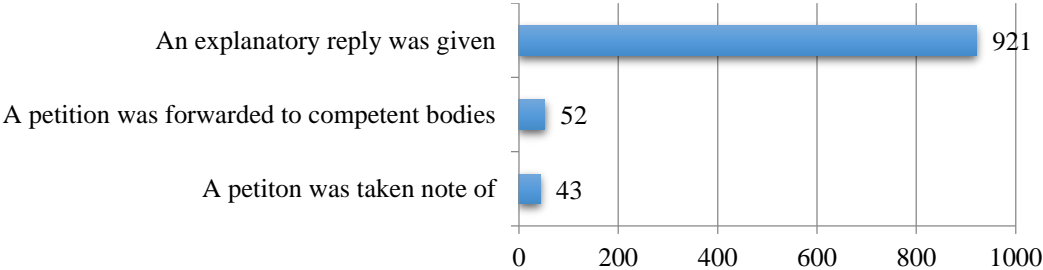


Figure 8. Distribution of replies in case of declining to accept a petition for proceedings

3. Distribution of cases by respondents

The distribution of cases by types of respondents has been presented in Figure 9.

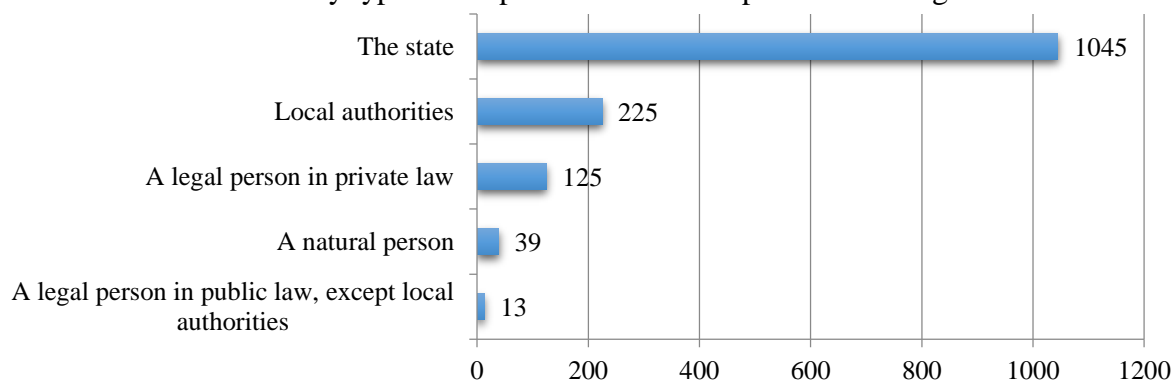


Figure 9. Distribution of cases by respondents

Distribution of cases opened in 2014 by areas of government and type of proceedings is shown in Figures 10 and 11. 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.

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 and were initiated on the basis of petitions by prisoners.

