



Chancellor of Justice

# 2011 OVERVIEW OF THE CHANCELLOR OF JUSTICE ACTIVITIES

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Chancellor of Justice as the Preventive Mechanism

Chancellor of Justice as Ombudsman for Children

Statistics of Proceedings



Tallinn 2012

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## PART I

### CHANCELLOR OF JUSTICE AS THE PREVENTIVE MECHANISM

## I. INTRODUCTION

The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)<sup>1</sup> was adopted on 18 December 2002. Estonia signed the Protocol on 21 September 2004 and it entered into force in respect of Estonia on 17 January 2007. In Estonia, the Chancellor of Justice performs the functions of the national preventive mechanism since 18 February 2007.<sup>2</sup>

Under the Optional Protocol, places of detention mean all places where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (Article 4 para 1). The notion of “deprivation of liberty” means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority (Article 4 para 2). In other words, in addition to state custodial institutions, places of detention include all other institutions, regardless of their form of ownership, where the liberty of persons is restricted by order of a public authority or with its consent or acquiescence and from where persons are not permitted to leave at will. Thus, places of detention include not only prisons and police detention centres but also closed wards at psychiatric hospitals, care homes, etc.

There are almost 150 establishments in Estonia qualifying as places of detention within the meaning of the Optional Protocol. The majority of them are police detention facilities and social welfare institutions. The Chancellor’s choice of the establishments to be inspected is based on the following grounds: time passed from the previous visit (the aim is to inspect each establishment at least once every three years), the seriousness of problems posed by the particular facility in terms of the guarantee of fundamental rights, circumstances having attracted the Chancellor’s attention and requiring immediate verification (e.g. information obtained from the media or from petitions to the Chancellor).<sup>3</sup>

In 2011, 33 inspection visits to 35 places of detention were carried out (two places of detention, i.e. Ahtme Hospital Foundation and Tartu Prison psychiatric department, were visited twice). In comparison, 27 inspection visits to 33 places of detention were carried out in 2010; 25 visits to 37 places of detention in 2009; 19 visits to 40 places of detention in 2008; and 18 visits in 2007.

By types of establishments, the inspection visits in 2011 can be categorised as follows:

- 1) police detention facilities – 9 visits (6 of them unannounced), 12 places of detention inspected;
- 2) Defence Forces – 2 visits, 2 units of the Defence Forces visited;<sup>4</sup>
- 3) expulsion centre – 1 visit, 1 establishment inspected;
- 4) prisons – 3 visits, 3 places of detention inspected;
- 5) providers of involuntary emergency psychiatric care and coercive treatment – 6 visits (5 of them unannounced), 5 places of detention inspected;
- 6) providers of special welfare services – 11 visits (11 of them unannounced), 11 places of detention inspected;
- 7) special schools – 1 visit, 1 school inspected.

1 Available at <http://www2.ohchr.org/english/law/cat-one.htm>.

2 See the Chancellor of Justice Act § 1(7). Available in Estonian at <https://www.riigiteataja.ee/akt/108072011060>.

3 On the basis of the criteria, an annual work plan is drawn up, laying down the list of establishments to be inspected, the time and type of the visits (i.e. announced or unannounced visits) and whether and which experts will be involved in the visits. Naturally, the plan is drawn up subject to consideration that some scope is left for ad hoc visits.

4 In the Defence Forces, the Guard Battalion and the Combat Service Support Battalion were inspected.

Experts were used in inspection visits on eight occasions in 2011. The experts included general practitioners, Rescue Service staff and an official from the Health Board.

As a result of the Chancellor's inspection visits, a summary is compiled, containing recommendations and proposals to the inspected establishment and other relevant authorities. Summaries of inspection visits are also published on the Chancellor of Justice website immediately after sending them to the addressees<sup>5</sup>. Data protection requirements are observed when publishing the summaries (i.e. no personal data is disclosed, etc). A short abstract of a summary of an inspection visit is also translated into English<sup>6</sup>.

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

In 2011, the following articles and other writings on problems in places of detention, ill-treatment and/or the respective competence of the Chancellor of Justice were published by advisers to the Chancellor:

1. Igor Aljošin. Väärkohtlemise ennetamine hoolekandeesutustes (1). [Prevention of ill-treatment in social welfare institutions (1)] – *Sotsiaaltöö* No 3/2011, pp 47–51<sup>7</sup>;
2. Igor Aljošin. Väärkohtlemise ennetamine hoolekandeesutustes (2). [Prevention of ill-treatment in social welfare institutions (2)] – *Sotsiaaltöö* No 5/2011, pp 12–16<sup>8</sup>.

In addition, officials from the Office of the Chancellor organised training events and information days for staff in places of detention. In 2011, two major training projects on the topic of the prevention of ill-treatment were carried out.

The first training project involved social welfare institutions. The aim of the training was to increase awareness among the staff of these institutions of the fundamental rights of service recipients and the need and possibilities for the prevention of ill-treatment. The training project can be considered a follow-up to the similar project carried out in 2010. As the number of social welfare institutions is large and it was not possible to offer training to all of their staff within one year, it was decided to continue the training in 2011.

In the framework of training the staff of social welfare institutions, the Chancellor of Justice senior adviser I. Aljošin trained 242 staff in 18 care homes in 2011 on the issues of fundamental rights and freedoms of individuals. The project was described in more detail in the Chancellor of Justice 2010 Overview<sup>9</sup>.

Another comprehensive training session was held in Tartu Prison on 9 August 2011. The training was intended for officers of the prison service, including officials of the psychiatric service of Tartu Prison. Three lectures were delivered during the training day:

- 1) Mari Amos (Chancellor of Justice senior adviser) gave an overview of the use of video monitoring in prison;

5 Summaries of inspection visits are available in Estonian at [http://oiguskantsler.ee/et/seisukohad/otsing?sisutuup=seisukoht&menetluse\\_liik=4&dokumendi\\_liik2=46&valitsemisala=117](http://oiguskantsler.ee/et/seisukohad/otsing?sisutuup=seisukoht&menetluse_liik=4&dokumendi_liik2=46&valitsemisala=117).

6 Available at <http://oiguskantsler.ee/en/inspection-visits>.

7 Available in Estonian at [http://www.sm.ee/fileadmin/meedia/Dokumendid/V2ljaanded/Sotsiaaltoe\\_ajakiri/2011/Sotsiaaltoe\\_nr3\\_2011.pdf](http://www.sm.ee/fileadmin/meedia/Dokumendid/V2ljaanded/Sotsiaaltoe_ajakiri/2011/Sotsiaaltoe_nr3_2011.pdf).

8 Available in Estonian at [http://www.sm.ee/fileadmin/meedia/Dokumendid/V2ljaanded/Sotsiaaltoe\\_ajakiri/2011/Sotsiaaltoe\\_nr5\\_2011.pdf](http://www.sm.ee/fileadmin/meedia/Dokumendid/V2ljaanded/Sotsiaaltoe_ajakiri/2011/Sotsiaaltoe_nr5_2011.pdf).

