CHANCELLOR OF JUSTICE

2008 OVERVIEW OF THE CHANCELLOR OF JUSTICE

Activities for the prevention of torture and other cruel, inhuman or degrading treatment or punishment

Statistics of proceedings

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I INTRODUCTION

Under Art 5 of the United Nations Universal Declaration of Human Rights, no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. This prohibition is considered an absolute human right and a fundamental value of a democratic society, from which no derogations are permissible in a state governed by rule of law.[1] Therefore, in addition to the UN Universal Declaration of Human Rights, the right not to be subjected to torture, cruel, inhuman or degrading treatment or punishment (further in the text also called ill-treatment) is also included in other global as well as regional human rights instruments, e.g. Art 7 of the UN International Covenant on Civil and Political Rights, the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Art 3 of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Art 4 of the European Union Charter of Fundamental Rights.[2] Naturally, the right is also enshrined in the Constitution of the Republic of Estonia, § 18(1) of which stipulates that no one shall be subjected to torture or to cruel or degrading treatment or punishment.

Estonia acceded to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entry into force 26 June 1987) on 1 June 2002. The aim of the Convention is fighting against torture all over the world.

Under Art 1 of the Convention, "torture" means any act by which severe physical or mental pain or suffering is intentionally inflicted on a person
- to obtain from him or a third person information or a confession;
- to punish him for an act he or a third person has committed or is suspected of having committed;
- to intimidate or coerce him or a third person;
- or for any reason based on discrimination of any kind,

when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Thus, the concept of "torture" consists of three elements: (1) causing physical or mental pain or suffering (an objective element); (2) intentionality and a specific purpose (a subjective element); (3) the perpetrator's relation to public authority.

However, the Convention does not define the concepts of other forms of prohibited ill-treatment and does not explain the content of cruel, inhuman or degrading treatment and punishment.[3]

Drawing a strict borderline between different forms of ill-treatment has generally not been considered necessary in practice. Distinction depends on the combined effect of many different circumstances – the nature of ill-treatment (what constitutes it), its purpose (to what extent it involves conscious and intentional inflicting of suffering), severity (duration of ill-treatment, physical and mental consequences) and circumstances of a particular case (e.g. gender, age, health of the victim; existence of aggravating circumstances etc).[4] The Convention obliges States Parties, including

1 See e.g. European Court of Human Rights judgment of 30 June 2008 in case No. 22978/05, *Gäfgen v. Germany*, par 63: "*Article 3 of the Convention enshrines one of the most fundamental values of democratic societies. Unlike most of the substantive clauses of the Convention, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation* […]. *The Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the conduct of the person concerned* […]." See also the relevant explanations by the UN Human Rights Committee: HRC. General Comment No 20 "Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment", 10 March 1992, par 3; M. Hion. Piinamise, väärkohtlemise ja karistamise keelamine. [Prohibition of torture, ill-treatment and punishment] – Juridica 2003, Inimõigused ja nende kaitse Euroopas [Human rights and their protection in Europe], pp 47 ff; R. Maruste. Väärkohtlemise käsitlus Euroopa Inimõiguste Kohtu praktikas. [Approaches to ill-treatment in the case-law of the European Court of Human Rights] – Juridica 2003, No 2, p 120 ff; E. Hilgendorf. Piinamine õigusriigis? [Torture in a rule of law?]– Juridica 2004, No 10, p 661 ff.

2 For more detail, see e.g.: CEJIL, APT. Torture in International Law. A guide to jurisprudence, Geneva 2008. Available online: http://www.apt.ch/component/option,com_docman/task,cat_view/gid,127/Itemid,59/lang,en/.

3 It should be noted that alongside torture different international instruments include other qualifying elements of ill-treatment, such as "cruel, inhuman or degrading", "inhuman or degrading" etc; § 18 Constitution: "cruel or degrading".

4 The Committee against Torture has explained that drawing a line between different forms of prohibited treatment and punishment is often unclear in practice, as they are mutually connected and interdependent. Torture is distinguished from other forms of ill-treatment by intensity of the pain and suffering inflicted and, unlike torture, other forms of ill-treatment do not presume the existence of a purpose under the Convention (see CAT, General Comment No 2 "Implementation of article 2 by States parties", 23 November 2007, par 3, 5). The same has been emphasised by the UN Human Rights Committee – see HRC, General Comment No 20 "Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment", 10 March 1992, par 4: "[…] *nor does the Committee consider it necessary to draw up a list of prohibited acts or to establish sharp distinctions between the different kinds of punishment or treatment; the distinctions depend on the nature, purpose and severity of the treatment applied*." The UN Special Rapporteur on Torture has considered the "*purpose of the conduct and the powerlessness of the victim*" as a decisive factor in distinguishing torture and other forms of ill-treatment. – see Report of the Special Rapporteur on the question of torture, 23 December 2005, No E/CN.4/2006/6, par 39. The European Court of Human Rights distinguishes between different forms of ill-treatment in practice, and provides them with specific content: degrading treatment – "*when it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance, or when it was such as to drive the victim to act against*

Estonia, to take effective legislative, administrative, judicial or other measures (including preventive, such as training or drawing up guidelines) to prevent acts of torture in any territory under their jurisdiction.

On this basis, it can be concluded that the right not to be subjected to torture, cruel, inhuman or degrading treatment or punishment protects individuals not only against torture in its ordinary meaning, but it is aimed more widely at protecting human dignity and physical and mental integrity of individuals. It should be stressed that the concept of torture in Article 1 of the above-mentioned UN Convention has also been used by the European Court of Human Rights in its case-law.[5]

On 18 December 2002, Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment was adopted. Estonia signed the Protocol on 21 September 2004 and it entered into force in respect of Estonia on 27 November 2006. Under the Protocol, each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (i.e. the national preventive mechanism). The functions of the national preventive mechanism include the following:

– to regularly examine the treatment of the persons deprived of their liberty in places of detention with a view to strengthening, if necessary, their protection against ill-treatment;
– to make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent ill-treatment, taking into consideration the relevant norms of the United Nations;
– to submit proposals and observations concerning existing or draft legislation.

It should be kept in mind that 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. 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. 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.

Since 18 February 2007, the Chancellor of Justice performs the functions of the national preventive mechanism in Estonia. In several other countries, ombudsman or another authority performing the functions of an ombudsman has also been designated as the preventive mechanism.[6]

In Estonia there are almost 150 establishments qualifying as places of detention within the meaning of the Optional Protocol. The majority of them are police detention facilities and social welfare establishments. In 2008, the Chancellor of Justice carried out 18 inspection visits[7] to 39 places of detention, among them 12 regular visits and 27 extraordinary or unannounced visits[8]. By comparison, the same number of visits (i.e. 18) were also conducted in 2007.

The choice of establishments inspected was mostly based on the need to inspect places of detention systematically and after regular intervals. In addition, any information received by the Chancellor which showed the need for immediate inspection was also taken into account. A separate mention could be made of the series of inspection visits to places of detention where individuals are detained only for a short period of time. The aim of the project was to inspect the conditions in the relevant facilities and, based on the circumstances ascertained, to propose to the Ministry of Internal Affairs to draft legislative provisions regulating short-term detention.

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his will or conscience"; inhuman treatment – "*it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering*"; torture as a more severe form of inhuman treatment – "*It was the intention that the Convention should, by means of the distinction between torture and inhuman treatment, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering*" (see e.g. European Court of Human Rights judgment of 30 June 2008 in case No 22978/05, *Gäfgen vs. Germany*, par 66). At the same time, the Court has admitted that the Convention is a dynamic instrument changing in time, and thus the content of different forms of ill-treatment may also change in time: "[…] *certain acts which were classified in the past as "inhuman and degrading treatment" as opposed to "torture" could be classified differently in future. It takes the view that the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies*." (see European Court of Human Rights judgment of 28 July 1999 in case No 25803/94, *Selmouni vs. France*, par 101).

5 For the first time in the ECHR judgment of 28 July 1999 in case No. nr 25803/94, *Selmouni vs. France*, par 100.

6 An overview of the bodies serving as preventive mechanisms is available online: http://www.apt.ch/content/view/44/84/lang,en/. See also: APT. Guide to Establishment and Designation of National Preventive Mechanisms. Geneva 2006.

7 Proceedings of statistics are based on cases opened. A 'case opened' means taking procedural steps and drafting documents to resolve one issue or deal with one topic, i.e. visits made to places of detention concerning one and the same issue are joined into one case and are thus viewed as one inspection visit in the course of which several places of detention may actually be inspected.

8 An unannounced inspection visit includes visits of which no advance notice is given at all, as well as visits of which the establishment to be inspected is informed one to two days in advance (as a rule for security reasons).

The establishments inspected in 2008 may be divided as follows:

1. police establishments – 6 inspection visits, 15 places of detention visited (1 regular and 14 extraordinary visits);
2. Defence Forces – 2 inspection visits, 2 places of detention visited (2 regular visits);
3. prisons – 2 inspection visits, 2 places of inspection visited (2 regular visits);
4. border guard establishments – 1 inspection visit, 12 places of detention visited (12 extraordinary visits);
5. psychiatric care providers – 4 inspection visits, 4 places of detention visited (4 regular visits);
6. providers of treatment of infectious diseases – 2 inspection visits, 2 places of detention visited (2 regular, 0 extraordinary visits);
7. special schools – 1 inspection visit, 1 place of detention visited twice (1 regular, 1 extraordinary visit).

Experts were used in inspection visits on two occasions in 2008. Experts were child psychiatrists and psychologists who assisted in carrying out interviews in special schools and prisons.

Organising of both regular and extraordinary visits is regulated by the "Guidelines for conducting Chancellor of Justice inspection visits", approved by the Chancellor of Justice order No. 1-4/28 of 4 December 2007, which establishes rules and principles for preparing and conducting inspection visits, as well as follow-up proceedings. The guidelines also contain a checklist of items to be observed while touring the inspected establishments.[9]

It should be emphasised that during the inspection visits the Chancellor provides an opportunity for reception for all individuals held in the place of detention, as well as their close ones and members of the staff. Random interviews may also be conducted. The Chancellor and his staff always talk to people in the place of detention while touring the establishment. Different informational material is always taken to the places of detention with the aim to help people whose liberty has been restricted better understand their fundamental rights and freedoms and effectively make use of different complaint mechanisms. The main type of information material distributed at places of detention includes a booklet explaining the competences of the Chancellor of Justice together with a complaint form, a leaflet containing information about state legal aid and a brochure on patient rights.

As a result of inspection visits, a summary is compiled, containing recommendations and proposals to the inspected establishment and other relevant authorities. In 2008, the Chancellor of Justice made 40 proposals and 46 recommendations based on inspection visits. Summaries of inspection visits are also published on the Chancellor of Justice website immediately after sending them to the addressees[10].

The media have covered the Chancellor's conclusions reached on the basis of inspection visits in 2008 on more than fifty occasions, including news, articles, opinions, interviews, commentaries and editorials published in paper editions of national and local newspapers; online news and news stories; coverage in news portals; news and articles in specialist newspapers.

In addition to inspection visits, other activities for preventing ill-treatment have been carried out with the aim to raise awareness of the essence of ill-treatment and the need to fight it among staff and individuals held in the places of detention as well as among the wider public.

In 2008, officials from the Office of the Chancellor of Justice organised training seminars and information days for staff in places of detention as well as other relevant persons. For example, three information days of the rights of children were held with the attendance of staff from juvenile committees and special schools. A training seminar on the Istanbul Protocol[11] for persons employed by psychiatric care providers was held and a presentation on the rights of persons in social welfare establishments was delivered.

In order to address more general shortcomings, the Office of the Chancellor of Justice has organised roundtables. During the reporting year, for example, two roundtables on the issues of health care and catering in places of detention were held. In addition, the Chancellor of Justice has established effective cooperation with the Ministries of Justice and Internal Affairs to investigate cases of death in prisons.

For a more detailed analysis of the protection of fundamental rights and freedoms and the prevention of ill-treatment in particular fields, seven comprehensive articles in specialist publications were issued.

9 See also e.g.: APT. Monitoring Places of Detention: A Practical Guide. Geneva 2004. Available online: http://www.apt.ch/content/view/44/84/lang,en/.

10 Summaries of inspection visits are available online: http://www.oiguskantsler.ee/?menuID=148.

11 UN High Commissioner for Human Rights. Istanbul Protocol. Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. New York, Geneva 2004. Available online: http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf.

In his activities as the preventive mechanism, the Chancellor of Justice considers it very important to have international cooperation with other preventive bodies and relevant international organisations. Therefore, the Chancellor and his advisers attended several events on these issues and also delivered presentations:

17–19 January	Allar Jõks and Mari Amos attended the workshop "Deprivation of liberty and protection of Human Rights";
25 February	Mari Amos organised a workshop "How to build and efficient national preventive mechanism in Lithuania" at the Office of the Ombudsman of the Lithuanian Seimas;
31 March – 03 April	Eve Liblik, Kadri Soova, Raivo Sults and Jaanus Konsa were on a study visit in Switzerland at the office of the Association for the Prevention of Torture (APT);
08-10 April	Indrek-Ivar Määrits attended the seminar "Ill-treatment of persons deprived of their liberty: The responsibilities of NHRS who become national OPCAT mechanisms and of those who do not" in Padua;
19–22 May	Jaanus Konsa attended the seminar "The handling by National Human Rights Structures of comlaints against the police forces" in St Petersburg;
21–23 May	Raivo Sults attended the seminar "Organising and Managing Penitentiary Services: Quality Standards" in Bratislava;
18–20 June	Raivo Sults attended the seminar "Best Practices in Prisoner's Intervention Programmes" in Barcelona;
23–24 June	Mari Amos met in Geneva with the members of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT);
24–26 November	Nele Parrest and Mari Amos attended the seminar "OPCAT in the OSCE region: What it means and how to make it work" in Prague, and also delivered two presentations.

In addition to the above, several issues of constitutionality of prison law were analysed in 2008 and problems were detected on three occasions (for more detail see Part 2, Section III The Area of Government of the Ministry of Justice: legal clarity of the obligations of prisoners, case No. 6-1/080252; Constitutionality of the compulsory administrative challenge procedure, case No. 6-1/80197; The concept of "letter" as established by internal prison rule, case No. 6-3/080628).

In 2008, the legislator also specified various regulative provisions concerning restrictions of right of ownership and freedom of movement which the Chancellor of Justice had repeatedly highlighted. Since 1 January 2009, the law precisely and exhaustively regulates restrictions of the right of ownership and freedom of movement of persons receiving a special care service (for more detail see Part 2, Section XII, the description of the social field under the General Outline of the Area of Government of the Ministry of Social Affairs). In 2008, the new concept of the Mental Health Act was drawn up, principles for the restriction of the right of ownership at psychiatric care providers were prepared, and guidelines for the application of means of restraint were devised for developing better practice (for more detail see Part 2, Section XII, description of the health field under the Area of Government of the Ministry of Social Affairs).

The following part contains an overview of the inspection visits made by the Chancellor of Justice to different places of detention in 2008, highlighting systematic shortcomings that were detected.

II PSYCHIATRIC CARE PROVIDERS

In Estonia there are twelve providers of involuntary in-patient psychiatric care. In 2008, four inspection visits to psychiatric care providers were conducted. The institutions inspected were Läänemaa Hospital Foundation psychiatric department (Inspection visit to Läänemaa Hospital psychiatric department, case No. 7-9/080022), AS Ahtme Hospital (Inspection visit to Ahtme Hospital, case No. 7-9/080588), Rapla County Hospital Foundation psychiatric department (Inspection visit to Rapla County Hospital, case No. 7-9/081401) and AS Wismari Hospital (Inspection visit to Wismari Hospital, case No. 7-9/081685). The choice of institutions was based on a work plan and proceeded from the aim to complete the first round of inspections of psychiatric care providers by 1 February 2009. Planning of inspection visits was also based on regional considerations – all the inspected institutions were located in different regions of Estonia. The Chancellor had made no previous visits to these institutions.