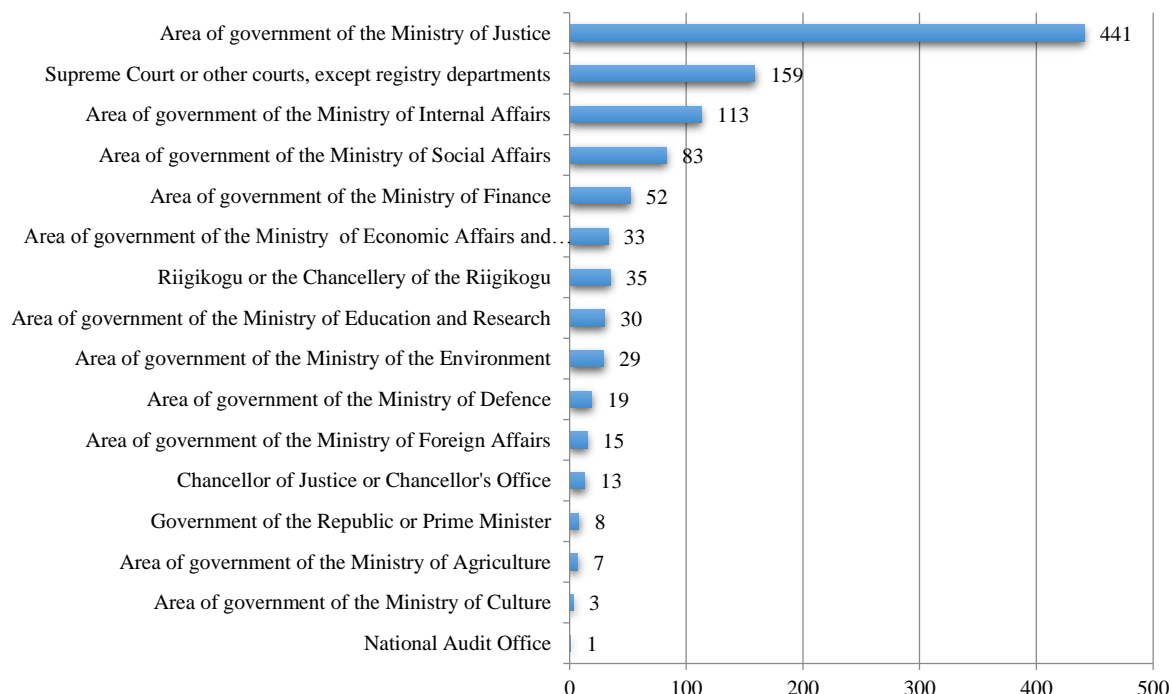


Figure 10. Distribution of cases by respondents on state level

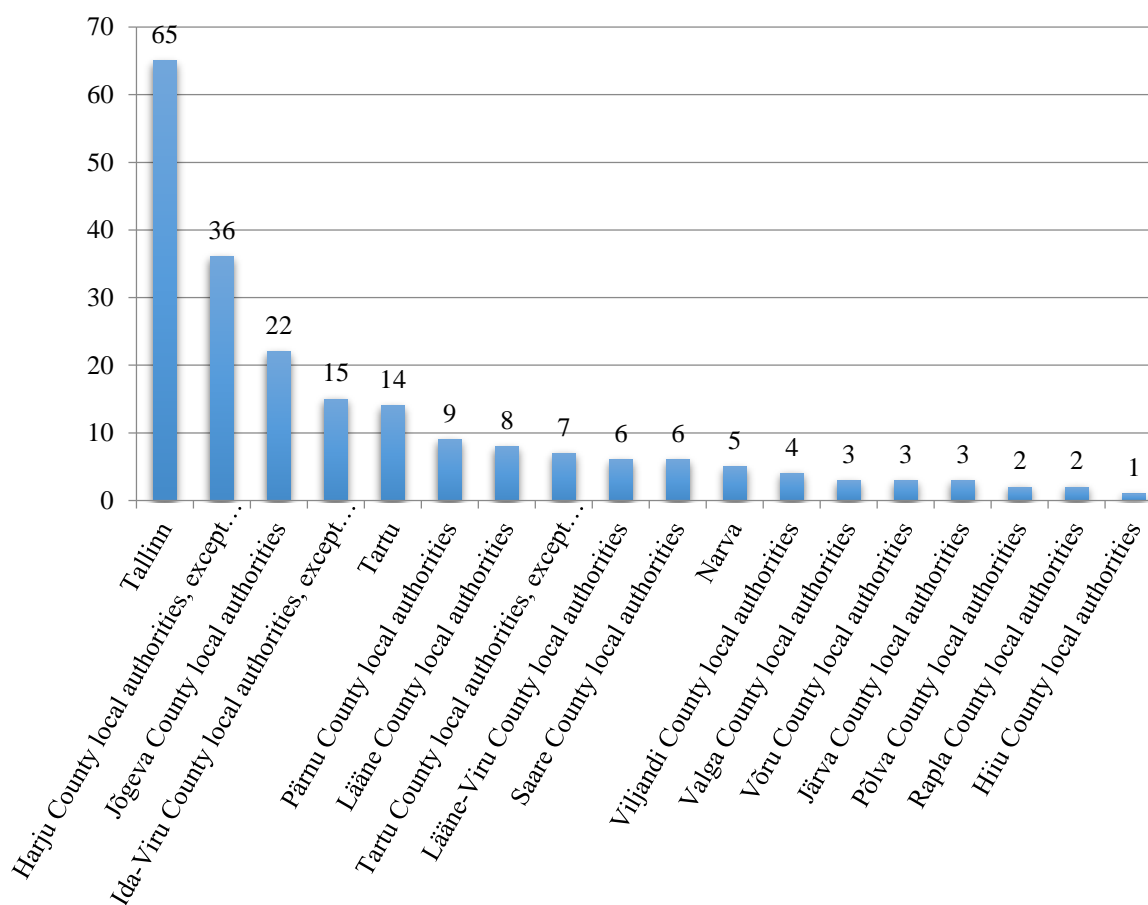


Figure 11. Distribution of cases by respondents on local government level

4. Distribution of cases by areas of law

Similarly to previous years, in 2014 the largest number of cases was opened in connection with criminal enforcement procedure and imprisonment law. The number of proceedings relating to civil court procedure law and education and research law has increased. At the same time, the number of proceedings relating to social welfare law and family law has dropped in comparison to the previous year (by 14 and 26 cases respectively).

Table 2. Cases opened by areas of law

Area of law	Number of cases
Criminal enforcement procedure and imprisonment law	289
Civil court procedure law	86
Education and research law	73
Other public law	70
Social welfare law	68
Health law	64

Administrative law (administrative management, administrative procedure, administrative enforcement, public property law, etc)	57
Financial law (incl. tax and customs law, state budget, state property)	50
Social insurance law	44
Enforcement procedure	44
Family law	41
Criminal and misdemeanour court procedure	40
Local government organisation law	39
Personal data protection, databases and public information, state secrets law	39
Pre-trial criminal procedure	34
Police and law enforcement law	33
Environmental law	27
Building and planning law	25
Citizenship and migration law	24
Public service	21
Labour law (including collective labour law)	20
Law of obligations	20
Traffic regulation law	20
Government organisation law	19
Ownership law, including intellectual property and copyright law	18
Energy, public water supply and sewerage law	17
Non-profit associations and foundations law	16
Other private law	14
Electoral and referendum law, political parties law	13
National defence law	12
Misdemeanour procedure	12
Transport and road law	11
State legal aid	10
Administrative court procedure law	10
International law	9
Ownership reform law	8
Bankruptcy law	7
Agricultural law (including food and veterinary law)	7
Company, bankruptcy and credit institutions law	5
Consumer protection law	5
Law of succession	4
Economic and trade management and competition law	4
Language law	4
Substantive penal law	3
Telecommunications, broadcasting, and postal services law	3
Animal protection, hunting, and fishing law	3
Heritage law	2
Constitutional review court procedure law	2

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, Tallinn and Tartu. Among the counties, the largest number of proceedings were in relation to Harju County and Ida-Viru County. As before, the smallest number of proceedings was in relation to Hiiu County. 28 proceedings were initiated on the basis of petitions received from abroad. With regard to 220 cases, the region is unknown, including mostly petitions sent by e-mail.