9 Available at [http://oiguskantsler.ee/sites/default/files/overview\\_2010.pdf](http://oiguskantsler.ee/sites/default/files/overview_2010.pdf) (2010 Overview of the Chancellor of Justice, Part 1, p 12.)

- 2) Jaanus Konsa (Chancellor of Justice adviser) explained the issues relating to the use of the means of restraint;
- 3) Dr Alo Jüriloo (psychiatrist and forensic psychiatrist, chief doctor at Vantaa prison hospital in Finland) gave a lecture on the issues of prison psychiatry.

In 2011, advisers to the Chancellor continued training themselves in the field of the prevention of ill-treatment. On 15–16 June 2011, the fifth thematic meeting with training and workshops was held in the Office of the Chancellor in the framework of the Council of Europe project „The European NPM Project. Setting up an active network of national preventive mechanisms against torture. An activity of the Peer-to-Peer Network“. The training focused on the collection and verification of information during inspection visits. Participating in the training were representatives from NPMs<sup>10</sup> of different countries and experts from international organisations (APT<sup>11</sup>, SPT<sup>12</sup>, CPT<sup>13</sup>). The following presentations were delivered during the training:

1. Jean-Sébastien Blanc (APT) „Collecting information: for what purpose?“;
2. James McManus (CPT) „Collecting information from registers“;
3. Dr Peter Green (Independent Medical Advisory Panel, IMAP) „Collecting information from medical files“;
4. Ladislav Tomecek (NPM of the Czech Republic) „Collecting information from staff, including management“;
5. Mari Amos (Estonian NPM; SPT member) „Introduction on team debriefing / cross checking during the visit“;
6. Suzanne Jabbour (SPT) „Collecting and checking medical/healthcare information“;
7. Rachel Lidsay (British NPM) „NPM’s experiences of allegations of active ill-treatment“.

Within the NPM project, officials from the Chancellor’s Office participated in the workshops where different situations relating to inspection visits were modelled and resolved. After the practical exercises the experts from international organisations shared their observations and recommendations concerning the resolving of model situations.

With funding from the European Social Fund a study visit for the officials of the Chancellor’s Office was held on 10–13 October 2011 to visit the deontology department of the French Ombudsman, the public order department of the French National Police, and the national defence company, to obtain an overview of the supervision of enforcement of public order.

In his activities as the preventive mechanism, the Chancellor of Justice considers international cooperation with other preventive bodies and relevant international organisations to be very important. Advisers to the Chancellor attended various international events on issues of ill-treatment, where they also delivered presentations:

- 21–22 February 2011 Indrek-Ivar Määrits met with members of the SPT in Geneva to provide an overview of the activities of the Chancellor of Justice as the OPCAT national preventive mechanism;

<sup>10</sup> NPM (National Preventive Mechanism).

<sup>11</sup> APT (Association for The Prevention of Torture). An international NGO leading the international campaign for the enforcement and implementation of OPCAT.

<sup>12</sup> SPT (United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment).

<sup>13</sup> CPT (Council of Europe European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment).



- 14–15 March 2011 Jaanus Konsa attended the seminar „Security and dignity in places of deprivation of liberty“ in Paris;
- 13–16 April 2011 Indrek Teder and Raivo Sults attended the international conference of the ombudsmen of the armed forces in Belgrade;
- 23–27 May 2011 Igor Aljošin delivered a presentation at the seminar „The role of National Human Rights Structures in promoting and protecting rights of persons with disabilities“ in Kiev;
- 27–30 July 2011 Igor Aljošin attended the conference „Ways of overcoming the difficulties of public control in the Russian Federation“ in Perm;
- 10–11 August 2011 Maria Sults delivered a presentation on the activities of the Chancellor of Justice as the national preventive mechanism at the „2nd Regional Conference within the Russian Public Monitoring Commissions (PMC) Pre-project“ in Barnaul;
- 5–7 September 2011 Ksenia Žurakovskaja-Aru delivered a presentation on the activities of the Chancellor of Justice as the national preventive mechanism at the „3rd Regional Conference within the Russian PMC Pre-project“ in Moscow;
- 17–19 October 2011 Jaanus Konsa attended the seminar „Roundtable discussions on operating models of NPMs and on the establishment of the Ukrainian NPM“ within the European NPM project in Kiev;
- 9–12 November 2011 Igor Aljošin attended the APT’s global forum on the OPCAT „Preventing Torture, Upholding Dignity: from Pledges to Actions“ in Geneva;
- 5–7 December 2011 Kertti Pilvik attended the 3rd annual meeting of the heads of the NPM in Ljubljana;
- 5–9 December 2011 Mari Amos attended the 3rd annual meeting of the heads and contact persons of the NPM and the 5th annual meeting of the national human rights structures (NHRS) in Ljubljana.

The following subdivision contains an overview of the inspection visits made by the Chancellor to different places of detention in 2011, highlighting shortcomings that were detected.

## II. PREVENTION OF ILL-TREATMENT IN PLACES OF DETENTION

### 1. Police detention facilities

In 2011, the Chancellor of Justice inspected 12 buildings used by the police for detaining persons.

Complete inspection of the seven of the buildings was carried out (Inspection visit to Valga detention chamber of the police detention centre under the public order bureau of the South Prefecture of the Police and Border Guard Board (PBGB), case No 7-7/110490; Inspection visit to Võru detention chamber of the police detention centre under the public order bureau of the South Prefecture of the PBGB, case No 7-7/110490; Inspection visit to Narva detention chamber of the police detention centre under the public order bureau of the East Prefecture of the PBGB, case No 7-7/110956; Inspection visit to Rakvere detention chamber of the police detention centre under the public order bureau of the East Prefecture of the PBGB, case No 7-7/111226; Inspection visit to Jõhvi detention chamber of the police detention centre under the public order bureau of the East Prefecture of the PBGB, case No 7-7/111488; Inspection visit to Tartu detention chamber of the police detention centre under the public order bureau of the South Prefecture of the PBGB, case No 7-7/111612; Inspection visit to Haapsalu detention chamber of the police detention centre under the public order bureau of the West Prefecture of the PBGB, case No 7-7/111741).

In addition, on 2 March 2011, an inspection visit to the police detention centre under the public order bureau of the North Prefecture of the Police and Border Guard Board (hereinafter also the PBGB) was carried out to monitor the implementation of the right to vote by the detainees. On 12 November 2011, two police departments of the North Prefecture (downtown and the east police department) and the sobering-up facility of the North Prefecture were inspected without an advance notice in connection with a football match held in Tallinn. On 22 November 2011, an unannounced inspection visit to Jõgeva police department of the public order bureau under the South Prefecture of the PBGB was carried out on the basis of information obtained from an application by a detainee.

Some inspection visits were carried out without an advance notice and outside the working hours. For example, the visits of 12 November 2011 to the police detention facilities of the North Prefecture were carried out during the hours of 03:00–05:00. The Chancellor involved fire safety officials from the Rescue Service as specialists in his visits (Valga and Võru detention chambers) and a general practitioner as a medical expert (Jõhvi and Tartu detention chambers). The involvement of experts in inspection visits was decided on the basis of the results of previous visits and the conditions of detention in a particular police facility.