By comparison to the results of inspections made to psychiatric care providers by the Chancellor in earlier years, it could be noted that in 2008 considerably fewer shortcomings with regard to violations of fundamental rights and freedoms of individuals were detected in these institutions. Definitely, prevention and active distribution of the results of inspections carried out at similar service providers has played a role in this. However, certain methodological shortcomings can be pointed out based on the outcome of visits in 2008.

A major problem concerning all the inspected psychiatric care providers was insufficient information given to patients about their rights in the institution both upon admission and during the stay. In addition, patients had insufficient information about in-hospital complaint mechanisms and the right and procedure of contacting supervisory authorities.

Paragraph 53 of the 8th General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) [12] provides that an introductory brochure setting out the establishment's routine and patients' rights should be issued to each patient on admission, as well as to their families. In addition, under § 6(4) of the Minister of Social Affairs Regulation No. 128 of 15 December 2004 "Requirements for the provision of health services" providers of health services are required to inform patients in their place of activity about the right to have recourse, in case of complaints concerning the provision of health services, to the management of the provider of health service, the regional department of the Health Insurance Fund, the Health Care Board or County Governor, and provide their contact data. In this respect, the Chancellor made a recommendation to all the inspected institutions to draw up exhaustive and clear information about patient rights, including description of the internal rules of the institution, the rights and duties of individuals and indication of the possible complaint mechanisms (e.g. internal proceedings within the institution, recourse to the court, the Health Care Board, the Chancellor of Justice) and possibilities for their use. The patient information brochure could also include a form for submitting complaints and proposals inside the hospital. This would allow patients or their carers make use of complaint mechanisms regardless of the restrictions of movement applicable in hospital. This document should be handed out in writing to each individual who is admitted to treatment in a language they understand and, if necessary, the health service provider should provide additional oral explanations regarding its content. The relevant materials explaining the rights of individuals and possible complaint mechanisms should be posted publicly in all departments of the hospital.

All the health service providers to whom the Chancellor of Justice made the above recommendation and in respect of whom follow-up proceedings had been carried out by the time of writing this report had drawn up the relevant information material. As an example, information materials available at other health service providers were used, and advisers to the Chancellor also provided opinions and guidelines for drawing up the material.

In addition to the above, three of the inspected institutions still had shortcomings with regard to court proceedings for imposing involuntary treatment. The main problems included failure by the court to hear the persons to be imposed involuntary treatment, failure to appoint a representative and deviations from the procedure for delivery of court rulings. With regard to these shortcomings, the Chancellor made recommendations to chairmen of Pärnu County Court, Viru County Court and Harju County Court.

Based on the proceedings in which follow-up inspections had been carried out by the time of writing the report, it may be noted that following the Chancellor's recommendations the courts effectively reorganised their work and comply with the duty of hearing of individuals, appointing a representative and other similar procedural guarantees for the protection of rights of individuals as required by procedural law.

12 8th General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT/Inf (98) 12). Available online: http://www.cpt.coe.int/en/annual/rep-08.htm.

III POLICE DETENTION FACILITIES

1. General outline

In Estonia there are 36 police detention facilities. In 2008, the Chancellor of Justice visited 15 police buildings where individuals are detained on differed legal grounds. The inspected facilities included the following:

1) Tartu police detention centre of the South Police Prefecture (Inspection visit to Tartu police detention centre, case No. 7-7/080613);
2) Jõgeva police detention centre of the South Police Prefecture (Inspection visit to Jõgeva police detention centre, case No. 7-7/090027);
3) Narva police detention centre of the East Police Prefecture;
4) Paide police detention centre of the West Police Prefecture (Inspection visit to police detention centre, case No. 7-4/080871);
5) Rapla police detention centre of the West Police Prefecture (Inspection visit to Rapla police detention centre, case No. 7-4/080763);
6) Haapsalu police detention centre of the West Police Prefecture (Inspection visit to Haapsalu police detention centre, case No. 7-4/081663);
7) Downtown police department of the North Police Prefecture;
8) West Harju County police department of the North Police Prefecture;
9) Elva constable point of the South Police Prefecture;
10) Otepää constable point of the South Police Prefecture;
11) Räpina constable point of the South Police Prefecture;
12) Mustvee constable point of the South Police Prefecture;
13) Antsla constable point of the South Police Prefecture;
14) Sillamäe constable point of the East Police Prefecture;
15) Iisaku constable point of the East Police Prefecture.

The choice of the inspected establishments was mostly based on the objective to visit police buildings which had not been previously inspected and the need to map the general living conditions in all the detention cells used by the police (including for short-term detention). Petitions received by the Chancellor from detained individuals (considering both the number of petitions and problems described in them) also affected the choice of time and location of inspection visits. One visit was carried out as part of a follow-up inspection – to Narva police detention centre of the East Police Prefecture.

In addition to living conditions, inspection visits focused on three main aspects: issues relating to the provision of health services in police detention centres, catering and short-term detention of individuals.

The visited police buildings can be provisionally divided in two categories: police detention centres where individuals are held for more than 48 hours and police detention centres or constable points where individuals are generally held for a short term (up to 48 hours).

Shortcomings in living conditions were detected in both police detention centres and other police facilities intended for short-term detention. As a result of inspection visits, the Chancellor of Justice divided police facilities where individuals are detained into three categories. First, facilities where living conditions generally do not comply with the minimum requirements provided by legislation; secondly, facilities where minimum requirements are fulfilled but there is room for improvement with regard to ensuring human dignity and other fundamental rights; thirdly, police facilities with good conditions for detention of individuals. Based on this distribution, the Chancellor has divided his recommendations and proposals made to the police as a result of inspections into two main categories. Firstly, problems in case of which solutions would require large-scale investments and cooperation between various police structures. These include, for example, extensive renovation of cells, building of exercise yards and hiring additional staff to ensure security of detainees. The second category includes shortcomings which can mostly be solved on the level of the police department, for example small-scale repairs, maintenance and repair of equipment etc.

With regard to living conditions in police facilities, a negative example is Narva police detention centre which has some of the worst living conditions among police detention centres in all of Estonia. The Chancellor inspected Narva police detention centre as part of the follow-up inspection on 3 March 2008 in order to ascertain the main developments after the inspection visit of 1 February 2007.[13] Earlier inspection of Narva police detention centre revealed numerous shortcomings with regard to living conditions and conditions of detention and significant overpopulation of the cells which further exacerbated the problems.

During the follow-up inspection, the Chancellor had to note that the conditions in Narva police detention centre had not considerably improved. There were no longer problems with overpopulation and this somewhat alleviated the situation caused by poor living conditions. In addition, the East Police Prefecture affirmed that after the opening of

13 See also Chancellor of Justice Annual Report 2007. Tallinn 2008, p 226.

Viru Prison in late spring or early summer of 2008, which also includes a new Jõhvi police detention centre under the East Police Prefecture, organisation of work in Narva police detention centre would change considerably. As of then, it would only serve the function of short-term detention of individuals and long-term detention would be executed either in Jõhvi police detention centre or Viru Prison.

Serious shortcomings in living conditions were also detected during inspection visits to Jõgeva police detention centre under the South Police Prefecture and Haapsalu police detention centre under the West Police Prefecture.

Jõgeva police detention centre has definitely some of the worst living conditions and conditions of detention among the detention centres of the South Police Prefecture. During the inspection visit, officers of the South Police Prefecture confirmed that they were aware of the poor conditions in this detention facility and the priorities included finding quick solutions to the problems.

Haapsalu police detention centre is housed in a building where the conditions generally comply with the minimum requirements under the legislation but where considerable room for improvement exists with regard to ensuring respect for human dignity.

On the positive side, it can be noted that Haapsalu police detention centre has taken a number of small but important steps to improve the situation of detainees. For example, a hygiene corner separated from the rest of the cell by a low wall has been built, which is problematically still absent in many other police detention centres.

Living conditions in Haapsalu police detention centre can also be divided into two categories based on the above-described distribution: those requiring large-scale investment for improvement and those which can be improved relatively easily, including in a short-term perspective. Main problems are due to the depreciation of the building.

In Tartu police detention centre under the South Police Prefecture the living conditions reflect the average level in Estonia. The conditions can be said to be relatively good and the latest major repairs were carried out a few years ago.

In addition to Tartu police detention centre, living conditions are average also in Paide and Rapla police detention centres under the West Police Prefecture.

Inspection visits to police detention centres revealed that a recurrent problem, which is partly related to living conditions, is the lack of exercise facilities in police buildings. Exercise yards are absent, for example, in Narva and Haapsalu police detention centres. At the same time, Tartu, Jõgeva and Paide police detention centres have an exercise yard but no access to it is provided due to the insufficient number of officers and consequent security risks.

The Chancellor of Justice proposed to Tartu police detention centre to find resources in cooperation with the South Police Prefecture (if necessary with the Police Board and the Ministry of Internal Affairs) for ensuring access to the exercise yard. The Chancellor also proposed drawing up clear guidelines for ensuring opportunity of exercise in cases where for objective reasons the right of exercise cannot be guaranteed to all the detainees in a police detention centre.

The Police Board replied to the Chancellor that guidelines would be prepared for ensuring the opportunity of exercise for different groups of detainees (remand prisoners, persons serving a misdemeanour detention).

Insufficient number of officers may also cause other serious security risks in addition to lack of opportunity of exercise, in particular at night. For example, conversations with the head of Paide police department revealed that one of the problems in the department was reduction of the number of staff positions. This is partly due to reorganisation of the work of the police prefecture but partly the staff positions were removed because it had been impossible to fill them.

In this case, the Chancellor of Justice proposed to Paide police detention centre to find possibilities in cooperation with the West Police Prefecture and the Police Board (if necessary with the Ministry of Internal Affairs) to alleviate security risks caused by the shortage of officers.

The West Police Prefecture in its reply noted that finding additional staff would be complicated due to scarcity of budgetary resources. There are also plans for reorganisation of the police system in connection with the merging of the police, border guard and migration authorities by 2010. In addition, the West Police Prefecture explained that, whenever necessary, law enforcement teams (police patrols) from the police district are involved in ensuring security at Paide police detention centre.

The Chancellor of Justice has also detected security risks due to shortage of officers during inspection visits to other police detention centres (e.g. Jõgeva police detention centre).[14]

In addition to poor living conditions and shortage of staff, other systematic and serious shortcomings in police facilities also exist. One area which the Chancellor dealt with in more detail in 2008 involved issues relating to or-

14 See also summary of the inspection visit to Pärnu police detention centre – Chancellor of Justice Annual Report 2007. Tallinn 2008, p 242 ff.

ganisation of health services. As this constitutes a wider problem, on 4 February 2008 the Chancellor organised a roundtable with the representatives from the Ministry of Internal Affairs, the Ministry of Social Affairs, the Health Care Board and the Police Board. As a result of the roundtable, the Chancellor asked the relevant authorities to draw up a precise procedure for provision of health services to individuals detained in police facilities, including reaching an agreement on the extent of provision of health services and, if necessary, amending of relevant legislation.

Another problem concerning most police facilities is related to catering. The Chancellor has repeatedly been contacted by detainees from different police detention centres and police departments with the claim that the food provided does not conform to the legally established requirements. Problems of catering have also been detected during inspection visits. Therefore, on 1 October 2008 the Chancellor organised a roundtable with representatives from the Health Protection Inspectorate. Under the law, the Inspectorate is responsible for supervision with regard to issues of catering. During the meeting, exchange of experience and information regarding problems found during inspections took place.

From September 2008 to January 2009, the Chancellor of Justice organised a series of inspection visits to border guard stations and posts, as well as police departments and constable points. The aim of the visits was to map practices relating to short-term detention of individuals and, on this basis, to propose to the Ministry of Internal Affairs to draw up a regulative framework for short-term detention. This is necessary primarily because currently no clear legal provisions exist which would explicitly establish the rights of individuals to be ensured during short-term detention of up to 48 hours.

As part of the inspection, visits were made to detention cells in police departments or constable points in the North, South and East Police Prefectures[15] and to border guard facilities where individuals are detained[16].

The Chancellor's proceedings with the aim to make a proposal for drawing up a regulative framework for short-term detention continue in 2009.

The following part contains a brief overview of other shortcomings not mentioned above but found during inspection visits to different police detention centres.

2. Tartu police detention centre

On 12 June 2008, the Chancellor of Justice inspected Tartu police detention centre. Tartu police detention centre is used for executing short-term detention (e.g. for sobering up) and misdemeanour detention. Individuals taken into custody within criminal proceedings, as well as convicted persons, are also brought to Tartu police detention centre for carrying out procedural actions. The Chancellor had not conducted any previous visits to this police detention centre.

The main problems detected during the inspection visit were described above. In addition, some problems in connection with lighting were found.

The inspection revealed that there was not sufficient light in the cells during the day, so as to enable detainees to read or write. Only some of the lamps in the ceilings of the cells had bulbs, and natural lighting through the windows was not sufficient.

Therefore, the Chancellor proposed that sufficient lighting of the cells should be ensured, so as to enable detainees to read or write in the cells.

Interviews with detainees also revealed that officers switch off lights in the cells for the night.

As existence of lighting at night is important for security reasons, the Chancellor proposed leaving the light on during the night so as to enable monitoring of the cells but at the same time not interfering with the sleep of the detainees. If necessary, suitable lights should be installed in the cells. The Chancellor also proposed explaining to the officers the need for lighting for reasons of security.

The Police Board replied that possibilities for procuring new lights and their gradual replacement would be sought. Staff of Tartu police detention centre also received training on issues of ensuring security of detainees.

15 The following police facilities were visited: North Police Prefecture: Downtown police department, East police department, East-Harju police department, West-Harju police department; South Police Prefecture: Mustvee constable station, Elva constable station, Räpna constable station, Antsla constable station, Otepää constable station; East Police Prefecture: Sillamäe constable station and Iisaku constable station.

16 The following border guard facilities were visited: Narva road border crossing point, Narva border patrolling station, Vasknarva border patrolling station, Narva-Jõesuu border patrolling station, Alajõe border patrolling station, Mustvee border patrolling station, Värska border patrolling station, Saatse border patrolling station, Koidula road border crossing point, Piusa border patrolling station, Luhamaa border patrolling station, Luhamaa road border crossing point.

Interviews with the head of the police detention centre and with the detainees also revealed that it was not possible to ensure to the detainees the right to use the telephone as required by legislation. The head of the detention centre explained that the South Police Prefecture had actively sought solutions (however unsuccessfully) to guarantee the legal right of using the telephone also to those detainees in respect of whom the body conducting the criminal proceedings had imposed a restriction of telephone communications (e.g. in communication with the close ones).

On this basis, the Chancellor proposed to continue dealing with the problem.

The Police Board replied that detainees are ensured the right to use the telephone, and information concerning the use of the telephone would be provided to officers during information days and briefings.

Inspection of the cells also revealed that air circulation in cells with more than two persons seemed not to be sufficient.

Therefore, the Chancellor proposed to avoid overcrowding the cells as this would further aggravate the shortcomings of the ventilation system. At the same time, the Chancellor asked to consider the need to keep smokers and no-smokers separately when placing people in the cells, and if possible improve ventilation of the cells in Tartu police detention centre.