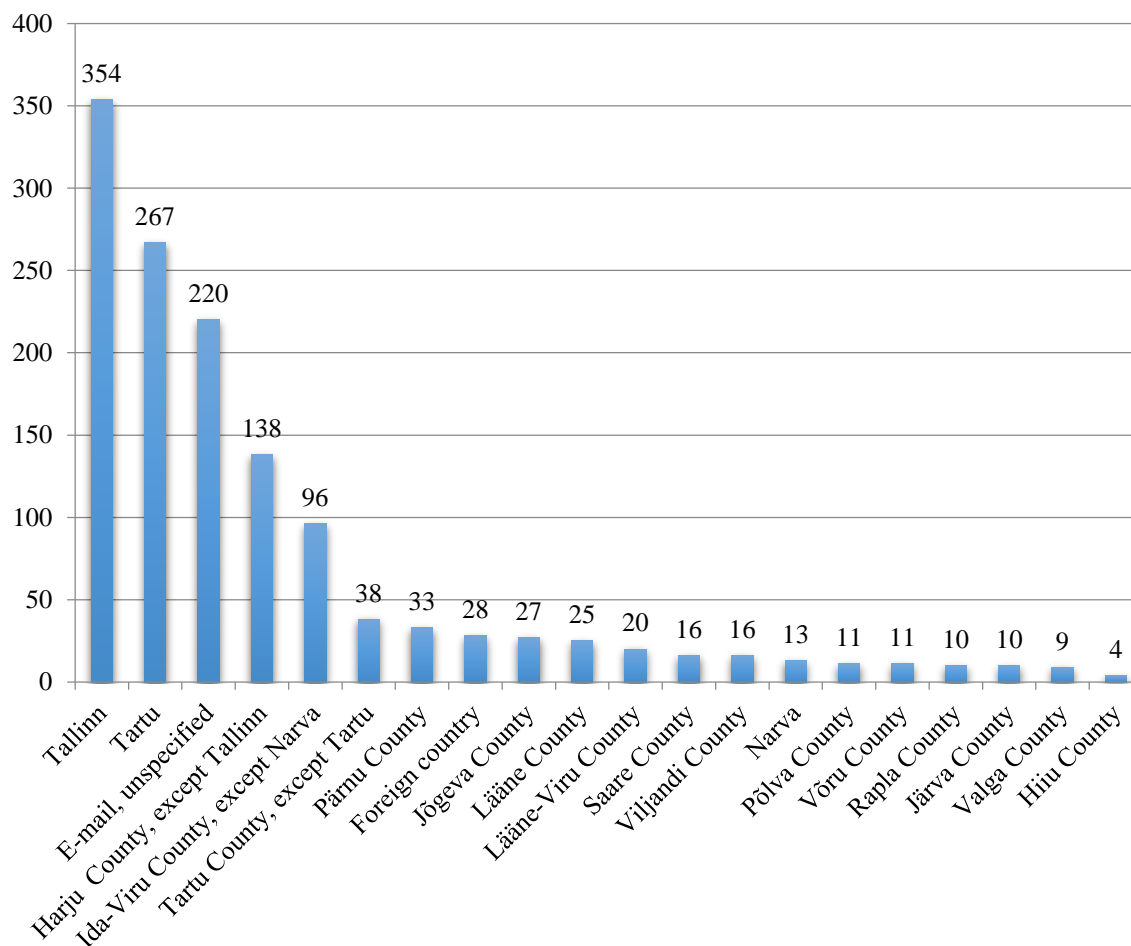


Figure 12. Distribution of cases by location of petitioner

6. Language of proceedings

Most petitions are in Estonian. 178 cases, i.e. 12.2% of the total number of cases, were opened based on petitions in Russian. The number of petitions in English makes up only 1.4% of the total number of cases opened.

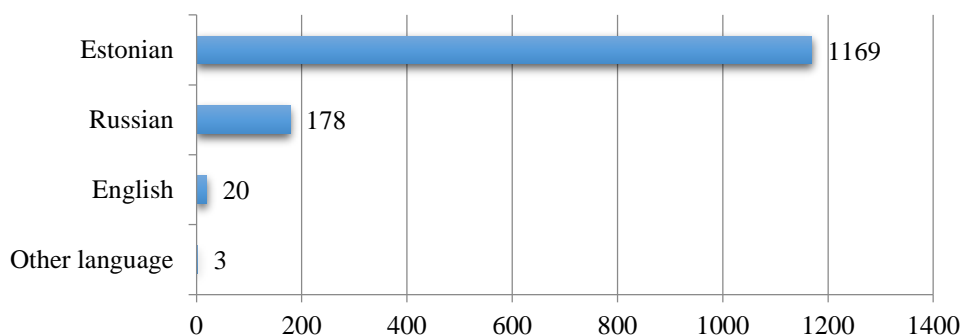


Figure 13. Distribution of cases by language of petition

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. 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 60 inspection visits, of which 22 were to closed institutions, 29 to open institutions, and 9 to administrative authorities (see Table 3). There were 40 unannounced inspection visits.