For the first time, the Chancellor inspected Rakvere detention chamber and the downtown police department of the North Prefecture which have at their disposal facilities constructed a couple of years ago. Despite the short interval between the previous visit (approximately one year) the Chancellor inspected Haapsalu detention chamber which is known for its poor conditions.

The inspection visits revealed, first and foremost, shortcomings with regard to the living conditions in the cells and fire safety requirements, as well as the provision of health care services in the police detention centres.

## 1.1 Living conditions

As the first common denominator, the inspected police facilities had shortcomings in the living conditions in the cells. As already noted, the problem is acute in Haapsalu detention chamber, but also in Narva and to a certain extent in Valga and Võru. As a rule, detention cells are in an extremely poor state of repair and lack an exercise yard.

In order to alleviate problems relating to the living conditions, the Chancellor recommended that persons should be detained in such facilities only as briefly as possible, and persons in custody or convicted persons should be placed in a prison at the first opportunity. The Chancellor also made suggestions how to find resources to refurbish the cells to improve the living conditions.

The Police and Border Guard Board was in general aware of the shortcomings in the living conditions found by the Chancellor, and he was given assurances that the cells would be remodelled according to the possibilities. For example, the South Prefecture affirmed that the conditions of detention are being constantly improved and prior to the Chancellor's visit windows, doors, ventilation and lighting in Valga detention chamber had been replaced. In Võru and Valga detention facilities, one cell was remodelled into a room which can be used as an outdoor exercise yard. The prefectures are also looking for opportunities to keep persons who should be in prison (i.e. convicted persons and persons in custody) in the above facilities for even shorter periods.

## 1.2 Shortage of staff

Another problem found in several of the inspected police facilities was the shortage of staff. Therefore, it is not possible to ensure (or at least not to the full extent) that detainees could enjoy all the rights prescribed by the legislation. For example, the Chancellor found that in Jõhvi detention chamber could not have access to the exercise yard during the weekends. To improve the situation, the Chancellor recommended changing the schedule of the existing staff and establishing new staff positions if necessary.

The Police and Border Guard Board in its reply to the Chancellor's proposals promised to analyse the use of the existing staff resource and, on the basis of the analysis, change the organisation of work. For example, in the reply to the summary of the inspection visit to Jõhvi detention chamber the prefect of the East Prefecture noted that the head of the police detention centre changed the schedule of escort officers, so as to ensure that detainees could have their daily exercise also during weekends and national holidays.

## 1.3 Health services and fire safety

The Chancellor inspected the provision of health services together with a medical expert in Jõhvi and Tartu detention chambers. In both cases, the expert found shortcomings in the provision of the service. In Jõhvi detention chamber, the expert recommended changing the procedure for drawing up medical documents of the patients (detainees), and in Tartu detention chamber the main problem according to the expert's assessment was the lack of a medical staff in sobering-up cells.

The Chancellor involved a fire safety specialist in the inspection visits to Valga and Võru detention chambers. Shortcomings with regard to fire safety were found in both buildings. Valga detention chamber lacked a proper emergency lighting system and an automatic fire alarm system. In addition, Valga detention chamber lacked a fire emergency plan which should be explained to each staff of the establishment upon signature. The fire safety specialist found similar problems in Võru detention chamber.

The relevant structural units of the Police and Border Guard Board affirmed to the Chancellor that the fire safety situation and the provision of health services would be improved.<sup>14</sup> The Chancellor will definitely continue to inspect the fire safety situation and organisation of health services in places of detention in the future.

#### 1.4 Drawing up of documents

In Võru and Valga detention chambers the Chancellor found some formal shortcomings upon inspection of documents relating to detainees (e.g. personal files, various reports). On the basis of the inspected files (total 22) it could be concluded that the documents were not always drawn up in time or consistently. There was reason to believe that with a high probability the police officers had normally performed the act mentioned in the document (e.g. notifying the next of kin of detainees) but the relevant records had not been drawn up.

The Chancellor proposed to the South Prefecture to draw the attention of officers in Valga and Võru detention chambers to the fact that documents relating to detainees (in particular as regards informing them of their rights, notification of the detention, and recording of the person's health condition) should be filled out properly.

In his reply to the Chancellor's proposals the prefect affirmed that the attention of the officers in the detention chambers was once again drawn to the need to properly fill out documents relating to detainees. The prefect added that it was emphasised to the officers that the obligation to inform the detainees of their rights, notify their next of kin, and record their health situation arises both under the legislation and the principle of good administration.

#### 1.5 Inspection visits to police detention facilities in Tallinn

As was mentioned, the Chancellor carried out unannounced inspection visits to police detention facilities in Tallinn on 12 November 2011. The visits took place at night and in connection with a football match held in Tallinn. The aim of the visits was to ascertain any overcrowding in the cells and the resulting possible interferences with fundamental rights.

First, at 03:07 the Chancellor visited the downtown police department of the North Police Prefecture of the PBGB. At the time of the inspection, there were six persons in the cells. No overcrowding was found and all the documents relating to the detainees had been drawn up without any significant shortcomings.

At 03:55 the Chancellor visited the sobering-up facility of the public order bureau under the North Prefecture of the PBGB. There were 16 persons in the cells, no violations of any rights were found.

Finally, at 04:59, the Chancellor inspected the detention cells in the east police department under the North Prefecture of the PBGB. On 12 November 2011, the cells were under renovation and no persons were being detained there.

## 2. Expulsion centre

On 14 September 2011, advisers to the Chancellor carried out a follow-up inspection visit to the expulsion centre of the migration supervision bureau of the Citizenship and Migration Department under the Police and Border Guard Board (case No 7-7/110954). A medical expert was involved in the inspection.

<sup>14</sup> For example, the prefect of the East Prefecture noted that together with the head of the police detention centre, the medical assistant at Jõhvi detention chamber, and the health service provider the procedure for documenting the provision of health services and the need to enter the necessary records in the official language was discussed, and the procedure was brought into line with the opinion expressed by the medical expert in the summary of the inspection.

Mostly the inspection focused on compliance with the recommendations made by the Chancellor to the Director General of the PBGB on 27 December 2010. The recommendations are described in the Chancellor's 2010 Overview.<sup>15</sup>

The inspection revealed that first and foremost problems with documenting of events still persist.

The most significant improvement in the meantime relates to changes in the use of the means of restraint when persons need to be escorted outside the centre. The inspection revealed that during the first seven months of 2011 in 14% of the cases handcuffs had been used as a means of restraint to avoid escape (in 2010 handcuffs had been used in approximately 2/3 of the escorts, and in almost all the cases of primary escort). The PBGB had also taken steps to comply with the recommendations relating to the provision of health services.