The Police Board agreed with the Chancellor and affirmed that smoking is considered as a factor in placement of individuals in the cells. The logistics department of the Police Board is also looking for possibilities to improve ventilation in Tartu police detention centre.

3. Paide police detention centre

On 12 June 2008, the Chancellor of Justice carried out an inspection visit to Paide police detention centre. The detention centre is used for short-term detention, misdemeanour detention and in certain cases also for remand prisoners and convicted prisoners. The Chancellor had not conducted any previous visits to Paide police detention centre.

In addition to the typical problems of police detention centres described above, the inspection revealed that sobering-up cells lacked a tap and a toilet separated from the rest of the cell. During the inspection visit, the washing machine for washing the laundry of detainees was out of order. It was also found that detainees could wash themselves only once a week.

The Chancellor proposed finding possibilities to install a partitioned toilet and a tap in sobering-up cells. In addition, the Chancellor also asked to improve personal hygiene possibilities for detainees, including additional washing possibilities. The Chancellor also proposed to repair the washing machine for washing the laundry of detainees.

The West Police Prefecture in its reply to the proposals noted that the living conditions in the sobering-up cells would be improved at first opportunity and mentioned that the washing machine for the use by detainees had been repaired. The prefecture also explained that additional washing times are provided to detainees.

4. Rapla police detention centre

On 10 July 2008, the Chancellor of Justice carried out an inspection visit to Rapla police detention centre under the West Police Prefecture. The inspection was induced by information received from a petitioner who claimed that leg-irons had been used in respect of them at Rapla police detention centre on 26 November 2006. The Chancellor had not conducted any previous visits to Rapla police detention centre.

The inspection revealed the existence of leg-irons at Rapla police detention centre. However, it was impossible to ascertain whether they had been used in respect of the above petitioner.

During the detention of the petitioner the Estonian legislation did not establish the right of the police to use leg-irons. However, the Chancellor decided not to make a proposal to Rapla police detention centre, as on 13 July 2008 the provisions of the Police Act were amended and the use of leg-irons was legalised.

During the inspection visit, a tour of the detention centre was carried out but no significant violations were found and the living conditions in the detention centre were good.

5. Haapsalu police detention centre

Based on a petition by an individual, on 3 October 2008 the Chancellor of Justice carried out an inspection visit to Haapsalu police detention centre. The complaint concerned handling of food in the detention centre. As complaints

from this detention centre are rare and the Chancellor had not previously inspected it, an extensive tour of the detention centre was carried out.

Based on the results of the inspection, the Chancellor reached the conclusion that small-scale small-budget sanitary repairs in the near future were needed to renew the appearance of the cells. The detention centre also lacked a washing machine for washing the clothes of detainees. Buying a washing machine would not require significant resources either.

On the basis of the inspection visit, the Chancellor made a proposal to Haapsalu police department to find budgetary resources in cooperation with the West Police Prefecture for renewal of the cells and procuring a washing machine.

The West Police Prefecture replied to the Chancellor's proposals that sanitary repairs in the detention centre had been gradually carried out cell by cell and the repairs would continue. The police prefecture also affirmed that it would eliminate the shortcomings in the detention centre according to the possibilities.

With regard to the washing machine, the West Police Prefecture explained that the building of Haapsalu police detention centre was located in a depreciated house in an area of cultural and environmental value. Connecting a new consumer to the power supply network would mean additional load for the building's electricity system and already now the prefecture has serious problems with providing electricity to the existing consumers. Significant investments to improve the situation have been made, and in 2007 generators were procured for each territorial structural unit, and attempts to balance the existing systems have also been made.

6. Jõgeva police detention centre

On 8 December 2008, the Chancellor of Justice carried out an inspection visit to Jõgeva police detention centre. The Chancellor had not conducted any previous visits to Jõgeva police detention centre.

As was mentioned above, the biggest problem is living conditions in the detention centre. Formally they seem to conform to the minimum requirements imposed by legislation, but there is definitely no reason to be satisfied with them. For example, detainees are held in cells without natural light (i.e. there is no window), ventilation is insufficient, the hygiene corner is partitioned only by a cloth suspended by the detainees themselves, etc. The condition of the walls and floors of the cells is also unsatisfactory in many respects. The general impression is further aggravated by the fact that individuals stay in these conditions round the clock for many days.

The Chancellor reached an opinion that the conditions in combination with the length of time spent in the cells amount to degrading treatment.

Interviews with officers of the prefecture revealed that improvement of the conditions in Jõgeva police department and the police detention centre was planned in the near future. Extensive renovation of the building would definitely be needed to improve the working conditions of officers in the police department and living conditions of detainees in the detention centre.

The inspection also revealed that detainees were not allowed to make phone calls in the police detention centre. This was mostly due to the fact that the detention centre had no possibility to check the telephone numbers dialled by detainees. Officers affirmed that solutions to the problem were being sought.

The Chancellor proposed to continue dealing with the problem.

IV DEFENCE FORCES

1. General outline

During the reporting period, there were seven training centres in Estonia where Estonian citizens performed their conscript service obligation in the Defence Forces. All these training centres are subject to supervision by the Chancellor of Justice as the preventive mechanism, as during the conscript service the liberty of individuals is extensively restricted against their will.

During the reporting period, the Chancellor of Justice carried out two inspection visits to training centres of the Defence Forces: infantry training centre of the Single Guard Battalion (inspection visit to infantry training centre of the Single Guard Battalion, case No. 7-7/071854) and infantry training centre of Kuperjanov Single Infantry Battalion (inspection visit to infantry training centre of Kuperjanov Single Infantry Battalion, case No. 7-7/081060).

The Chancellor of Justice has previously inspected Kuperjanov Battalion in 2005.[17] The Guard Battalion was inspected for the first time.

The choice of the establishments to be inspected was based primarily on the number of conscripts in the particular training centres, i.e. the number of individuals whose fundamental rights and freedoms are restricted in the establishments. Usually, the Chancellor schedules the inspection visits to take place at the time when new conscripts arrive in the training centre, i.e. the time immediately following the arrival of new conscripts in the training centre. In addition, the Chancellor also takes into account the need to have at least one inspection visit to the same training centre every three years.

Visits to training centres carried out during the reporting year unfortunately revealed the existence of the practice of imposing unlawful degrading punishments which had earlier been found in Viru Single Infantry Battalion.[18] The Chancellor found similar violations in the Guard Battalion and Kuperjanov Battalion. Namely, as a punishment for violating Defence Force regulations conscripts were made to do press-ups or stand in a forced position. In addition, it was found that for a violation committed by one conscript often the whole unit was punished, i.e. collective punishment was applied. According to the Chancellor's assessment, such forms of punishment are prohibited and applying them must be stopped.

The Chancellor proposed to the Guard Battalion to ensure that no such punishments would be applied in the future.

The Guard Battalion affirmed that the leadership and regular staff of the training centre would pay particular attention to the problem. The Guard Battalion promised to take all the necessary measures to make the prohibition of physical tasking and collective punishment understandable to commanders at all levels.

In his summary of the inspection visit to Kuperjanov Battalion, the Chancellor noted that unlawful punishment was not a problem limited to one training centre only. Due to the nature of the problem (lack of a necessary legal framework) and the fact that the training centre is not competent to draft legislation and the Chancellor has contacted the Ministry of Defence with this issue, the Chancellor did not consider it necessary to dwell in more detail on this issue during the inspection visit to Kuperjanov Battalion.

The following part contains a brief overview of other shortcomings not mentioned above but found during inspection visits to the training centres.

2. Guard Battalion

The Guard Battalion is a training centre directly subordinate to the Commander of the Army. It provides training to urban combat units and military police. In addition, the Guard Battalion also performs the representative function of the Estonian Defence Forces. Soldiers who have received ceremonial training wear army, navy and air force uniforms and guard the premises of the Office of the President of the Republic at Kadriorg in Tallinn.

During the inspection visit, the Chancellor found various shortcomings and made five proposals to the Battalion for eliminating the violations. In addition, the Chancellor made one proposal to the Minister of Defence.

The inspection visit revealed that the living and training conditions in the Guard Battalion did not conform to the requirements of the legislation. The shortcomings can be divided in two categories: problems in case of which solutions would require large-scale investments and others which are easy to deal with and do not require extensive rebuilding or expenditure. Conversations with the leadership of the Battalion showed that they were aware of the problems and

17 See, in addition, Chancellor of Justice Annual Report 2005. Tallinn 2006, p 200 ff. Available online: www.oiguskantsler.ee.
18 See, in addition, Chancellor of Justice Annual Report 2007. Tallinn 2008, p 137 ff. Available online: www.oiguskantsler.ee.

had submitted a detailed vision to the General Staff of the Defence Forces on how to improve the living and training conditions in the training centre. Thus, within their possibilities, the Guard Battalion was actively seeking solutions to problems.

As eliminating shortcomings caused by lack of space is not within the power of the Guard Battalion alone, the Chancellor proposed to the Minister of Defence to draw up an action plan for solving the problem of overpopulation in order to ensure minimum legally required floor space to conscripts and find sufficient financial resources to implement the action plan. The Minister of Defence replied that possible solutions to the problem would be sought when drawing up the military national defence development plan for 2009-2018. In addition, the Minister of Defence affirmed that providing humane living conditions to conscripts is a priority in the development of the military national defence system.

The inspection visit revealed that the Guard Battalion had washing machines and, according to the Commander of the Battalion, conscripts could used them for doing the laundry, but in reality there were not enough washing machines and conscripts had no possibility to use them. The Chancellor proposed to guarantee that conscripts could use the washing machines. For this, more machines should be procured.

The Guard Battalion explained in response to the proposal that in the future conscripts would have a possibility to use the washing machines. At the same time, the Battalion also admitted that due to the shortage of space it would not be possible to procure more machines.

The inspection visit also revealed that due to the shortage of space spending of free time was complicated for conscripts as the Battalion lacks the necessary facilities. It was found that for individual study some of the conscripts had to stand in the corridor as there were not enough seats. At the same time, conscripts could not use empty classrooms at the time when no classes took place because the rooms were locked. The Chancellor proposed that in order to alleviate the problems caused by the absence of a proper living room, classrooms could also be made available to conscripts during free time.

The Commander of the Guard Battalion replied that in the future conscripts would also be able to use classrooms during the free time.

Some problems were also found in connection with shopping possibilities for conscripts. In the territory of the battalion only cash purchases were possible. However, as allowances to conscripts are paid to their settlements accounts and no possibility for cash withdrawal exists in the territory of the battalion, a situation had emerged where conscripts essentially lacked the possibility for shopping. The Chancellor proposed that a solution to the problem should be found.

In reply, the Guard Battalion explained that in the future the platoon commander would gather conscripts who need cash and under the supervision of a regular member of the Defence Forces the conscripts would be taken to the nearest cash dispenser.

It was also found that some problems existed with granting a leave pass to conscripts. There had been cases where a conscript had been granted a leave pass but it had subsequently been withdrawn and the reasons for withdrawal had not been given. The Chancellor explained to the Guard Battalion that reasons for withdrawal of a leave pass must definitely be given to a conscript; including to allow them to assess the lawfulness of withdrawal and decide whether to contest the withdrawal. The Chancellor proposed to the Guard Battalion that requirements of the legislation should be complied with when granting or withdrawing a leave pass in the future.

The Commander of the Guard Battalion took note of the Chancellor's proposal and affirmed that once a leave pass has been granted to a soldier and it has been registered with the duty officer it would no longer be withdrawn.

3. Kuperjanov Battalion

Kuperjanov Battalion is a training centre directly subordinate to the Commander of the Army. Its tasks include training and forming of war-time units in accordance with the formation task and, according to the training plan, preparing war-time sub-units from conscripts during the training year: including infantry company, mortar battery, reconnaissance groups of the infantry battalion. Tasks of Kuperjanov Battalion also include carrying out, according to the training plan, reserve training with units formed on the basis of the battalion and consisting of reservists, and keeping and maintaining the battalion's and the units' peace-time and war-time equipment, armaments, ammunition, clothes and other supplies.

As a result of the findings of the inspection visit, the Chancellor of Justice made two proposals to Kuperjanov Battalion, both of them concerning violations of processing of sensitive personal data.

The inspection visit revealed that information about the health of conscripts (sensitive personal data) was also re-

quested by members of the Defence Forces who were not entitled to process such data. It was also found that during the initial health examination of conscripts there were third persons, i.e. other members of the Defence Forces besides the conscript and the medical staff, present in the same room. Therefore, a conscript's health data could become accessible to third persons.

The Chancellor of Justice proposed to Kuperjanov Battalion to prohibit requesting of sensitive personal health information of conscripts by members of the Defence Forces who do not need such data for performing their duties. In addition, the Chancellor proposed to take measures to ensure that during the health examination sensitive personal data do not become accessible to third persons.

Kuperjanov Battalion replied that serious attention had been paid to the issue of processing sensitive personal data of conscripts, and rules of the Personal Data Protection Act had been explained to members of the Defence Forces dealing with conscripts in order to avoid possible violations.

V PRISONS

1. General outline

At the end of 2008, Estonia had five prisons, all of them within the area of government of the Ministry of Justice. In 2008, the Chancellor of Justice carried out a comprehensive inspection visit to two prisons. On 21 February 2008, an inspection visit to Tallinn Prison and on 2-3 December 2008 to Viru Prison was made (inspection visit to Tallinn Prison, case No. 7-7/080046; inspection visit to Viru Prison, case No. 7-7/081558).

In his annual action plan, the Chancellor of Justice plans inspection visits to prisons at intervals which enable making a comprehensive visit to each prison at least every three years. In addition, daily information about the situation in prisons is collected on the basis of complaints received by the Chancellor and, if necessary, a particular prison may be visited more frequently.

The Chancellor's previous comprehensive inspection visit to Tallinn Prison took place in March 2005. Viru Prison was opened on 29 July 2008, and thus no earlier visits to it had been made. These two prisons hold more than half of all the convicted and remand prisoners in Estonia.[19]

Three main systematic problems may be highlighted on the basis of inspection visits to prisons in 2008.

First, the conditions prevalent in the last remaining unrenovated prisons deriving from the Soviet period do not enable guaranteeing the rights of prisoners on the level presumed in the 21st century Europe. One such prison is Tallinn Prison in which several rooms did not conform to the requirements during the Chancellor's visit. Tallinn Prison, according to its reply, tries to improve the situation of the rooms as much as possible. Building of the new Tallinn Prison is also planned.

Secondly, it is still difficult for prisoners to protect their rights by contacting the prison administration and other state agencies, because there is no information as to which prison officer violated a person's rights and what the rights of individuals are in general. The prison also violates the procedure for responding to applications, and getting in touch with the contact person who is the main communicative link between the prison and the prisoner is often complicated. The Chancellor of Justice has pointed out these problems and in cooperation with the Ministry of Justice and the prisons the situation has slowly improved.

Thirdly, there are still problems with diversifying daily activities available to persons who are locked to their cells for 24 hours (remand prisoners, persons locked to cells for security reasons). Minors in locked cells cannot sufficiently study or participate in hobby groups, and remand prisoners do not have sufficient opportunities for targeted activities. Prisons in their replies to the Chancellor's recommendations explained that diversifying of daily activities was considerably hampered due to the interests of criminal proceedings (the need to keep persons separately) as well as security considerations.

The following part contains a brief overview of other shortcomings not mentioned above but found during inspection visits to the prisons.

2. Tallinn Prison

Tallinn Prison is an institution within the area of government of the Ministry of Justice which carries out imprisonment and custody pending trial and organises probation supervision. Tallinn Prison is a closed prison with a block for custody pending trial. The prison capacity is 1159 persons.