Table 3. Inspection visits conducted by the Chancellor of Justice

	2008	2009	2010	2011	2012	2013	2014
Inspection visits to closed institutions	19	25	27	33	23	17	22
Inspection visits to open institutions	10	17	6	14	13	24	29
Inspection visits to administrative authorities	4	7	9	6	8	8	9
Total inspection visits	33	49	42	53	44	49	60
of which, unannounced inspection visits	8	4	13	29	19	26	40

8. Reception of individuals

In 2014, 99 individuals came to a reception in the Office of the Chancellor of Justice, which is 5 people more than in 2013 (see Figure 14).

Similarly to the previous years, the largest number of people coming to a reception were from Tallinn and Harju County (86 and 7 people respectively).

Questions raised during the receptions most frequently concerned issues relating to civil court procedure law (13 persons), social welfare law (11 persons) and enforcement procedure law (7 persons). Mostly, people coming to receptions needed clarification concerning legislation, and legal advice.

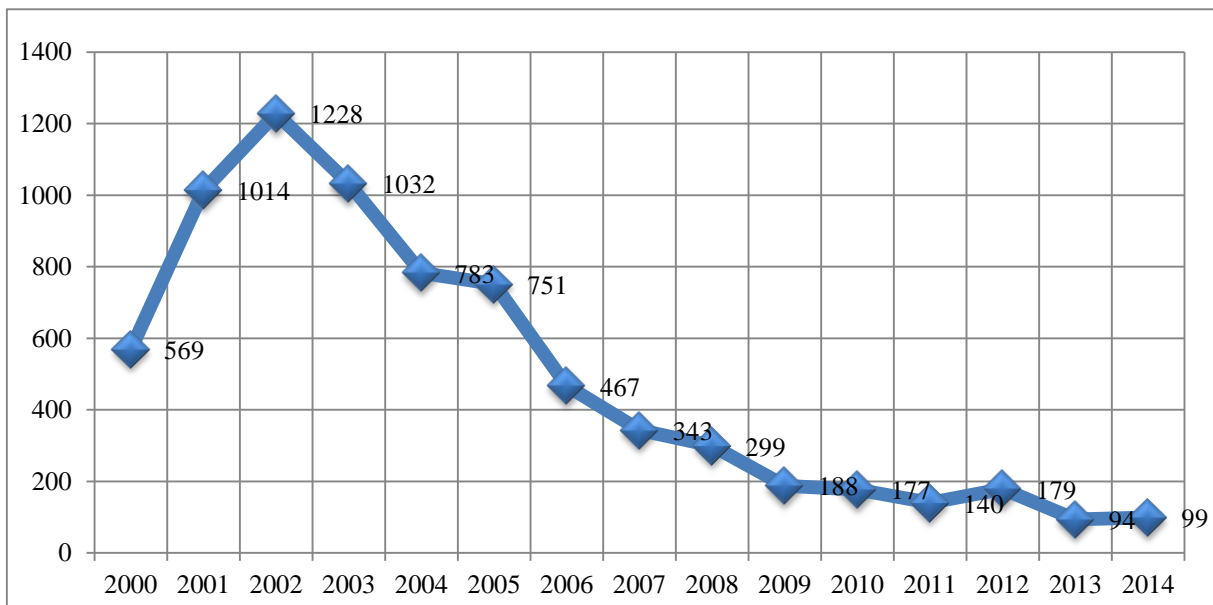


Figure 14. Number of persons coming to reception with the Chancellor in 2000–2014