The inspection revealed that problems still existed with documenting the circumstances of the use of means of restraint. Cases of application of security measures are registered in aggregate form in the relevant register while information about medical consultation and occurrence of any health damage upon the application of a security measure is recorded in the personal files. The Chancellor repeated his recommendation that the register should contain all the necessary aggregate data, including information about medical consultation and the occurrence of any damage to health. According to the PBGB the relevant data can be sufficiently easily found in the personal files. However, the PBGB will try to find a possibility to enable aggregate searches on the use of security measures in the database on aliens staying or having stayed in Estonia without a legal basis, or should this prove impossible, to amend the relevant legislation, so that the register on the use of security measures would also contain information on medical consultation and damage to health.

Unfortunately, it should be noted that even after the repetition of the recommendation after the follow-up visit in 2011 the Director General of the PBGB did not consider it necessary to take steps to ensure that the circumstances of escorting persons outside the expulsion centre are comprehensively documented, nor amend the relevant PBGB guidelines.

Neither did the Director General of the PBGB consider it necessary to comply with all the Chancellor's recommendations in connection with documenting of situations when persons are escorted to the doctor. The Chancellor recommended complying with the principle of confidentiality during escort to the health service provider, and documenting the presence of the escort team during the provision of health care. The inspection revealed that members of the escort team had been present within the hearing distance of the medical worker and the escorted person during the provision of health service, but this was not documented and the escort plan did not include anything on the presence of the escort team either. On this basis, the Chancellor repeated that in order to ensure medical confidentiality the presence of the escort team is admissible exceptionally only when the medical staff consider it necessary for reasons of security, and even then the escort team may only be within the range of vision. To ensure verifiability, all the relevant circumstances should be documented. The Chancellor also repeated his recommendation to specify in the PBGB guidelines for escorting detainees how escorting to medical examinations should take place.

The Director General of the PBGB replied to the recommendation that officials act according to individual threat assessment and requests and wishes of the doctor. Requiring medical staff to verify by signature any circumstances not relating to their work may pose a danger to the security of escort. A report on the circumstances occurring during the escort is drawn up retroactively because only then the officials are aware of all the circumstances. The PBGB did not consider it necessary to amend the guidelines for escorting detainees with regard to the

15 See the Chancellor of Justice Overview 2010, pp 27–38. Available at [http://oiguskantsler.ee/sites/default/files/overview\\_2010.pdf](http://oiguskantsler.ee/sites/default/files/overview_2010.pdf).

principles of the use of special equipment and presence of the escort team during the provision of health services.

In 2010, the Chancellor recommended expanding the range of activities offered to persons detained in the centre, taking as far as possible into account the needs of each particular person (handicraft, means to engage in arts, language study materials or courses, etc). The Chancellor also recommended analysing possibilities to enable long-term residents of the centre to engage in sports outside the centre.

The inspection revealed that the possibilities for spending free time in the centre were still extremely limited and no substantial progress had occurred in the meantime. Most of the possibilities include passive pastimes, while the range of purposeful activities is very limited. In expanding the possibilities the PBGB relies primarily on civil society organisations which may establish various activity programmes within the voluntary framework.

The Chancellor pointed out that this is the state's obligation and therefore it is not sufficient to wait until civil society organisations provide various leisure activities within the voluntary framework. The Chancellor repeated his recommendation that the centre should offer more activities for persons staying in the centre for a longer period. The Chancellor recognised the intention of the centre to create a possibility of internet access for persons staying in the centre and asked to be briefed in more detail about the implementation of the plan.

In his reply to the Chancellor, the Director General of the PBGB noted that in October 2011 different board games and table football were made available in the meal and leisure room. On 26 October 2011, the Estonian Red Cross carried out another first aid training session for the persons to be expelled. The PBGB maintained its position that allowing detainees to engage in sports outside the centre would be contrary to the principle of detention in the expulsion centre. The PBGB promised to inform the Chancellor about any new leisure opportunities offered, in cooperation with various NGOs, to the persons to be expelled. The Director General of the PBGB also noted that in the opinion of the centre allowing persons to be expelled access to the internet includes similar security risks as allowing the use of mobile phones. It is currently also impossible to create an autonomous internet connection in the accommodation sections of the persons to be expelled.

### 3. Prisons

In 2011, the Chancellor of Justice carried out an announced inspection visit to Tallinn Prison (case No 7-7/ 110248), Viru Prison (case No 7-7/111231) and Tartu Prison psychiatric department (case No 7-9/110486).

Fire safety officials from the Rescue Service were involved as specialists in the visit to Tallinn Prison, and a medical expert in the visit to Viru Prison.

Prisons visited in 2011 are very different establishments, as Viru and Tartu Prison have at their disposal relatively new facilities built in conformity with the modern requirements for the enforcement of imprisonment. Tallinn Prison, on the other hand, is a rather depreciated camp-type prison.

The following part explores four ranges of issues which arose during the inspection visits. First of all, it was found that besides the living conditions and application of means of coercion there were also problems with prisoners' communication outside the prison and leisure time activities.



### 3.1. Living conditions

Despite the building of new prisons, problems with living conditions in prisons still persist. This was not surprising in Tallinn Prison. However, shortcomings in the living conditions in cells were also found in Viru Prison and in the psychiatric department of Tartu Prison.

In accommodation blocs for convicted prisoners in Tallinn Prison, there is no toilet or water system in the cells and the buildings have no shower. At night, prisoners wishing to use the toilet and have access to the water tap must notify a guard who will then provide access to the toilet and the washing room with sinks to prisoners cell by cell. Access to hot water for washing themselves or their clothes is provided to prisoners only once a week during shower time, while at other times prisoners heat water in electric water kettles. The Chancellor recommended to the prison installing a hot water system in the accommodation blocs for convicted prisoners, improving possibilities for drying the laundry and ensuring that at night prisoners should not wait more than 30 minutes to use the toilet.

Tallinn Prison promised to the Chancellor to consider installing hot water boilers in the prison. However, upon the follow-up inspection it was found that in the present situation the prison did not consider it possible to install hot water boilers in the accommodation blocs for convicted prisoners. The prison also promised to look for solutions to improve possibilities for drying the laundry. However, the follow-up inspection showed that still it was only possible to dry the laundry in the yard. With regard to the possibility to use the toilet, after analysing the situation the prison concluded that currently prisoners are ensured access to the toilet with reasonable waiting time at night.

The living conditions in Viru Prison are significantly better than in Tallinn Prison. Nonetheless, Viru Prison had problems with broken windows in several cells. There had been cases where pieces of glass from a broken window were lying around near the window while a prisoner was staying in the same cell. The Chancellor recommended not placing prisoners in cells with broken windows before the glass has been replaced.

In the psychiatric department in Tartu Prison there were problems with the conformity of the cells to the requirements of persons with special physical needs. Some cells in the department are used for accommodating persons recovering from an operation or having special health needs for some other reason. Such persons had no possibility to independently move around in the accommodation bloc, and there was also no special equipment to enable persons with special needs to cope independently. According to the reply from Tartu Prison, after the Chancellor's visit two cells in the department were adjusted to take into account the needs of persons with motion problems. It is now possible to enter the toilet with a wheelchair in the cell, and a handrail on the wall of the toilet has been installed enabling persons to use the toilet independently. The toilet also has a shower corner where, by using a special shower chair, persons with motion problems can take care of their hygiene without any assistance.