The inspection visit revealed that many prison officers did not wear identifying marking which would allow identifying particular officers. Several officers lacked name tags or other marking to allow distinguishing them.

The Chancellor of Justice concluded that public authority must not act arbitrarily. The guarantee of compliance with the law should include a practical, not only theoretical, possibility to ascertain which of the persons acting on behalf of public authority has violated the law. Standard friendly and polite communication also presumes that the parties know who they are dealing with. This plays an important role in establishing a problem-free and trustworthy contact between an officer and an individual. Therefore, the Chancellor proposed that uniforms of prison officers who come into contact with prisoners in Tallinn Prison should have name tags or other identifying marking (e.g. personal number combination), so as to ensure that prison officers are identifiable for prisoners.

Tallinn Prison agreed with the Chancellor's opinion that officers should be identifiable. Each prison officer has been provided with a name tag which they should wear on the uniform. In addition, according to the prison administra-

19 There are approximately 3550 prisoners in Estonian prisons. The data are available online: http://www.vangla.ee/.

tion, new prison officer's uniform has a 'velcro'-type strip for attaching a name tag. The prison has monitored and would continue to monitor that officers wear a name tag.

Interviews with remand prisoners revealed that upon admission to prison they were asked to sign the statement that they had been familiarised with the legislation before the actual familiarisation took place. The remand prisoners also claimed that there had been cases where prison officers had provided them with invalid versions of legislation and were not aware of any amendments to legislation that had entered into effect.

The Chancellor of Justice concluded that the requirement of publication of legislation arises from the principle of the rule of law. Individuals cannot be required to comply with the rules about the existence of which they have no information or no possibility to access them and adjust their behaviour accordingly. Familiarity with the rules of law is also necessary for effectively protecting one's rights. Therefore, the Chancellor proposed to Tallinn Prison to draw the attention of prison officers to the need for proper introduction of legislation to prisoners. The Chancellor also proposed to draw up a procedure/methodology for guiding the work of prison officers, including the principles on the basis of which legislation is introduced to prisoners.

Tallinn Prison replied that the procedure for introducing legislation to prisoners would be revised, so that prisoners would have a possibility to familiarise themselves with the substantive list of legislation regulating imprisonment and the principles contained in the legislation before they are required to sign the relevant statement. In addition, the prison is drawing up an information brochure about the organisation of imprisonment which would be provided to all new prisoners admitted to prison.

The inspection visit also revealed that remand prisoners had very few or no possibilities at all for targeted activity (e.g. studying, working). As a rule, remand prisoners spend 23 hours in their cell and one hour in the exercise yard.

The Chancellor found that one of the factors contributing to future law-abiding behaviour of prisoners would be providing them with targeted activity. Such an activity includes primarily acquiring of education, working and participation in different hobby groups. The Chancellor recommended finding possibilities to enable remand prisoners to engage in study, work or hobby groups similarly to convicted prisoners.

According the reply by Tallinn Prison, organising activities for remand prisoners was to a large extent hampered by the legal situation (including restrictions on communication imposed on remand prisoners by the investigative authorities) and the architectural design of Tallinn Prison. The prison said it was actively looking for volunteers who would be interested in organising out-of-cell activities for remand prisoners.

During the interviews prisoners claimed that in certain cases the prison administration did not reply to their requests within the legally prescribed periods. It was also noted that there had been cases where no reply at all had been given to a request.

The Chancellor of Justice found that individuals must have an opportunity to contact authorities without excessive formalities and receive swift replies to their requests. As the Estonian law provides that prisoners communicate with the prison in writing, the precondition for processing written requests is registration of the requests by the administrative authority. Considering the resources of the prison and the number of requests made by prisoners, the Chancellor believes it would be practicable to use electronic means for registering and processing them. Use of electronic means of document management would help to reduce the workload of prison officers and expedite replying to requests of prisoners, which in turn would conform to the principle of good administration. On this basis, the Chancellor proposed to the prison to develop, in cooperation with the Ministry of Justice, an electronic system for registering and speeding up the processing of requests by prisoners.

Tallinn Prison replied to the Chancellor that written requests by prisoners are entered in the relevant register. An information technology solution *e-kontakt*, based on MS Outlook and already successfully used in other prisons in Estonia, is being implemented.

Touring of the prison during the inspection visit revealed that cell No. 89 used for executing disciplinary punishments had significantly poorer living conditions than other punishment cells due to its poor lighting and ventilation. It was also ascertained that the average term of punishment served in the cell was ten days.

The Chancellor concluded that holding individuals in cell No. 89 was contrary to prohibition of degrading treatment. The Chancellor proposed to the prison that cell No. 89 should be used only for very short-term placement of prisoners.

Tallinn Prison replied that cell No. 89 is used only in case of extreme need and individuals do not stay in it for more than a couple of days. The prison also promised to make the cell more suitable for short-term detention of individuals.

The inspection visit to Tallinn Prison also revealed shortcomings in living conditions in the rooms of the first and

second block for custody pending trial, which is mostly used for meetings of prisoners with their defence counsel. In case of the first block the problem was insufficient ventilation. Ventilation could not be improved by opening the window because in that case loud music from the outside made conversation impossible. In case of the second block, the room used for meetings with counsel was in an unsanitary condition and was badly in need of renovation.

The Chancellor proposed that the rooms used for meetings with defence counsel in the blocks for custody pending trial should be renovated and a solution to the problem of insufficient ventilation should be found.

Tallinn Prison replied that filters of the ventilation system had been replaced in the blocks for custody pending trial in April 2008 and, as a result, the ventilation should work more effectively. The prison has proposed to the company *OÜ Hooldus Pluss* to include renovation of the second block for custody pending trial among the extraordinary work to be carried out in Tallinn Prison in 2009. However, the prison in its reply admitted that the process of renovation in Tallinn Prison under the contract with *OÜ Hooldus Pluss* is limited to so-called critical work. The list of critical work is drawn up and the work is carried out according to the availability of necessary resources.

During the interviews some remand prisoners complained that problems with hot water occurred in showers in the blocks for custody pending trial in Tallinn Prison. Namely, if all showers in the shower room were turned on at the same time, not all of them had hot water and consequently some prisoners had to wash themselves with cold water.

The Chancellor drew the attention of the prison to the need to renovate the showers, and the prison in its reply affirmed that the showers in the block for custody pending trial would be renovated in summer 2008.

3. Viru Prison

Viru Prison is an institution within the area of government of the Ministry of Justice which carries out imprisonment and custody pending trial and organises probation supervision. Viru Prison is a closed prison which, in addition to a block for custody pending trial, includes an open prison and blocks for prisoners who are working. The closed prison has a capacity of 1000 persons and the open prison a capacity of 75 persons.

Based on the petitions received by the Chancellor and interviews with prisoners in the maximum-security accommodation blocks in Viru Prison it was found that prisoners in these blocks were considerably dissatisfied with the fact that they were not given access to all the activities and services provided by Viru Prison to the extent and in a manner comparable to other prisoners in the same prison. Among the prisoners in the maximum-security accommodation block who came to the Chancellor's reception no-one knew exactly the reason why they had been placed in the so-called super-max block. The persons noted that their contact with prisoners in other blocks was minimum. Prisoners in maximum-security blocks claimed that, as a rule, they go outside the territory of their block only for a walk in exercise boxes located on the roof of the same building. All the other activities take place and services are provided in the territory of the same block (e.g. physical exercise, attending to religious needs, acquiring education). Primary health care services are provided in the room in the immediate vicinity of the block. The room has no special equipment (there is only a table and a few chairs) and, according to prisoners, they have to wait for a week or two before receiving medical care. Prisoners also complained that the day room for prisoners was small and persons were simultaneously watching television, engaging in physical exercises and making phone calls in it.

The Chancellor noted that current legislation does not provide grounds for prisoners to demand that their rights under the Imprisonment Act should be guaranteed exactly in the same manner as the rights of other prisoners in the same prison or in other custodial institutions. It is important that exercising of the rights is guaranteed at least on the minimum level required by legislation and that actual conditions for exercising the rights do not distort the essence of the rights so as to render exercising them essentially impossible. The Chancellor admitted that during the inspection visit it was not possible to ascertain that prisoners in maximum-security blocks could not exercise their rights under the Imprisonment Act. However, the Chancellor proposed to the prison that in cooperation with experts from the Health Care Board it should be assessed whether the quality of health services was adversely affected by the fact that, as a rule, primary health examination of prisoners was performed in a room without special equipment and, if necessary, relevant changes in the rooms should be made. The Chancellor also proposed to refrain, if possible, from filling maximum-security blocks to their full capacity and find possibilities to provide more rooms and space for spending free time, diversify opportunities for spending free time and, if the security situation allows, sometimes offer activities outside the maximum-security blocks for prisoners held there. Additionally, the Chancellor proposed that, whenever possible, at least limited information could be given to prisoners in maximum-security blocks as to the reasons why they had been placed there.

During interviews, prisoners complained that long-term visits were rarely allowed in Viru Prison and often the days offered for visits were not suitable for potential visitors. Conversations with the prison administration revealed that on average persons in Viru Prison were allowed more long-term visits than the legally required minimum but, as a rule, visits took place on weekdays and the range of persons wishing to have visits was relatively small. Visits are allowed only on weekdays mostly due to the shortage of prison staff performing supervision.

The Chancellor of Justice emphasised the importance of positive family links in the process of resocialisation of prisoners and recommended finding possibilities to allow long-term visits for a wider range of people and provide opportunities for visits at the times which are presumably more suitable for visitors (primarily weekends and holidays).

Interviews with adult prisoners during the inspection visit also revealed that prisoners in Viru Prison assessed the relations with inspector-contact persons who serve as the primary link between the prisoners and the prison to be poor. The same assessment of relations with contact persons was given by juvenile prisoners. Prisoners complained that sometimes contact persons whose mother tongue was Russian were unable to provide explanations in Estonian or, vice versa, contact persons whose mother tongue was Estonian were unable to communicate in Russian.[20] Working adult prisoners complained that reception times of contact persons were at the time when they were at work and so it was extremely difficult to have an appointment with a contact person. Minors complained that sometimes reception times of contact persons were at times when they were at school. Communication skills of some contact persons were allegedly also poor.

The Chancellor of Justice noted that in cell-type prisons (like Viru Prison) it is the inspector-contact person who comes into most contact with prisoners on a daily basis. Most of correspondence and requests pass through the contact persons and they are the primary source of information for prisoners about prison matters. The Chancellor proposed to the prison to analyse reception hours of contact persons in different accommodation blocks in comparison with the scheduled activities of prisoners and, if necessary, adjust the reception hours of contact persons so that the possibility to meet a contact person would not be hampered because, for example, their reception hours are at the same time when the prisoners' working or study hours. The Chancellor also proposed investing resources in raising the qualifications of contact persons, enabling them to attend training courses relevant for improving their professional skills (including language courses) and facilitating participation of contact persons in these courses.

The inspection visit also revealed that not all school-age prisoners in Viru Prison were enabled to acquire education and comply with their compulsory school attendance, and various reasons for this existed.

The Chancellor proposed that Viru Prison should take steps to enable all school-age convicted prisoners and remand prisoners who have been in custody pending trial for at least one month to comply with their compulsory school attendance while staying in prison. Viru Prison, the Ministry of Justice and the Ministry of Education and Research should cooperate to ensure that children of foreign citizens and stateless persons legally staying in Estonia also have access to education in Viru Prison.

It was also found during the inspection visit that various social programmes were planned with participation of young people (including minors) in Viru Prison for the aim of resocialisation. However, information contained in the relevant table sent to the Chancellor showed that at the time of the inspection visit only two prisoners who were minors participated in the social programmes, there were plans to involve 17 minors in the new social programmes about to begin, and 10 minors did not participate in any social programme and the prison had no plans to involve them in programmes beginning in the near future. Interviews with prison staff revealed that the majority of minors who were not involved in social programmes were staying in isolated locked cells. Prison staff again justified not involving these prisoners in social programmes with security reasons. According to prison staff, prisoners staying in isolated cells could not be let into contact with others.

In the Chancellor's opinion, prisoners placed in isolated locked cells would perhaps be in need of social programmes (e.g. aggression replacement training, lifestyle training, social skills training) more than anyone else. Isolated cells are used for placement of prisoners who systematically violate the Imprisonment Act or internal prison rules, damage their health or are inclined to suicide or escape, as well as prisoners who are dangerous to others or who endanger security in prison. The Chancellor reached the conclusion that merely placing juvenile prisoners who meet these criteria in isolated cells is not sufficient to achieve the aims of imprisonment, i.e. guiding prisoners to adopt law-abiding behaviour and protecting law and order. Placement in isolated cells helps to ensure security in prison but, at the same time, resocialisation process of these prisoners should not be neglected. The inspection revealed that several minors were staying in an isolated cell at their own request for reasons of personal security. Minors who have been victim to bullying or other mental or physical violence by other prisoners definitely need the assistance of a social worker or psychologist. Thus, individual activities or programmes aimed at resocialisation and development of social skills should be prepared for these prisoners. The Chancellor proposed to come up with suitable resocialising activities and programmes for minors who are placed in isolated locked cells in the prison. If due to reasons of prison security, prisoners in locked cells cannot be involved in social programmes together with others, the social worker and psychologist could deal with them individually.

The inspection revealed that prisoners in Viru Prison could engage in hobby activities by attending music, dance or art groups. Russian-speaking young people can attend a computer group. According to the prison director, there are also plans also to open a computer group for Estonian-speaking prisoners in the near future. During personal interviews with hobby group leaders, all prisoners can describe their interests and wishes for engaging in hobby activities in prison, specifying their skills and proficiency level in the particular field of interest. Hobby activities can be pursued

20 Approximately 70% of prisoners in Viru Prison are Russian mother tongue speakers.

at the time when the young prisoners are not involved in acquiring general education, vocational education or attending a rehabilitation programme. The majority of juvenile prisoners with whom the advisers to the Chancellor talked complained about the lack of possibilities to engage in hobby activities and expressed the wish to do more sports. Almost all the interviewed juvenile prisoners complained about the lack of sporting opportunities. Interviews revealed that juvenile prisoners could engage in sport mostly within the physical education classes. No separate sports groups have been created and there is no possibility to use the sports hall during free time. A couple of interviewed prisoners also mentioned that there had been cases when a guard simply forgot to take a child from the accommodation block to the hobby group at the right time.

In the opinion of the Chancellor, juvenile prisoners are children whose level of development is not comparable to adults and who therefore need the help and support of adults for their development. Enabling them access to hobby activities appropriate for their age is extremely important for the development of children. Therefore, the Chancellor made a recommendation to provide additional opportunities for hobby activities for juvenile prisoners. The Chancellor also recommended providing more sporting opportunities for juvenile prisoners. In the opinion of the Chancellor, expanding of sporting opportunities could somewhat help to reduce physical violence between prisoners by offering an alternative way of alleviating tensions and spending energy.

VI SPECIAL SCHOOLS

In 2008 there were three schools for pupils needing special educational measures in Estonia: Kaagvere Special School, Tapa Special School and Puiatu Special School. In 2008, advisers to the Chancellor made two visits to Puiatu Special School. Visits to Puiatu Special School have also been made in the past – the previous inspection visit by advisers to the Chancellor took place on 22 November 2007.

Puiatu Special School is a state elementary school in the area of government of the Ministry of Education and Research for children requiring special treatment due to behavioural problems. Children aged 10-17 are admitted to the school. Children are referred to the school on the basis of a court order made upon an application by a juvenile committee or on the basis of a court judgment.