### 3.2. Communication with persons outside the prison

As usual, the Chancellor made several recommendations to prisons concerning the prisoners' possibility to communicate with persons outside the prison. In Viru Prison there were several minors held in custody or persons in custody who had been there for a very long time (more than four years). Regardless of this, they could only use the telephone to communicate with their next of kin only once a week for ten minutes. The ten minutes also included the time necessary for dialling the number and different access codes. The Chancellor recommended to Viru Prison increasing the number of times of access to the phone per week for minors in custody or persons in custody already for a long time, or extending the time allowed for each phone call.

In Tallinn Prison, the Chancellor found problems with the use of the internet (some links could not be opened, the computer was basically in the area between the flights of stairs, etc), and the number of telephones in the accommodation blocs for convicted prisoners was too small in comparison to the number of prisoners. In Tallinn Prison, prisoners could not have long-term visits from their next of kin during weekends (e.g. by arriving on Saturday and leaving on Sunday).

The Chancellor also recommended to Tallinn Prison to improve the conditions in the room designated for internet use and ensure that the required websites open properly. In addition, the Chancellor recommended installing additional phones in the accommodation blocs for convicted prisoners and allowing long-term visits also on weekends.

Tallinn Prison in its reply promised to install the additional telephones and consider the possibility to allow long-term visits also on weekends. The prison service also promised to improve the possibilities for internet use. The follow-up inspection showed that additional phones had indeed been installed. However, in the computer designated for using the internet several links could still not be opened.

### 3.3. Documenting the use of coercion

During the inspection visits in 2011, the Chancellor found problems with the use of coercion. In the psychiatric department in Tartu Prison the Chancellor found shortcomings in the application of means of restraint. Inter alia, no guidelines for the application of means of restraint existed, and the register on the use of the means of restraint was incomplete. The Chancellor recommended bringing the application of means of restraint into conformity with the current legislation, the guidelines of the Health Board and recommendations of international organisations. The follow-up inspection showed that guidelines for the application of means of restraint for medical purposes had been drawn up. However, there were still shortcomings in documenting the use of the means of restraint in the relevant registration journal.

During the inspection visit to Viru Prison, the Chancellor found that unfortunately records on the use of physical force, special equipment, means of restraint and weapons were often superficial. In several cases it was not possible to ascertain whether and which medical staff had examined a person after the use of force, special equipment, weapon or means of restraint, and whether the person had needed any medical assistance. The Chancellor recommended that the use of physical force, special equipment, weapons and means of restraint should be documented more carefully.

### 3.4. Leisure activities

Scarce possibilities for leisure time activities still continue to be a big problem in prisons, in particular in the case of prisoners who spend most of the time locked up in their cell (e.g. persons remanded in custody, but also persons under psychiatric treatment). Adult persons remanded in custody in Viru Prison claimed that, as a rule, they spend 23 hours in a locked cell and the only activity outside the cell is a daily one-hour walk, while the main leisure activity is reading books and materials from the prison library. Minors remanded in custody who are in the age of compulsory school attendance affirmed that they could mostly attend school but any possibilities for other purposeful activity were extremely limited or non-existent. In order to alleviate harmful effects of pre-trial detention on persons remanded in custody, the Chancellor recommended to Viru Prison to find more possibilities for purposeful physical and intellectual activities outside the cells (e.g. acquiring education, work, participation in social programmes, sports). The Chancellor recommended paying particular attention to organising more purposeful activities for minors remanded in custody, as well as persons who have been in custody for a long time.



In the psychiatric department of Tartu Prison the Chancellor found that no special activities for patients were offered and the department's staff did not include an activity therapist. The staff of the department had not received training in activity therapy. Such training would allow, at least to a certain extent, offering the necessary services within the treatment process. Upon request, patients can spend up to one hour daily in open air. In case of possibility, patients are also taken to sporting facilities and the activity room outside the department. The patients had no access to activity therapy or any similar activity to support treatment with medicines. In the nurses' room there were some books which patients could read but the medical staff admitted that the reading material was in a rather poor physical shape.

The Chancellor recommended to Tartu Prison ensuring that persons under treatment in the psychiatric department are offered therapeutic recreational activities. The Chancellor also suggested considering possibilities to hire an activity therapist in the department to ensure more successful treatment. In addition, the Chancellor asked to consider creating other leisure time opportunities, for example acquiring suitable literature. The follow-up inspection revealed that during the week preceding the follow-up visit the patients in the department had not been organised any purposeful leisure activity. Only the possibility to read newspapers existed.

#### 4. Providers of involuntary emergency psychiatric care

During the reporting year, the Chancellor visited five involuntary psychiatric health care providers: Ahtme Hospital Foundation (cases No 7-9/110186 and No 7-9/110565), psychiatric clinic of Viljandi Hospital Foundation (case No 7-9/110298), Rapla County Hospital Foundation (case No 7-9/101220) and Lääne County Hospital Foundation (case No 7-9/111186). In addition, the Chancellor inspected the infection clinic of West Tallinn Central Hospital (case No 7-9/110103).

Five of the inspection visits were unannounced and one announced. In one inspection, experts were involved in addition to officials from the Chancellor's Office.

Upon the inspection the Chancellor found shortcomings in the work of the inspected establishments mostly in connection with informing the patients of their rights, applying the means of restraint, prohibiting of certain items, and access to health care. The following part describes in more detail the relevant problems and the Chancellor's opinions, as well as the commendable practice followed by the inspected establishments. Most of the problems highlighted by the Chancellor were eliminated by the time of drawing up this report.

##### 4.1. Patient information

Problems with informing the patients of their rights were found in almost all the inspected hospitals. In several hospitals the internal rules of the psychiatric care department and an introductory brochure setting out patients' rights had not been drawn up, and upon admission to the establishment persons were given information only orally. Some hospitals did not have any materials introducing the rights of patients or internal rules of the hospital. There were also hospitals lacking a complaints procedure or model forms for submitting complaints. In some cases the complaints procedure existed but there were no rules on submitting complaints and replying to them. Some hospitals did not offer information on complaints bodies available outside the establishment, there were no leaflets or information materials on state legal aid, or information materials drawn up by other authorities.

The Chancellor recommended that the hospitals should draw up and make available for all persons admitted for treatment, as well as for all the patients staying in the hospital, information materials on the rights of patients, internal rules of the clinic and the rights of complaint. The information materials should explain clearly all the rights of patients under psychiatric treat-

ment (either on the basis of an agreement or involuntary placement). In addition, the Chancellor recommended drawing up an exhaustive procedure for dealing with complaints of patients or their next of kin, including model complaint forms in the main languages used by the patients. Inter alia, the procedure should set out the right of persons to contact other relevant authorities. The procedure for resolving of complaints, model complaint forms and the list of competent institutions for dealing with complaints should be made publicly available in all the units of the hospitals and on the webpage of the health service provider.

The Chancellor also made proposals concerning the consent form for the provision of health services<sup>16</sup> and video surveillance of patients<sup>17</sup>.

#### 4.2. The use of means of restraint

Verification of compliance with the requirements on the use of means of restraint revealed that, in four hospitals, the beds in the rooms for the application of the means of restraint were not suitable for fixing the patients, the doors had no observation holes, there was no surveillance camera, the rooms only had general lighting which could not be adjusted, there was no toilet. It was found that during the application of means of restraint there was no member of staff of the health service provider present in the relevant rooms. The Chancellor recommended ensuring that means of restraint are applied in a room specially fitted for this purpose and only under constant supervision of a health worker.

Several establishments had shortcomings in maintaining the register on the means of restraint. In some cases the register was maintained on paper, in Russian, and it contained only information on the time of beginning and end of restraint, the name of the doctor who made the decision, and the diagnosis. Some hospitals could not explain how persons could examine entries on themselves in the register without also seeing sensitive personal data of other patients.

The Chancellor recommended creating an electronic register on the means of restraint. The register should contain at least the following data: name of patient, number of medical case file, beginning and end of restraint, circumstances leading to the application of restraint, type of restraint, name of the doctor who made the decision, information on injuries or health problems occurring during the restraint, use of external assistance, and explanatory remarks by the patient. The patient should be specifically informed about the right to submit explanatory remarks.

#### 4.3. Prohibited items

Several hospitals had problems with items prohibited for patients.<sup>18</sup> The Chancellor recommended establishing an exhaustive list of objectionable items or substances and informing all the patients about it. In addition, the Chancellor recommended establishing a procedure to regulate depositing of personal belongings and substances, or their destruction in case of necessity, as well as the procedure to be followed in cases when a person refuses to hand over objectionable items or substances.

#### 4.4. Access to health care

On several occasions the Chancellor drew the attention to access to health services for persons under psychiatric treatment. He also pointed out that some accommodation rooms for patients were not suitable for persons with special mobility needs<sup>19</sup>. The Chancellor recommended

16 See the summary of the inspection visit to Ahtme Hospital and Rapla County Hospital.

17 See the summary of the inspection visit to Viljandi Hospital.

18 See the summary of the inspection visit to Ahtme Hospital.

19 See the summary of the inspection visit to Viljandi Hospital.

reviewing the necessity of restrictions on the movement of persons receiving in-patient health services<sup>20</sup>.

Besides the above shortcomings, the Chancellor found several positive practices in the hospitals. For example, Ahtme Hospital had created possibilities for physical exercise, music and art therapy, as well as other recreational activities for the patients.

## 5. Providers of special care services

During the reporting year the Chancellor visited 11 establishments providing 24-hour special care services. Eight of them were also using a seclusion room. The inspected establishments included the social welfare unit of the nursing care and social welfare department of Viljandi Hospital Foundation (case No 7-9/110302), care homes owned by Hoolekandeteenused Ltd (Ravila Care Home (case No 7-9/110375), Sillamäe Care Home (case No 7-9/110573), Erastvere Care Home (case No 7-9/110675), Võisiku Care Home (case No 7-9/110588), Sõmera Care Home (case No 7-9/110799), Koluvere Care Home (case No 7-9/111597), Valkla Care Home (case No 7-9/111480), Mõisamaa Care Home (case No 7-9/111620) and Tori Care Home (case No 7-9/111401)) and non-profit association South-Estonian Special Care Services Centre (case No 7-9/110676).

All the inspection visits were unannounced. In one inspection visit an expert was involved in addition to officials from the Chancellor's Office.

The main violations found upon the inspections concerned informing service recipients about their rights, seclusion of persons, collection of documents and preparation of medical staff. Several of the violations and shortcomings were eliminated during the reporting year.

### 5.1. Informing persons about their rights

Similarly to the hospitals described in the previous section, the Chancellor also found problems with informing persons about their rights, as well as the complaints procedure, in establishments providing special care services. The problems mainly concerned the procedure for submitting and reviewing complaints, as well as information and contact data of available complaints bodies outside the establishment (Social Insurance Board, Health Board, Chancellor of Justice, courts)<sup>21</sup>. Inter alia, the Chancellor recommended drawing up rules of behaviour for a department providing services to mentally challenged persons, preparing pictograms explaining the daily schedule and making them available on information boards, and, if necessary, additionally explaining their content to the patients<sup>22</sup>.

### 5.2. Seclusion of persons

Under the current legislation, providers of 24-hour special care services are required to have a seclusion room which is secure, safe, with proper lighting, suitable temperature and fittings which cannot be used to cause injuries. A seclusion room should have a bed or any other sleeping place higher than the floor. While in a seclusion room, a person should also be under constant supervision of the staff of the provider of 24-hour special care services.

In almost all the inspected establishments, the seclusion rooms did not conform to the requirements. For example, a seclusion room had no beds at all, or the beds were not fixed to the wall or the floor, the doors of the rooms could not be opened from the inside. The Chancellor recommended fitting seclusion rooms in conformity with the requirements of the legislation.

20 See the summary of the inspection visit to the infection clinic of West-Tallinn Central Hospital.

21 See, for example, the summary of the inspection visit to Viljandi Hospital.

22 See the summary of the inspection visit to Sõmera Care Home.

The Chancellor found shortcomings in notifying providers of the ambulance service or the police about the seclusion of a person, in the duration of seclusion, as well as in entering the relevant records in the register.<sup>23</sup>

### 5.3. Training of medical staff

The inspection visit to one of the care homes revealed that the medical nurses had not received special training for dealing with persons with mental problems.<sup>24</sup> The Chancellor recommended providing them the relevant training to the extent recommended by the Committee of Ministers of the Council of Europe.

The Chancellor can also point out some commendable practices in the care homes. For example, on the information boards in some of the establishments (e.g. Viljandi Hospital, Ravila Care Home, Sillamäe Care Home, Mõisamaa Care Home) information on daily and weekly schedules was available not only in writing but also in the form of pictograms. In Mõisamaa Care Home, a representative body of service recipients had been established with the aim to contribute to shaping the living environment. Ravila Care Home had created a possibility to use a so-called calming-down room in order to reduce the need for seclusion.

## 6. Special schools

In Estonia there are currently two schools for children requiring special educational measures due to behavioural problems (i.e. special schools): Tapa Special School for boys and Kaagvere Special School for girls. On 23 May 2011, advisers to the Chancellor carried out an announced follow-up inspection visit to Kaagvere Special School (case No 7-9/102058).

This time the inspection focused mainly on compliance with the recommendations made by the Chancellor after the visit of 4 November 2010<sup>25</sup>. The following part describes the shortcomings which had not been eliminated by the time of the follow-up inspection.

### 6.1. Seclusion of children in the special school

During the inspection of 4 November 2010, Kaagvere Special School had no seclusion room. At the time of the follow-up visit on 23 May 2011 the school still had no seclusion room. During conversations with the staff it was found that therefore the school still has problems with isolating aggressive children from others, as no suitable rooms for this exist. At the same time, violent incidents in the school are frequent. This is demonstrated merely by the fact that in the period of slightly more than half a year between the Chancellor's inspection visit and the follow-up visit the police had been called to the school on more than twenty occasions.