On 12 May 2008, advisers to the Chancellor and relevant experts (two child psychiatrists and one child psychologist) carried out an extraordinary unannounced inspection visit to Puiatu Special School (inspection visit to Puiatu Special School, case No. 7-9/080729). The visit was motivated by information received by the Chancellor from various sources claiming that fundamental rights of children were violated at Puiatu Special School and the school had not complied with the Chancellor's earlier proposals for eliminating the problems.

The team consisting of the Chancellor's advisers and experts interviewed 28 children out of 43 who were present at school and also talked to six current and previous employees of the school.

During the unannounced inspection visit, the advisers to the Chancellor ascertained a large number of violations concerning the use of an isolation room, security of the school environment and the right of pupils to education and protection of health.

The inspection revealed that in using the isolation room Puiatu Special School had violated several requirements under the Juvenile Sanctions Ac. The isolation room also did not conform to the Minister of Social Affairs Regulation No. 33 of 8 February 2002 "Health and safety requirements for the isolation room and its furnishing".

The Chancellor of Justice proposed to the director of the school to immediately stop using the isolation room for disciplinary purposes. The Chancellor also recommended the director to comply with the requirements of the Juvenile Sanctions Act when using the isolation room in the future. The Chancellor also asked the Minister of Education and Research to ensure that an establishment under the area of government of the Ministry would comply with the law while using an isolation room.

The inspection also revealed that Puiatu Special School was unable to ensure mental and physical security and protection of health of the pupils during their stay at school. At the time of the inspection the school environment was not secure either for pupils or for teachers. Lack of sufficient assistance and guidance from the state and inability of the school administration to take appropriate measures to prevent mental and physical violence had led to a situation where violence at Puiatu Special School had become a daily phenomenon.

The Chancellor asked the director of the school to take immediate measures to ensure mental and physical security and protection of health of children at school. The Chancellor also asked the Minister of Education and Research to verify whether the current school administration was capable of ensuring mental and physical security and protection of health of children at the school and, if necessary, immediately take steps to guarantee security of children at Puiatu Special School.

Furthermore, the inspection revealed that many pupils at Puiatu Special School had behavioural or mental problems and were consequently in need of medicinal treatment and psychotherapy which cannot be offered at a school for pupils needing special educational measures. It was also found that at least five children with mental retardation and damage of the nervous system had been sent to the school while, instead, they would need an individual curriculum and treatment for coping and complying with the compulsory school attendance. A school for pupils needing special educational measures is currently incapable of ensuring sufficient psychiatric care and a favourable rehabilitative environment to children with mental problems.

The Chancellor of Justice sent a memorandum to the Minister of Education and Research and the Minister of Social Affairs, drawing their attention to the fact that currently there was a large number of pupils with mental problems at Puiatu Special School who did not receive the necessary medical treatment at school. The Chancellor also asked the Minister of Education and Research and the Minister of Social Affairs to cooperate to find out whether and how it would be possible under the current regulative framework to ensure that pupils with mental problems who are in need of special educational measures would receive necessary treatment and rehabilitation as well as acquire education and social skills appropriate to their abilities.

The inspection also revealed that Puiatu Special School had failed to comply with the law when forming a composite

class and formed the class from pupils of very different ages and with very different knowledge. Consequently, the rights to education of not all the children attending the composite class were guaranteed.

The Chancellor proposed to the director of Puiatu Special School to comply with the law when forming a composite class. The Chancellor recommended that the director should proceed from the interests of the child when forming composite classes and organising supplementary learning, and ensure that the right to education of all the children at Puiatu Special School is guaranteed.

On 19 November 2008, the Chancellor with his advisers carried out a follow-up inspection visit to Puiatu Special School to verify how the school had complied with the proposals for elimination of violations made after the extraordinary inspection visit of 12 May 2008.

As a result of the follow-up inspection, the Chancellor unfortunately had to conclude that serious shortcomings still existed in the work of the school. The school administration had not been able to do anything to reduce violence and ensure physical and mental security at the school. The fundamental right to the protection of health under § 28(1) of the Constitution was still not guaranteed to pupils with mental retardation and mental disorders. In addition, during the follow-up inspection the Chancellor found violations with regard to restriction of rights without an appropriate legal basis.

However, on the positive side it could be noted that at the time of the follow-up inspection Puiatu Special School was complying with the law in forming composite classes, and had almost fully complied with the Chancellor's proposals concerning the use of the isolation room. Nonetheless, it should be pointed out that the isolation room still did not meet the health and safety requirements.

As a result of the follow-up inspection, the Chancellor contacted the school director, the Minister of Education and Research, the Minister of Justice, the Riigikogu Social Affairs Committee and the Riigikogu Cultural Affairs Committee. The Chancellor drew their attention to the problems detected in the work of Puiatu Special School as well as problems concerning the general regulative framework for pupils in need of special educational measures.

STATISTICS OF PROCEEDINGS

I GENERAL OUTLINE OF STATISTICS OF PROCEEDINGS

1. Petition-based statistics

In 2008, the Chancellor of Justice received 2566 petitions, on the basis which 1944 cases were opened. As compared to 2007, the number of petitions rose by 11.3%.

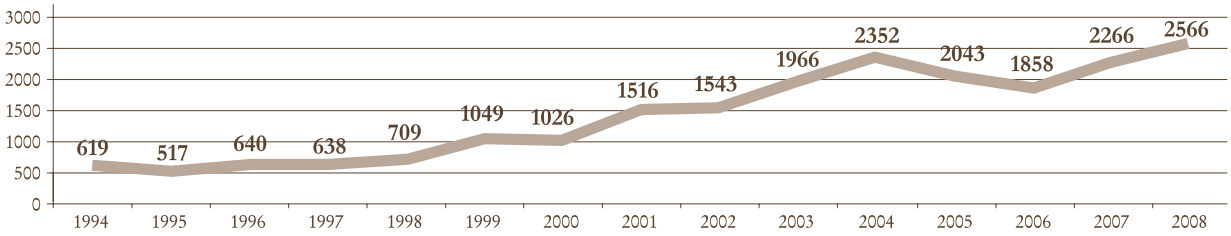

Figure 1. Number of petitions 1994–2009

2. Statistics based on cases opened

Since 2005, 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 opens a case either based on a petition or on his own initiative. Proceedings of cases are divided into substantive and non-substantive proceedings. Substantive proceedings are divided as follows based on the Chancellor's competencies:

- review of the legality or constitutionality of legislation (i.e. review proceedings);
- verification of the legality of measures 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).

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. Outcomes of cases are divided as follows depending on the type of proceedings.

In reviewing the constitutionality and legality of legislation, the outcome of proceedings is classified according to whether a conflict was found or not.

A conflict was found if:

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

No conflict was found if:

– an opinion was issued stating a finding of no conflict.

In reviewing the legality of activities of bodies performing public functions, the outcome of proceedings is classified according to whether a violation was found or not.

A violation was found if:

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

No violation was found if:

– an opinion was issued stating a finding of no violation.

Special proceedings are classified depending on outcome as follows:

o an opinion within constitutional review court proceedings;

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

In case of petitions declined for proceedings, the outcome is classified as follows:

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

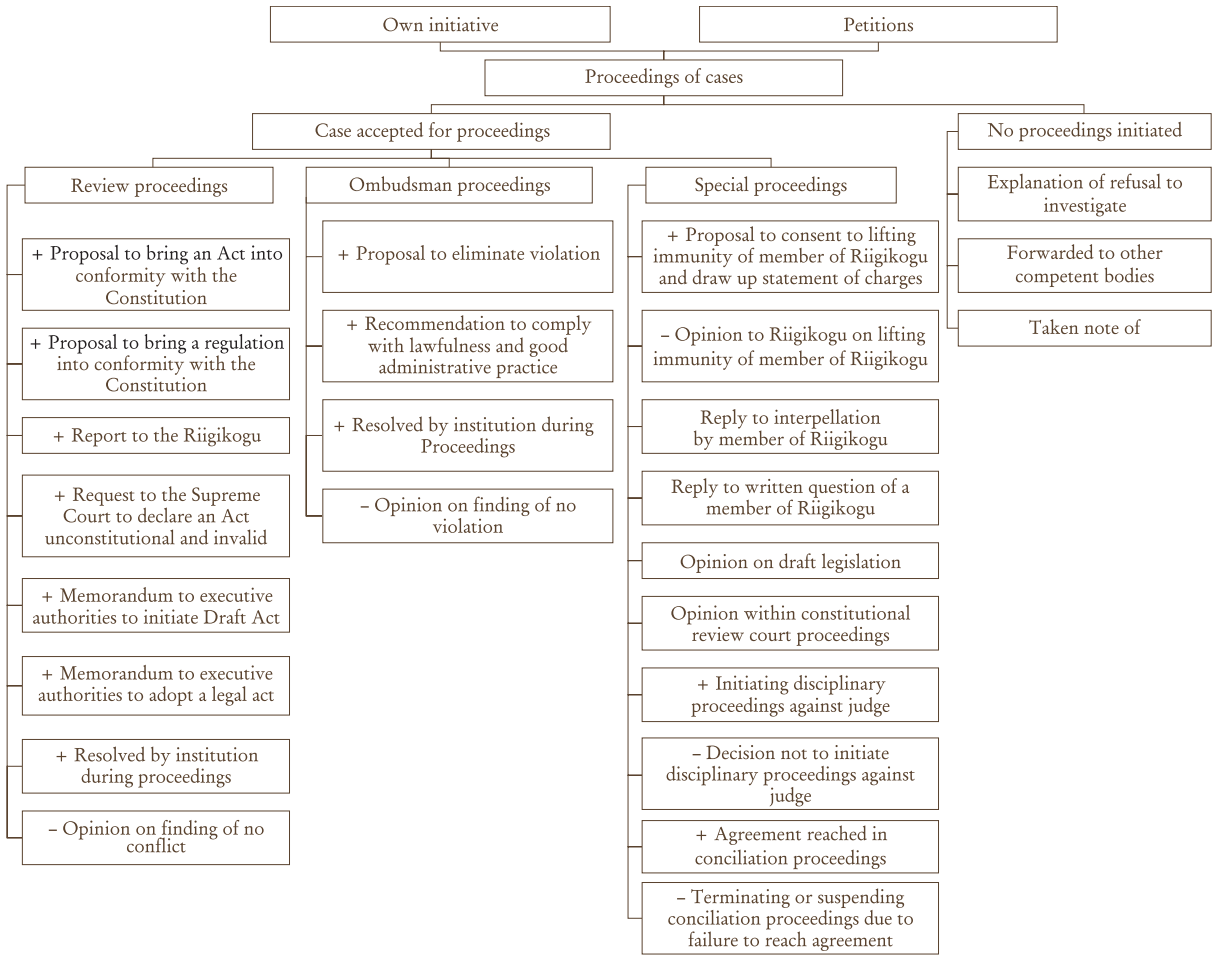

Figure 2. Classification of proceedings of cases and outcome of proceedings

During the reporting year, there were 1944 cases opened, which is 11.7% more than in 2007. As at 1 February 2009, 1794 proceedings had been completed, in 52 cases follow-up proceedings were pending and 98 cases were still being investigated. In 480 cases, substantive proceedings were conducted during the reporting year, and in 1464 cases no proceedings were initiated for various reasons. During the reporting year, 66 proceedings were initiated based on the Chancellor's own initiative. 33 inspection visits were conducted.

In 2008, the number of cases increased first and foremost on account of cases where no proceedings were initiated. The proportion of substantive proceedings remained the same, both in terms of review proceedings, ombudsman proceedings and special proceedings.

Table 1. Distribution of cases by content

	2005	2006	2007	2008
Cases accepted for proceedings	725 *43.5%*	551 *34.6%*	474 *27.2%*	480 *24.7%*
incl. review proceedings	247 *14.8%*	207 *13%*	150 *8.6%*	151 *7.8%*
incl. ombudsman proceedings	372 *22.3%*	258 *16.2%*	252 *14.5%*	258 *13.3%*
incl. special proceedings	106 *6.4%*	86 *5.4%*	72 *4.1%*	71 *3.7%*
Non-substantive proceedings of cases	941 *56.5%*	1043 *65.4 %*	1266 *72.8%*	1464 *75.3%*
Total cases	1666	1594	1740	1944
incl. own-initiative proceedings	57 *3.4%*	35 2.2 %	70 *4%*	66 *3.5%*
incl. inspection visits	12	8	28	33

II OUTCOME OF PROCEEDINGS OF CASES

The outcome of proceedings of cases demonstrates what kind of solutions or measures the Chancellor reached as a result of his proceedings. The number of proceedings initiated does not exactly correspond to the number of outcomes, as only completed cases can have an outcome, while the distribution of cases by content includes all cases opened during the reporting year.

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

To review the constitutionality and legality of legislation of general application, 151 cases were opened, i.e. 7.8% of the total number of cases and 31.5% 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 (82 proceedings, of these 76 based on petitions by individuals and 7 on own initiative);
- conformity of Government regulations with the Constitution and Acts (9 proceedings based on petitions by individuals);
- conformity of regulations of Ministers with the Constitution and Acts (24 proceedings, of which 21 based on petitions and 3 on own initiative);
- conformity of regulations of local councils and rural municipality and city administrations with the Constitution and Acts (32 proceedings, of which 4 based on application by County Governor, 27 based on petitions by individuals, and one on own initiative);
- legality of other legislation of general application (3 proceedings based on petitions by individuals).

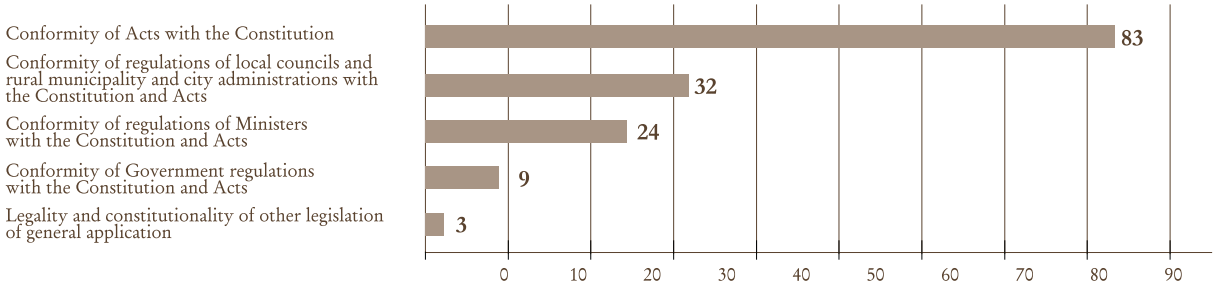

Figure 3. Distribution of constitutional review proceeding

As a result of review of the constitutionality and legality of legislation of general application, the Chancellor reached the following outcomes:

- proposal to bring an Act into conformity with the Constitution (3);
- proposal to bring a regulation into conformity with the Constitution or an Act (1);
- request to the Supreme Court for declaring legislation of general application unconstitutional and invalid (in 2008, the Chancellor made no proposals to the Supreme Court);
- report to the Riigikogu (in 2008, the Chancellor made no reports to the Riigikogu);
- memorandum to executive authorities for initiating a Draft Act (12);
- memorandum to executive authorities for adopting a legal act (5);
- case resolved by the institution during proceedings (7);
- opinion stating a finding of no conflict (68).