Under the current legislation, schools for children requiring special educational measures due to behavioural problems must have a seclusion room which is secure, safe, with proper lighting, suitable temperature and fittings which cannot be used to cause injuries.

In view of the special needs of children referred to a special school and the fact that they spend 24 hours a day on the school territory, the risk of self-injury or violence against other persons is significantly higher in such schools as compared to mainstream schools. In order to help resolve dangerous situations and allow secluding a dangerous pupil from others and pacifying them, the legislator has provided for a possibility to place a child, until their pacification, in a safe room meeting all the health protection requirements. The absence of a room conform-

23 See the summaries of inspection visits to Valkla Care Home and Koluvere Care Home.

24 See the summary of the inspection visit to Valkla Care Home.

25 See the Chancellor of Justice 2010 Overview, pp 62–66. Available at [http://oiguskantsler.ee/sites/default/files/overview\\_2010.pdf](http://oiguskantsler.ee/sites/default/files/overview_2010.pdf).

ing to the health protection requirements in a special school is dangerous because, in case of a situation endangering the health of a child or of others, it is not possible to safely isolate the child until the arrival of the ambulance. This endangers the safety of the child as well as the safety of other pupils and school staff.

The Chancellor recommended that the Minister of Education and Research in cooperation with the school management should create safe conditions for secluding pupils in Kaagvere Special School in conformity with the health protection requirements.

## 6.2. Search of children without a legal basis

After the inspection visit of 4 November 2010, the Chancellor proposed to the director of Kaagvere Special School to discontinue searching of pupils without a legal basis. In case of a reasonable suspicion that a pupil is trying to bring prohibited items or substances to the school territory, the Chancellor recommended asking the assistance of the police.

The Chancellor recommended to the Minister of Education and Research to consider amendment of the Juvenile Sanctions Act, so as to give certain staff members of special schools the right to search, under certain conditions, pupils and their belongings. The Minister noted that the need for amending the provisions on the search of children without a legal basis would be analysed in the course of preparing amendments to the Juvenile Sanctions Act. By the time of the follow-up inspection, the Minister had not yet submitted the relevant proposal to the legislator.

The follow-up inspection revealed that Kaagvere Special School had not discontinued the search of pupils without a legal basis. According to the director and supervisory staff of the school, in case of a suspicion, a staff member of the same sex would carry out a search of a girl arriving in the school. However, the current legislation does not provide for the right of the staff of special schools to search pupils.

Although the Chancellor admits the practical need to search pupils arriving in the school, it is not acceptable to restrict fundamental rights of persons without a legal basis. On this basis, the Chancellor repeated his proposal to the director of Kaagvere Special School to discontinue searching pupils without a legal basis.

## 6.3. Shortcomings in the school's documentation

In the course of the follow-up inspection, the Chancellor still found shortcomings in the documents regulating the operation of Kaagvere Special School. At the time of the follow-up inspection the Minister of Education and Research had still not approved the school's development plan. The Chancellor proposed to the Minister to approve the development plan of Kaagvere Special School.

The follow-up inspection also revealed that the internal rules of the school no longer met the school's needs and therefore the school staff did not follow them in their daily work. For example, use of the telephone, home visits and other communication with the next of kin had been arranged differently than prescribed by the internal rules.

According to the Chancellor's assessment, such a situation causes confusion both among pupils and parents, as parents have access to the approved internal rules on the school homepage while in practice different rules are applied in the daily school life. The absence of clear and uniform school rules also causes difficulties in the daily work of the staff. Many of the children interviewed during the visit of 4 November 2010 noted that different staff members reacted differently to similar situations. According to the children, due to such different reactions they

often felt that they were being treated unequally. The Chancellor received similar complaints from pupils in Kaagvere Special School between the inspection visit of 4 November 2010 and the follow-up inspection of 23 May 2011.

According to the Chancellor's assessment, bringing the internal rules into conformity with the actual practice and following the new rules in organising the school life would ensure certainty among the pupils as well as the staff, and would help to reduce the sense of inequality which several pupils pointed out in conversations with the Chancellor's advisers.

On this basis, the Chancellor recommended to the school director bringing the internal rules into conformity with the actual practice and making the new rules available both in Estonian and Russian for all the pupils, as well as publicly on the school homepage.

## PART II

### CHANCELLOR OF JUSTICE AS OMBUDSMAN FOR CHILDREN

## I. INTRODUCTION

The United Nations General Assembly adopted the Convention on the Rights of the Child<sup>26</sup> on 20 November 1989. Estonia ratified the Convention on 26 September 1991. Under Article 4 of the Convention, States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the Convention. The UN Committee on the Rights of the Child considers the establishment of an independent supervisory institution on the rights of children as one of the obligations of States Parties under Article 4. In Estonia the function of the independent supervisory institution on the rights of children (i.e. ombudsman for children) is performed by the Chancellor of Justice since 19 March 2011.<sup>27</sup>

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

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

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

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

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

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

<sup>26</sup> Available at <http://www2.ohchr.org/english/law/crc.htm>.

<sup>27</sup> See the Chancellor of Justice Act, § 1(8). Available in Estonian at <https://www.riigiteataja.ee/akt/108072011060>.



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

To perform the functions of the ombudsman for children, the Office of the Chancellor of Justice includes the Children's Rights Department as a separate structural unit, having a staff of four during the reporting year.

The following part of the overview describes the main proceedings concerning the rights of children in 2011, as well as inspection visits to children's institutions and activities relating to promoting the rights of children.

## II. PROCEEDINGS

In 2011, the Chancellor opened 82 cases concerning the rights of children. Of these, 34 were substantive proceedings and 48 cases were outside the competence of the Chancellor. In those cases, the Chancellor explained to the petitioners the Chancellor's competence and advised them how to best protect their rights. Children themselves contacted the Chancellor for the protection of their rights on three occasions during the reporting year. In the remaining cases the Chancellor was contacted by parents or other legal representatives of a child.

During the reporting year, the Chancellor opened 9 cases to verify the constitutionality of legislation concerning children. Of these, two cases were opened on the Chancellor's own initiative and seven on the basis of a petition. For example, the Chancellor analysed the constitutionality of legislation adopted by Tallinn city and Saue rural municipality to regulate designation of the school according to the residence of a child, and in both cases found a conflict with the Constitution. Both cases are described in more detail in the following subdivisions. To verify the lawfulness of activities of persons and agencies exercising public authority, the Chancellor initiated 20 proceedings, of these 7 on his own initiative and 13 on the basis of a petition.

### 1. Claiming maintenance for children living in a substitute home

During the reporting year, the Chancellor analysed on his own initiative the practice of claiming maintenance for children in a substitute home, and administering and using the property of children (case No 7-9/110428).