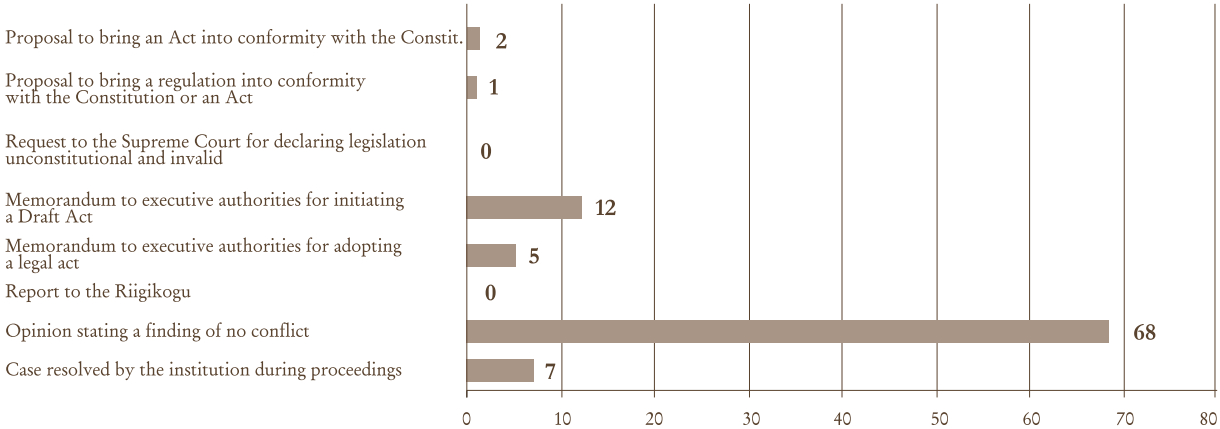

Figure 4. Outcomes of proceedings for review conformity with the Constitution and Acts

In case of proceedings for review of conformity with the Constitution and Acts, conflict with the Constitution or an Act was found in 19% of the cases. In 2007, the indicator was 22%.

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

258 proceedings were initiated for verification of legality of measures of the state, local authorities, other public-law legal persons or of a private person, body or institution performing a public function, i.e. 13.3% of the cases and 53.8% of the total number of substantive proceedings. Of these, 203 were based on petitions by individuals and 55 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 (143 proceedings, of these 122 based on petitions by individuals and 29 on own initiative);
- activities of a local government body or agency (68 proceedings, of these 61 based on petitions and 6 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 (47 proceedings, of these 20 based on petitions and 27 on own initiative).

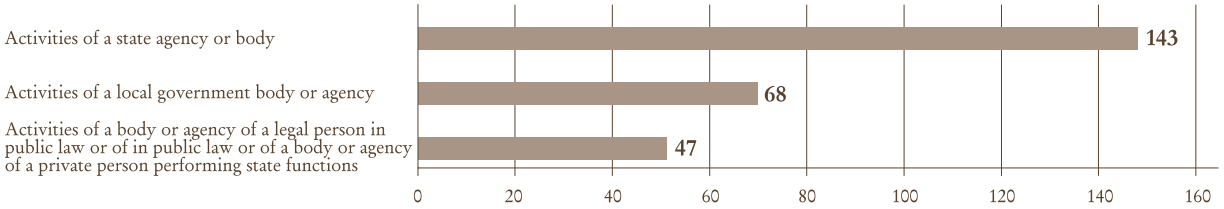

Figure 5. Distribution of proceedings for scrutiny of activities of persons, agencies, and bodies

Outcomes of supervision over activities of agencies and institutions performing public functions:

- proposal to eliminate a violation (23);
- recommendation to comply with lawfulness and good administrative practice (53);
- resolved by the institution during the proceedings (33);
- opinion stating a finding of no violation (91).

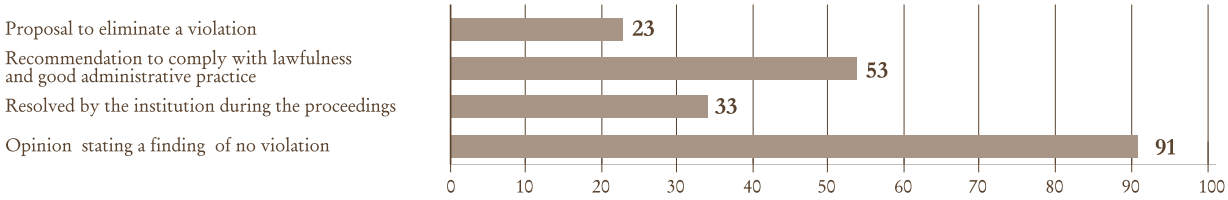

Figure 6. Outcomes of proceedings initiated for scrutiny of activities of persons, agencies, and bodies

In proceedings initiated for scrutiny of activities of persons, agencies and bodies, a violation of the principles of good administration and lawfulness was found in 38% of the cases. In 2004, the indicator was 43%.

3. Special proceedings

There were 71 special proceedings during the reporting year, i.e. 3.7% of the total number of cases opened and 14.8% of the total number of substantive proceedings, which is the same as in the previous year.

Special proceedings are divided as follows:

- providing an opinion on a legal act within constitutional review proceedings (16 proceedings);
- replying to interpellations by members of the Riigikogu (one proceeding);
- replying to written questions by members of the Riigikogu (5 proceedings);
- proceedings for lifting of immunity (one proceeding);
- proceedings for initiating disciplinary proceedings against judges (11 proceedings);
- conciliation proceedings to resolve discrimination disputes between private individuals (3 proceedings);
- opinions on draft legal acts and documents (21 proceedings)
- other activities arising from law (13 proceedings).

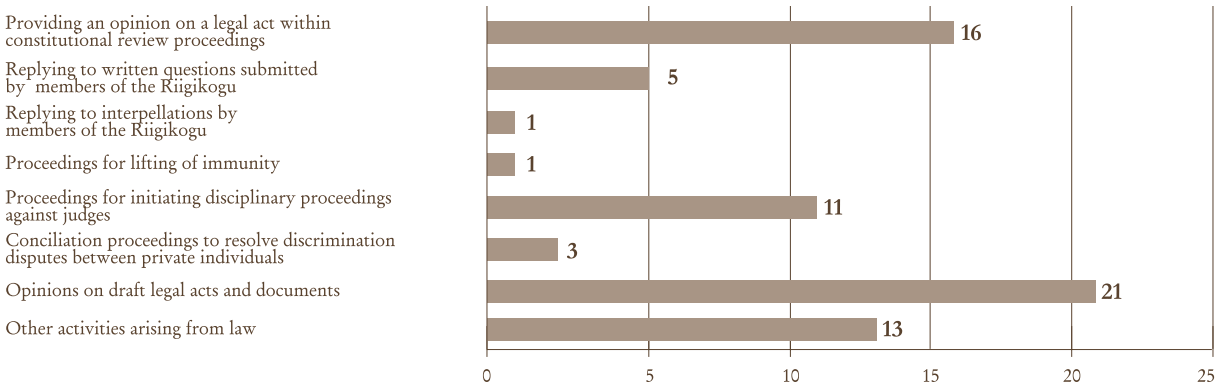

Figure 7. Distribution of special proceedings

Although the Chancellor's task within constitutional review proceedings is primarily performing of a follow-up control over laws that have already entered into force, in comparison to previous years there has been an increase in the number of cases where the Chancellor is asked to perform preliminary control by providing opinion on draft legislation. Proceedings for providing opinions on draft legislation make up the largest share of special proceedings, i.e. approximately 30%.

During the reporting year three conciliation proceedings for resolving discrimination disputes between private individuals were initiated. Two of them were interrupted due to unwillingness of the parties to participate in conciliation proceedings and one case is still pending.

Similarly to the previous year, within proceedings for initiating disciplinary proceedings against judges the Chancellor did not have to take any disciplinary charges to the Supreme Court in 2008. However, the Chancellor forwarded to the Court one recommendation for compliance with the principles of lawfulness and good administration.

4. Cases not accepted for proceedings

Upon receiving a petition, the Chancellor of Justice first assesses whether to accept it for further proceedings or not. He rejects 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 of Justice will also reject a petition 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 to be a legal remedy. Rather, the Chancellor of Justice is a petition body, with no direct possibility to use any means of enforcement and who resolves cases of violation of people's rights if the individual lacks legal remedies or they cannot use existing remedies for some reason (e.g. the deadline for filing a complaint with a court of law has passed).

The Chancellor may also reject a petition if 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. In such cases the Chancellor's decision is based on the right of discretion, which takes into account the circumstances of each particular case.

The Chancellor may reject 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 2008, the Chancellor declined to open proceedings in 1464 cases, which makes up 75.3% of the total number of cases.

Proceedings were not opened for the following reasons:

- the individual could file an administrative challenge or use other legal remedies (633 cases);
- lack of competence by the Chancellor (545 cases);
- judicial proceedings or compulsory pre-trial proceedings were pending in the matter (149 cases);
- petition did not comply with requirements under the Chancellor of Justice Act (97 cases)
- a petition was manifestly unfounded (25 cases);

- the petition had been filed one year after the petitioner discovered the violation (11 cases);
- administrative challenge proceedings or other voluntary pre-trial proceedings were pending (4 cases).

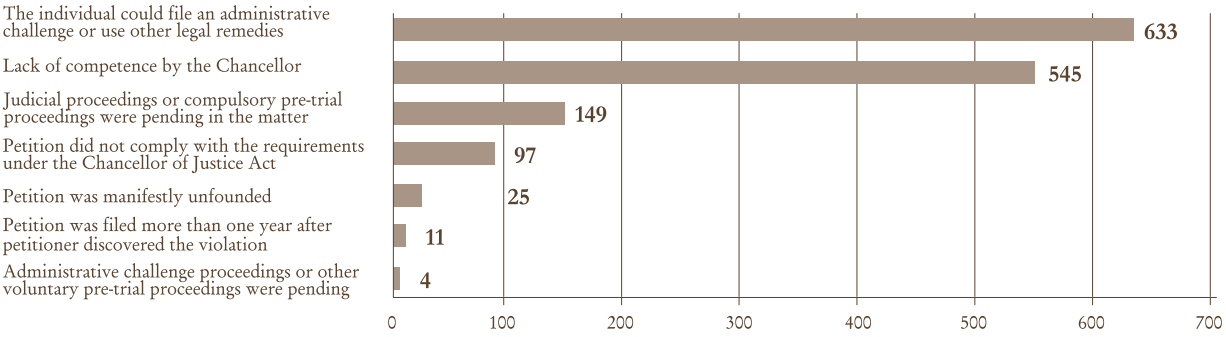

Figure 8. Reasons for declining to initiate proceedings of petitions

In case of petitions declined for proceedings, the competence of the Chancellor, Acts and other legislation were explained to the petitioners. Steps taken based on petitions in 2008:

- an explanatory reply was given (1186 cases);
- a petition was forwarded to competent bodies (239 cases);
- a petition was taken note of (53 cases).

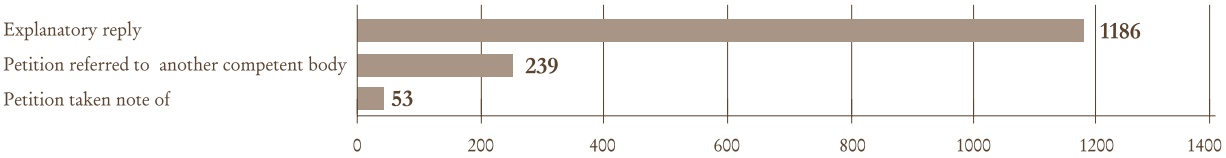

Figure 9. Distribution of replies in case of declining to accept a petition for proceedings

III DISTRIBUTION OF CASES BY AREA OF RESPONSIBILITY

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

- the state (1370 cases);
- local authorities (297 cases);
- a legal person in public law, except local authorities (27 cases);
- a legal person in private law (160 cases);
- a natural person (36 cases).

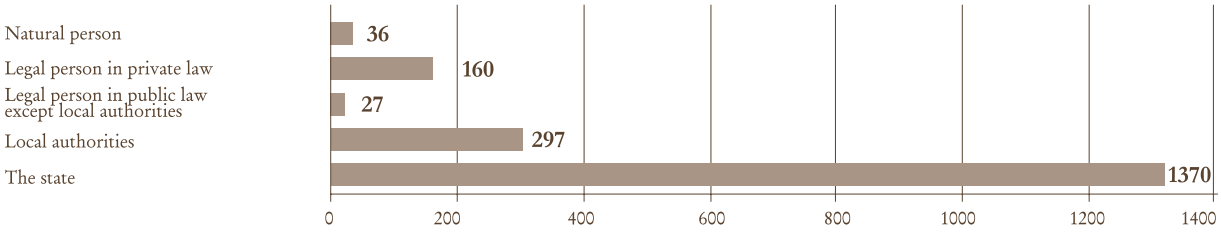

Figure 10. Distribution of cases by respondents

Distribution of cases opened in 2008 by areas of government and type of proceedings is shown in Tables 2 and 3. Proceedings are divided by areas or responsibility of government agencies and other institutions depending on who was competent to resolve the petitioned matter or against whose activities the petitioner complained[21].

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

Agency, body, person	Cases opened	Proceedings initiated	Finding of conflict with the Constitution or an Act	Finding of violation of lawfulness or good administrative practice	No proceedings conducted
Riigikogu	96	41	3	0	55
Supreme Court or other courts, except registry departments	169	18	0	2	151
President of the Republic or Office of the President	0	0	0	0	0
Government of the Republic or Prime Minister	21	3	0	0	18
Chancellor of Justice or Chancellor's Office	7	2	0	0	5
National Audit Office	0	0	0	0	0
Area of government of the Ministry of Education and Research	**36**	**15**	**2**	**5**	**21**
Ministry of Education and Research	23	8	1	1	15
Agency subordinate to the Ministry of Education and Research	12	7	1	4	5
Language Inspectorate	1	0	0	0	1
Area of government of the Ministry of Justice	**560**	**94**	**2**	**6**	**466**
Ministry of Justice	123	52	1	2	71
Agency subordinate to the Ministry of Justice	22	3	1	0	19
Tallinn Prison	114	5	0	2	109
Tartu Prison	82	8	0	0	74
Murru Prison	53	6	0	1	47
Harku Prison	4	2	0	0	2
Viru Prison	106	11	0	0	95
Prosecutor's Office	29	3	0	1	26
Bailiffs	21	3	0	0	18
Notaries	4	0	0	0	4
Data Protection Inspectorate	2	1	0	0	1

21 In case of review of constitutionality of Acts, normally the Riigikogu is the respondent.

Area of government of the Ministry of Defence	**26**	**15**	**1**	**6**	**11**
Ministry of Defence	10	9	1	3	1
Agency subordinate to the Ministry of Defence	14	6	0	3	8
Defence Resources Agency	2	0	0	0	2
Area of government of the Ministry of the Environment	**51**	**9**	**0**	**2**	**42**
Ministry of the Environment	41	6	0	1	35
Agency subordinate to the Ministry of the Environment	3	2	0	1	1
Land Board	2	0	0	0	2
Environmental Inspectorate	5	1	0	0	4
Centre for Forest Protection and Silviculture	0	0	0	0	0
Area of government of the Ministry of Culture	**7**	**0**	**0**	**0**	**7**
Ministry of Culture	7	0	0	0	7
Agency subordinate to the Ministry of Culture	0	0	0	0	0
National Heritage Board	0	0	0	0	0
Area of government of the Ministry of Economic Affairs and Communications	**39**	**13**	**2**	**1**	**26**
Ministry of Economic Affairs and Communications	22	8	1	1	14
Agency subordinate to the Ministry of Economic Affairs and Communications	7	2	0	0	5
Consumer Protection Board	4	1	0	0	3
Technical Inspectorate	0	0	0	0	0
Road Administration	4	2	1	0	2
Patent Office	1	0	0	0	1
Competition Board	1	0	0	0	1
Area of government of the Ministry of Agriculture	**17**	**2**	**0**	**1**	**15**
Ministry of Agriculture	5	1	0	0	4
Agency subordinate to the Ministry of Agriculture	0	0	0	0	0
Agricultural Registers and Information Board	11	0	0	0	11
Plant Production Inspectorate	0	0	0	0	0
Veterinary and Food Board	1	1	0	1	0
Area of government of the Ministry of Finance	**47**	**13**	**1**	**0**	**34**
Ministry of Finance	32	9	1	0	23
Agency subordinate to the Ministry of Finance	0	0	0	0	0
Tax and Customs Board	14	4	0	0	10
Public Procurement Office	1	0	0	0	1
Area of government of the Ministry of Internal Affairs	**133**	**41**	**1**	**7**	**92**
Ministry of Internal Affairs	20	8	1	1	12
Agency subordinate to the Ministry of Internal Affairs	15	1	0	0	14
Police Board	70	25	0	6	45
Citizenship and Migration Board	18	3	0	0	15
Security Police Board	4	2	0	0	2
Rescue Board	1	0	0	0	1
Border Guard Administration	5	2	0	0	3
Minister for Regional Affairs, county administration, or subordinate agencies	**19**	**6**	**1**	**3**	**13**
Area of government of the Ministry of Social Affairs	**123**	**43**	**0**	**4**	**80**
Ministry of Social Affairs	60	25	0	1	35

Agency subordinate to the Ministry of Social Affairs	14	3	0	2	11
Social Insurance Board	32	12	0	1	20
Health Protection Inspectorate	5	2	0	0	3
Labour Inspectorate	5	0	0	0	5
Health Care Board	6	0	0	0	6
Labour Market Inspectorate	1	1	0	0	0
State Agency of Medicines	0	0	0	0	0
Ministry of Foreign Affairs	**5**	**2**	**0**	**0**	**3**
State Chancellery	**1**	**1**	**0**	**0**	**0**
Agency subordinate to the State Chancellery	0	0	0	0	0
National Electoral Committee	**1**	**0**	**0**	**0**	**1**

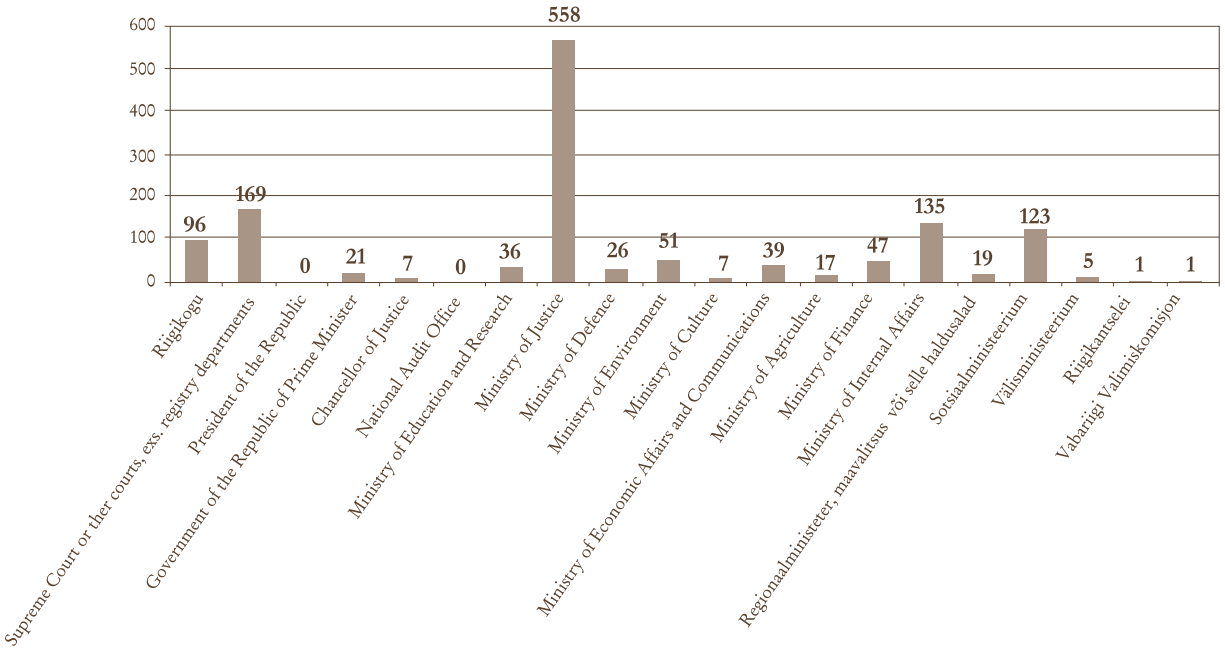

Figure 11. Distribution of cases by respondents on state level

Similarly to previous years, the largest number of cases fell within the area of government of the Ministry of Justice, and in comparison to 2007 their number had risen by 10%. The majority of cases within the area of government of the Ministry of Justice were related to criminal enforcement law and imprisonment law (see Table 4) and were initiated on the basis of petitions by prisoners. In 83% of the cases within the area of government of the Ministry of Justice, no substantive proceedings were initiated. A conflict with the Constitution or Acts or a violation of the principles of lawfulness and good administration was found in eight cases, which is proportionally similar as compared to other larger ministries.

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

Respondent on local government level	Cases opened	Proceedings initiated	Finding of conflict with the Constitution or an Act	Finding of violation of lawfulness or good administrative practice	No proceedings conducted
Harju County local authorities, except Tallinn city	59	24	1	10	35
Hiiu County local authorities	1	0	0	0	1
Ida-Viru County local authorities, except Narva city	31	8	0	3	23
Jõgeva County local authorities	9	2	0	1	7
Järva County local authorities	5	1	0	1	4

Lääne County local authorities	6	2	0	0	4
Lääne-Viru County local authorities	11	6	1	1	5
Põlva County local authorities	5	1	0	0	4
Pärnu County local authorities	15	3	1	2	12
Rapla County local authorities	5	3	0	2	2
Saare County local authorities	10	3	0	1	7
Tartu County local authorities, except Tartu city	8	3	0	1	5
Valga County local authorities	14	4	0	0	10
Viljandi County local authorities	16	8	0	2	8
Võru County local authorities	12	2	0	0	10
Tallinn City	74	18	0	7	56
Tartu City	15	5	1	0	10

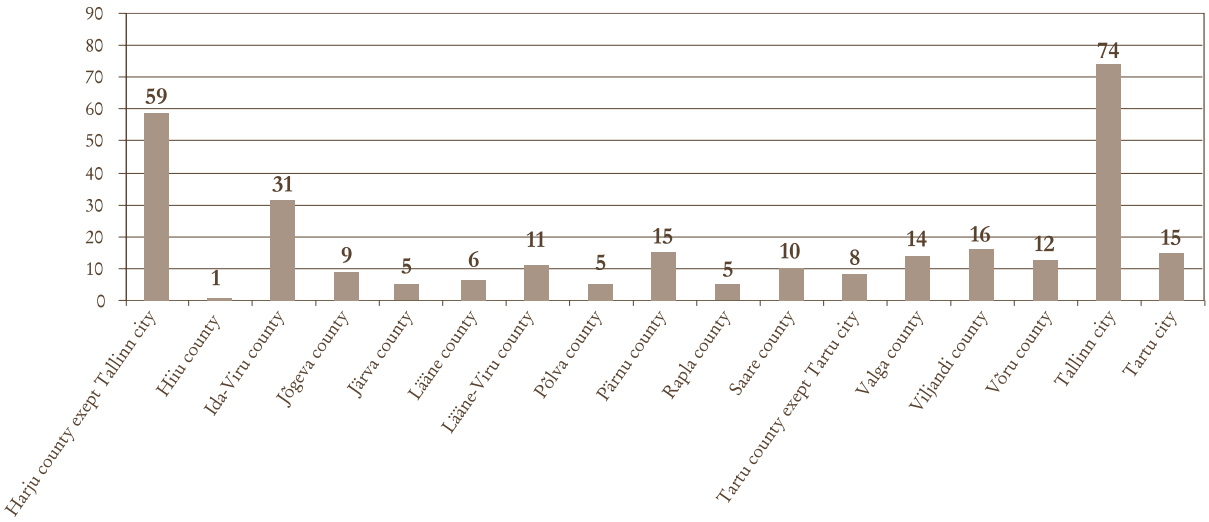

Figure 12. Distribution of cases by respondents on local government level

Table 4 provides an overview of outcomes in review proceedings and ombudsman proceedings conducted by the Chancellor on local government level with regard to particular local authorities[22].

Upon scrutinising conformity of local government legislation with the Constitution and Acts, the Chancellor found a conflict in twenty cases. In 13 cases the Chancellor sent a memorandum to the local authority, and in seven cases the local authority resolved the conflict during the proceedings.

Upon scrutinising lawfulness of local government activities, the Chancellor found a violation in 35 cases. In nine of the cases the Chancellor made a proposal to the local authority for eliminating the violation. In 17 cases, the Chancellor made a recommendation to a local authority for compliance with the principle of good administration and in nine cases the local authority resolved the problem during the proceedings.

22 Table 4 "Outcome of review proceedings and of ombudsman proceedings on local government level" was drawn up on the basis of cases completed by 31 May 2009. All the remaining procedural statistics are based on the number of cases completed by 1 February 2009.

Table 4. Outcome of review proceedings and ombudsman proceedings

Review proceedings		
Memorandum to executive authority for adopting a legal act		
1	Kaarma Rural Municipality Administration	Conflict of Kaarma Rural Municipality Administration regulation No. 1 of 25 March 2008 "Establishment of the price of water supply and waste-water disposal services in Kaarma rural municipality" with the Public Water Supply and Sewerage Act, Kaarma Rural Municipality Council regulation No. 13 of 26 May 2000 "Approval of the procedure for regulating the price of water supply and waste-water disposal services at Kaarma" and the Constitution, and conflict of Kaarma Rural Municipality Council regulations No. 12 and 13 of 26 May 2000 with the Public Water Supply and Sewerage Act and the Constitution.
2	Loksa Town Council	Conflict of regulations adopted at Loksa Town Council meetings in the period of 18 September 2006 to 19 January 2007 with the Local Government Organisation Act and the Constitution.
3	Narva City Council	Conflict of Narva City Council regulation No. 1962 of 28 December 2007 "Establishment of the price of water supply and waste-water disposal services" (§ 1) with the Public Water Supply and Sewerage Act, Narva City Council regulation No. 31 of 3 August 2006 "Procedure for regulating the price of water supply and waste-water disposal services" and the Constitution.
4	Narva-Jõesuu Town Council	Conflict of Narva-Jõesuu Town Council regulation No. 11 of 1 March 2006 "Rates for provision of services in Narva-Jõesuu town" (clauses 2.4 and 2.5 of appendix 1) with the Local Government Organisation Act, the Local Taxes Act, the Administrative Procedure Act and the Constitution.
5	Pärsti Rural Municipality Council	Conflict of adoption of Pärsti Rural Municipality Council regulation No. 13 of 21 May 2008 "Amendment of Pärsti Rural Municipality Council regulation No. 22 of 29 June 2006" (§ 1) with the Constitution.
6	Püssi Twon Administration	Memorandum for drawing up a procedure for access to drinking water.
7	Saarde Rural Municipality Council	Conflict of Saarde Rural Municipality Council regulation No. 7 of 21 December 2005 "Property maintenance rules at Saarde rural municipality" (clauses 24-25[3]) with the Constitution.
8	Saue Rural Municipality Council	Conflict of Saue Rural Municipality Council regulation No. 7 of 25 May 2006 "Saue rural municipality building regulation" (§ 19(5)) with the Building Act, the Planning Act and the Constitution.
9	Tallinn City Council	Conflict of Tallinn City Council regulation No. 5 of 7 February 2008 "Implementation of the measure for applying the duty of care in the retail sale of alcoholic beverages" with the Alcohol Act and the Constitution.
10	Tartu City Council	Conflict of Tartu City Council regulation No. 40 of 28 September 2006 "Tartu City building regulation" (§ 30(2)) with the Building Act and the Constitution.
11	Tapa Rural Municipality Council	Conflict of Tapa Rural Municipality Council regulation No. 55 of 12 April 2007 "Rules for keeping dogs and cats in Tapa rural municipality" (§ 5) with the Constitution.
12	Torma Rural Municipality Council	Conflict of adopting Torma Rural Municipality Council regulation No. 42 of 21 August 2007 "Establishment of price limits for water and sewerage services" with the Public Water Supply and Sewerage Act and the Constitution.
13	Torma Rural Municipality Council	Conflict of Torma Rural Municipality Council regulation No. 21 of 21 December 2001 "Rules for connecting to and using of Torma rural municipality public water supply and sewerage system" (§ 21(6)) with the Public Water Supply and Sewerage Act and the Constitution.

Resolved by the institution during the proceedings		
1	Karula Rural Municipality Council	Conflict of Karula Rural Municipality Council regulation No. 6 of 26 April 2007 "Procedure for social services intended for independent coping" with the Constitution.
2	Karula Rural Municipality Council	Conflict of Karula Rural Municipality Council regulation No. 5 of 5 April 2005 "Procedure for the use of resources allocated for social welfare of disabled persons and for the granting of caregiver's allowance" with the Constitution.
3	Kohila Rural Municipality Council	Conflict of Kohila Rural Municipality Council regulation No. 41 of 27 February 2007 "Procedure for the granting and payment of social benefits" (§ 10) with the Social Welfare Act.
4	Kuusalu Rural Municipality Council	Conflict of Kuusalu Rural Municipality Council regulation No. 23 of 29 September 2005 "Establishment of the statutes of Kuusalu rural municipality" (§ 55(6)) with the Local Government Organisation Act.
5	Paldiski Town Administration	Conflict of Paldiski Town Administration regulation No. 6 of 29 September 2003 "The procedure for admission to and exclusion from Paldiski kindergarten Naerulind" (clause 2 first sentence) with the Constitution.
6	Suure-Jaani Rural Municipality Council	Conflict of Suure-Jaani Rural Municipality Council regulation No. 66 of 18 December 2006 "Types of social benefits, and conditions and procedure of their payment in Suure-Jaani rural municipality" (§ 5(2)) with the Constitution.
7	Võhma Town Administration	Memorandum for drawing up a procedure regulating the salary rate of employees at pre-school child care institutions".
Ombudsman proceedings		
Proposal to eliminate a violation		
1	Jõelähtme Rural Municipality Administration	Activities of Jõelähtme Rural Municipality Administration in land privatisation.
2	Kiili Rural Municipality Administration	Activities of Kiili Rural Municipality Administration in replying to an application by an individual.
3	Laimjala Rural Municipality Administration	Activities of Laimjala Rural Municipality Administration in returning of land.
4	Rae Rural Municipality Administration	Activities of Rae Rural Municipality Administration in processing applications for granting of a building permit and initiating of a detailed plan.
5	Rae Rural Municipality Administration	Activities of Rae Rural Municipality Administration in publishing names of debtors in the official publication of the rural municipality.
6	Rapla Rural Municipality Administration	Activities of Rapla Rural Municipality Administration in processing a detailed plan.
7	Rõngu Rural Municipality Administration	Activities of Rõngu Rural Municipality Administration in performing construction supervision.
8	Tallinn City Administration	Activities of Tallinn City Planning Board in performing construction supervision.
9	Viimsi Rural Municipality Council, Viimsi Rural Municipality Administration	Activities of Viimsi Rural Municipality Council in connection with membership of committees of rural municipality council and activities of the municipality administration and council in connection with failure to reply to enquiries by members of the council.

Recommendation to comply with lawfulness and the principle of good administration		
1	Jõelähtme Rural Municipality Administration	Activities of Jõelähtme Rural Municipality Administration in replying to an application by an individual.
2	Karksi Rural Municipality Administration	Activities of Karksi Rural Municipality Administration in performing construction supervision.
3	Kehtna Rural Municipality Administration	Activities of Kehtna Rural Municipality Administration in prescribing a simplified curriculum.
4	Keila City Administration	Activities of Keila City Administration in transforming municipal schools to private schools.
5	Kiili Rural Municipality Administration	Activities of Kiili Rural Municipality Administration in replying to an application by an individual.
6	Kohtla-Järve City Administration	Activities of Kohtla-Järve City Administration in declaring a dwelling as abandoned, occupying and demolishing it.
7	Paide City Administration	Activities of Paide City Administration in replying to an application by an individual.
8	Pärnu City Administration	Activities of Pärnu City Administration in connection with the right to choose a school.
9	Pärnu City Council	Activities of Pärnu City Council in land privatisation.
10	Rae Rural Municipality Administration	Activities of Rae Rural Municipality Administration in building a public road.
11	Rakvere City Administration	Activities of Rakvere City Administration in connection with guardianship.
12	Tallinn City Administration	Activities of Tallinn Downtown District Administration in connection with guardianship.
13	Tallinn City Administration	Activities of Pirita District Administration in replying to an application by an individual.
14	Tallinn City Administration	Activities of Tallinn City Administration in establishing parking regulations in the old town.
15	Tallinn City Administration	Activities of Tallinn City Administration in drawing up a structural plan for deciding initiation of planning.
16	Tallinn City Administration	Activities of Tallinn City Administration in replying to an application by an individual.
17	Viimsi Rural Municipality Administration	Activities of Viimsi Rural Municipality Administration in replying to an application by an individual.
Resolved by the institution during the proceedings		
1	Kuressaare Town Administration	Activities of Kuressaare Town Administration in disclosing documents containing personal data on the town administration's homepage.
2	Kõo Rural Municipality Administration	Activities of Kõo Rural Municipality Administration in terminating the provision of the substitute home service.
3	Rõngu Rural Municipality Administration	Activities of Rõngu Rural Municipality Administration in applying for social housing.
4	Tallinn City Administration	Activities of North Tallinn District Administration in applying for social housing.

5	Tartu City Administration	Activities of Tartu City Administration in ensuring health sustainability of social housing.
6	Tartu City Administration	Activities of Tartu City Administration in ensuring access of children with special needs to a kindergarten in their place of residence.
7	Vasalemma Rural Municipality Administration	Activities of Vasalemma Rural Municipality Administration in exempting from the duty of transport of municipal waste.
8	Viiratsi Rural Municipality Administration	Activities of Viiratsi Rural Municipality Administration in applying for a dwelling.
9	Võru City Administration	Activities of Võru City Administration in organising transportation for people with disabilities.

IV DISTRIBUTION OF CASES BY AREAS OF LAW

Similarly to previous years, in 2008 the largest number of cases was opened in connection with criminal enforcement procedure and imprisonment law. In comparison to other areas of law, significantly more cases were opened in relation to issues of criminal and misdemeanour court procedure, social welfare law and health law. A large number of cases still relate to issues of ownership reform.

Table 5. Cases opened by areas of law

Area of law	Number of cases
Criminal enforcement procedure and imprisonment law	450
Criminal and misdemeanour court procedure	89
Social welfare law	88
Health law	84
Ownership reform law	80
Administrative law (administrative management, administrative procedure, administrative enforcement, public property law, etc)	62
Financial law (incl. tax and customs law, state budget, state property)	61
Education and research law	61
Civil procedure	56
Local government organisation law	54
Social insurance law	54
Pre-trial criminal procedure	53
Construction and planning law	49
Public service	46
Personal data protection, databases and public information, state secrets law	45
Legal aid and notarial law	45
Enforcement procedure	36
Environmental law	35
Law of obligations	35
Other public law	33
Labour law (including collective labour law)	33
Government organisation law	31
Energy, public water supply and sewerage law	30
Property law, including intellectual property law	29
Citizenship, migration, and language law	26
Misdemeanour procedure	25
Non-profit associations and foundations law	23
National defence law	22
Transport and road law	22
Family law	18
Traffic regulation law	17
Police and law enforcement law	17
Economic and trade management and competition law	16
Other private law	16

Telecommunications, broadcasting, and postal services law	11
Company, bankruptcy, and credit institutions law	11
Administrative court procedure law	10
International law	9
Election and referendum law, political party law	8
Agricultural law (including food and veterinary law)	7
Animal protection, hunting, and fishing law	6
Heritage law	5
Consumer protection law	5
Substantive penal law	4

V DISTRIBUTION OF CASES BY REGIONS

During the reporting year, the largest number of petitions and cases opened on the basis of them was in Tallinn (616 cases), Tartu (261 cases), Ida-Viru County (254 cases) and Harju County (223 cases). In comparison to 2007, the number of proceedings initiated on the basis of petitions from Ida-Viru County has significantly risen, exceeding the previous year almost four-fold (67 and 254 proceedings respectively). This sudden increase is primarily due to opening of Viru Prison in Ida-Viru County. Generally, however, similarly to previous years the larger number of proceedings is still mostly contributable to major cities. Similarly to previous years, the smallest number of proceedings was in relation to Hiiu County (8 proceedings). The number of petitions received by e-mail was exactly the same as in the previous year (133 proceedings). 21 cases were based on petitions received from abroad, which is almost the same as in 2007. With regard to other regions, the number of cases opened was almost in the same as in 2007.

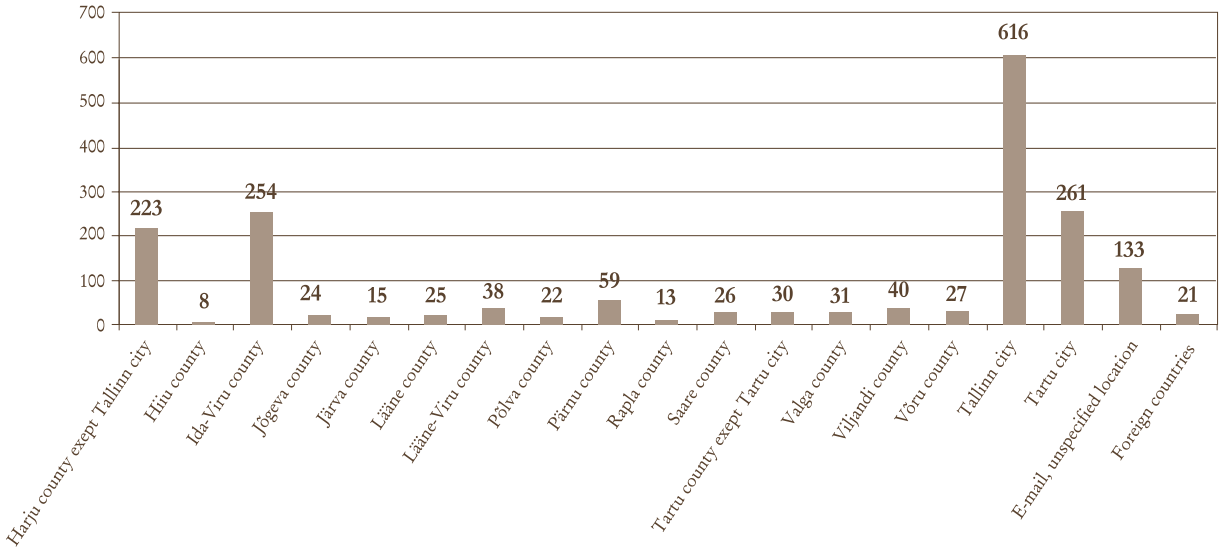

Figure 13. Distribution of cases by location of petitioner

VI LANGUAGE OF PROCEEDINGS

Cases were mostly opened on the basis of petitions submitted in Estonian. 1449 cases, i.e. 74.5% of the total number of cases, were opened based on petitions in Estonian. 406 cases, i.e. 20.9% of the total number of cases, were opened based on petitions in Russian. In comparison to 2007, the number of petitions in Russian increased significantly. In 2007, 274 cases, i.e. 15.7% of the total number of cases, were opened based on petitions in Russian.

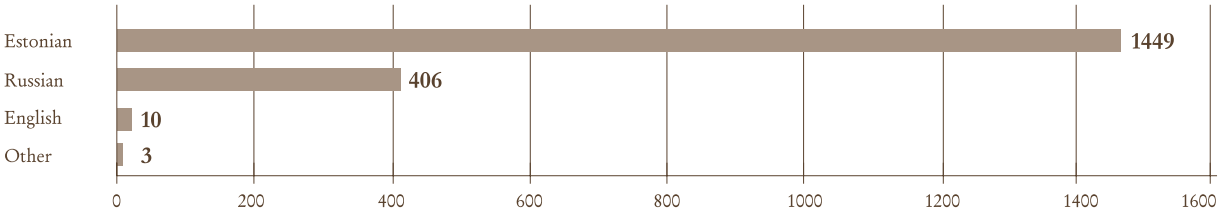

Figure 14. Distribution of cases by language of petition

VII INSPECTION VISITS

The Chancellor of Justice is authorised to conduct 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, as well as all other agencies and institutions subject to the Chancellor's supervision.

Inspection visits are divided into regular and extraordinary visits. Regular inspection visits are scheduled in the annual action plan of the Office of the Chancellor of Justice, and supervised institutions are notified about them in advance. Extraordinary inspection visits are not reflected in the annual plan. Supervised institutions are not notified about them in advance, or they are notified immediately prior to inspection.

As of 18 February 2007, the Chancellor of Justice also functions as the national preventive mechanism established under Art 3 of the Optional Protocol to the UN Convention for the Elimination of Torture and other Cruel or Degrading Treatment or Punishment (OPCAT), so that targets of inspection visits include, 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 (OPCAT institutions);
- inspection of open institutions – institutions where individuals are staying voluntarily (schools, children's homes);
- inspection of administrative authorities – state or local government agencies, in respect of which compliance with good administrative practice is verified (ministries, county administrations, local government units).

During the reporting year, the Chancellor made 33 inspection visits, of which 18 were to closed institutions, 11 to open institutions, and 4 to administrative authorities. There were 8 extraordinary inspection visits, 7 of them to scrutinise closed institutions and one to inspect an open institution.

Table 6. Inspection visits conducted by the Chancellor of Justice

	2007	2008
inspection visits to closed institutions (OPCAT)	18	18
inspection visits to open institutions	5	11
inspection visits to administrative authorities	5	4
total inspection visits	28	33
of which, extraordinary inspection visits	6	8

VIII RECEPTION OF INDIVIDUALS

In 2008, 299 individuals came to a reception at the Office of the Chancellor of Justice or to receptions organised in counties. In addition to Tallinn, individuals were also received in Tartu, Jõhvi, Narva, and Pärnu. Advisers to the Chancellor organised receptions during their business trips to Järva County Administration and Paide City Administration in the course of inspection visits.

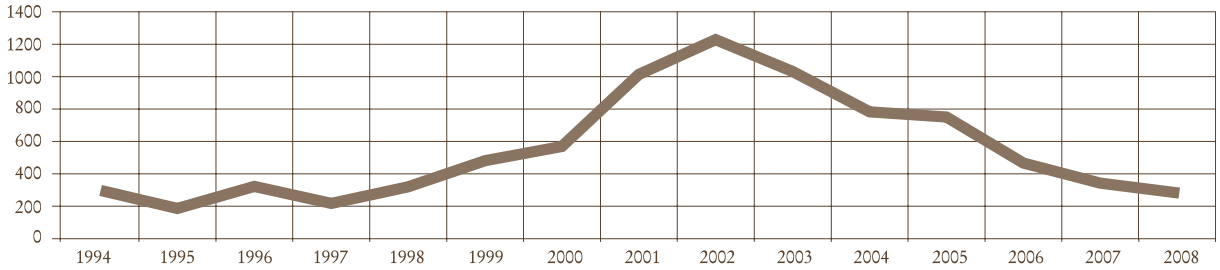

Figure 15. Number of persons coming to reception with the Chancellor in 1994–2008

In comparison with 2007, the number of persons coming to receptions has somewhat dropped. In 2007, 343 individuals came to receptions.

The largest number of persons came to a reception in Tallinn (187), Tartu (36), and Pärnu County (35). The number was somewhat smaller in Ida-Viru County and Narva (29), which is almost half fewer than in 2007. Since autumn 2008, no regular receptions of advisers to the Chancellor took place in these places either, as the number of persons registering for receptions was smaller than usual and a solution to their problems was found either by telephone or proceedings were opened for resolving the issue.

Questions raised during receptions most frequently related to ownership reform law and rights of ownership (64 and 20 persons respectively). Other most frequently raised issued concerned social welfare law (25 persons), law of obligations (18 persons), civil procedure (13 persons) and local government organisation (12 persons). Similarly to previous years, there was considerable interest in issues relating to pre-trial criminal procedure (12 persons). Mostly, people coming to receptions needed clarification concerning legislation, and legal advice.

IX SUMMARY

The number of petitions received by the Chancellor is still growing. During the reporting year, the Chancellor received 2566 petitions, which is 11.3% more than in the previous year.

During the reporting year, the Chancellor opened 1944 cases. In 2008, the number of cases opened increased mostly on account of non-substantive proceedings of cases. The proportion of substantive proceedings remained the same as in the previous year, both with regard to review proceedings, ombudsman proceedings and special proceedings.

During review proceedings, in 18 cases (19%) the Chancellor found a conflict with the Constitution or an Act. As a result of ombudsman proceedings, violations of principles of lawfulness and good administration were found on more occasions; in 76 cases (38%) the Chancellor made a proposal or a recommendation to the supervised institution. In comparison to 2007, the relevant indicators have remained more or less on the same level.

During the reporting year, most cases were opened with regard to issues falling within the area of government of the Ministry of Justice; cases were opened based on petitions by prisoners and to resolve issues relating to criminal enforcement procedure and imprisonment law. Similarly to previous years, criminal enforcement procedure and imprisonment law were areas in connection with which 450 cases were opened, which is almost one fourth of the total number of cases opened.

By regional distribution, the largest number of cases is from larger cities. During the reporting year, most cases were opened based on petitions from Tallinn and Tartu. Among counties, however, Ida-Viru County rose to the first place, as the number of cases opened based on petitions received from that county increased more than three-fold. The sudden increase of petitions from Ida-Viru County is due to opening of Viru Prison. There were a total of 254 cases opened from Ida-Viru County, and almost half of them concerned Viru Prison.

74.5% of cases were opened based on petitions in Estonia. Cases opened on the basis of petitions in Russian made up 20.9%, which is 5% more than in 2007.

In comparison to 2007, the number of inspection visits increased by five, primarily on account of visits to open institutions. During the reporting year, the Chancellor carried out two times more visits to inspect open institutions than in the previous year. The number of inspection visits to closed institutions was exactly the same as in 2007.

In 2008, 299 individuals came to receptions at the Office of the Chancellor of Justice or to receptions organised in counties. In comparison to 2006, the number of individuals coming to receptions dropped slightly. Questions most frequently raised during receptions related to ownership reform and social welfare law, law of obligations, civil procedure, and local government organisation.