Under the Family Law Act, guardians must claim in time all the payments owing to persons under their guardianship, including maintenance payments, and administer prudently the assets belonging to the person under guardianship. If the money of the person under guardianship is not needed for their maintenance, administering of property or other current expenses, the guardian must place it in a credit institution in Estonia or another contracting state separately from his or her own assets. Upon placement a note should be attached that a court authorisation is needed to dispose of the assets in the account.

The Chancellor found that several rural municipality and city authorities had not claimed a maintenance payment from parents or grandparents on behalf of children under their guardianship in substitute homes. Several rural municipality or city authorities had not taken steps to adjust the maintenance after the circumstances for awarding the maintenance had changed.

With regard to the administration of property of children in substitute homes, the Chancellor found that some rural municipality or city authorities had deposited the money of a child under their guardianship (i.e. the maintenance payment) in the bank account of the substitute home. The Chancellor also found that the maintenance awarded to some children in substitute homes was used for the benefit all the children in a substitute home or for covering overhead expenses of a substitute home.

While most of the children in substitute homes are under the guardianship of local authorities, the Chancellor sent a circular to all the rural municipality and city authorities in Estonia to draw their attention to the violations and explain the legislation regulating the claiming, administering and use of maintenance.

### 2. Designation of a school according to a child's residence in Tallinn

The Chancellor verified on his own initiative whether the procedure established by Tallinn City Administration regulation No 28 of 14 March 2001 "The conditions and procedure for the desig-

nation of a municipal school according to a child's residence" was in conformity with the Basic Schools and Upper Secondary Schools Act and the Constitution (case No 6-12/110632).

The Chancellor found that the Tallinn City Administration regulation was in conflict (a) with § 10(1) of the Basic Schools and Upper Secondary Schools Act because, in case of some children, it was not taken into account in the designation of their school that the school should be close to the child's residence, that the child could attend the same school as their siblings, and in case of some children the wishes of parents were not taken into account; (b) with § 27 subsections 1, 4 and 5 of the Basic Schools and Upper Secondary Schools Act because in the designation of a school of a child's residence the admission conditions and procedure of each individual school was applied, and (c) with the fundamental right to a proper procedure and organisation arising under § 14 of the Constitution, as the procedure established by the regulation was non-transparent, unnecessarily complicated and inefficient.

As a result of the Chancellor's proceedings, Tallinn City Administration significantly changed the conditions and procedure for the designation of a school according to a child's residence.<sup>28</sup>

### 3. Designation of a school according to a child's residence in Saue rural municipality

The Chancellor verified, on the basis of a petition, whether the activities of Saue rural municipality in designating the school for the petitioner's child according to their residence and Saue Rural Municipality Administration regulation No 1 of 22 March 2011 "The conditions and procedure for the designation of a school according to a child's residence for the school year 2011/2012" were in conformity with the Basic Schools and Upper Secondary Schools Act and the Constitution (case No 6-5/110642 and 7-5/111373). More specifically, the petitioner asked the Chancellor to verify whether the decision of Saue Rural Municipality Administration to designate Pääsküla Upper Secondary School in Tallinn as the school of his son's residence was lawful and in conformity with the principle of good administration.

First, the Chancellor found that although the delegating norm in § 10(1) of the Basic Schools and Upper Secondary Schools Act obliges a rural municipality or city administration to establish, in the form of a general legislative act, the conditions and procedure for the designation of a school according to the residence of children in the age of compulsory school attendance, Saue Rural Municipality Administration had not adopted such an act. As a result of the Chancellor's proceedings, Saue Rural Municipality Administration adopted a general act (regulation) establishing the conditions and procedure for the designation of a municipal school according to a child's residence.

Secondly, the Chancellor found that in conflict with § 10(1) of the Basic Schools and Upper Secondary Schools Act, while designating the school according to the residence of the applicant's child, Saue Rural Municipality Administration relied on circumstances not established by a law or a general legislative act of the rural municipality administration, thus rendering such circumstances irrelevant: the registration of residence of one or both of the parents of a child in the age of compulsory school attendance, and the duration of such registration.

### 4. Consent of a guardianship authority for of a mother and child to live together in prison

In 2010, the Chancellor resolved a petition by a prisoner in Harku Prison in which she asked the Chancellor to verify whether separation of her newborn child from her had been lawful and in conformity with the legislation. It was necessary to answer the question whether Lasnamäe city district administration as the guardianship authority had acted lawfully in replying to the petitioner's request to live together in prison with her newborn child (case No 7-5/100102).

<sup>28</sup> Tallinn City Administration regulation No 132 of 21 December 2011 "The conditions and procedure for the designation of a municipal school according to a child's residence", available in Estonian at <http://goo.gl/5k2Bg>.

Under the Imprisonment Act, a mother and her child of up to three years old (inclusive) may be allowed to live together in a prison at the request of the mother and with consent of the guardianship authority. Although the Chancellor may not assess the substantive reasons for a decision of a guardianship authority either to grant or refuse consent, he could verify the conformity of the decision to the formal requirements established by the Administrative Procedure Act.

The Chancellor reached the conclusion that Lasnamäe City District Administration had not complied with the formal requirements under the Administrative Procedure Act when replying to the petitioner's request, as the decision to refuse consent for the mother and child to live together in a prison was not reasoned, did not contain consideration of essential facts or reference to legal norms on the basis of which the administrative act was issued. The decision also lacked a reference to the possibility of appeal.

The Chancellor emphasised that a decision of a guardianship authority must indicate whether and how the authority took into consideration, *inter alia*, the age and health of a child and the resulting special needs, personality and previous behaviour of the child's mother, possibility to take care of the child in a prison, the length of sentence of the mother, possibility of the other parent to take care of the child, etc.

As a result of the proceedings, the Chancellor recommended to Lasnamäe City District Administration to comply with the requirements under the Administrative Procedure Act when replying to similar requests in the future.

In reply to the Chancellor's recommendations, Tallinn City Administration admitted that it agreed with the Chancellor's conclusions and would inform administrations of city districts of the obligation to comply with the formal requirements for administrative acts and the requirement of reasoning under the legislation.

## 5. The right of a father to request the possibility to live together with his child in a prison

During the reporting year, the Chancellor was contacted by a male prisoner complaining that the Imprisonment Act was contrary to the principle of equal treatment by providing the right to request the possibility to live together in a prison with a child of up to three years of age only for female prisoners. The petitioner found that he as the male parent was treated unequally by the law in comparison to female parents (case No 6-1/100993).

As a result of his analysis, the Chancellor decided to send a memorandum to the Ministry of Justice,<sup>29</sup> as he found that the second sentence of § 54(1) of the Imprisonment Act providing for the right to request the possibility to live together with a child in a prison only for female prisoners was contrary to the prohibition of discrimination on the basis of sex under the Constitution, and the Chancellor did not see any justifiable or pertinent reasons to distinguish between female and male parents.

In response to the Chancellor's memorandum, the Ministry of Justice replied that it did not agree with the Chancellor's conclusions.

### III. INSPECTION VISITS

During the reporting year the Chancellor visited Kaagvere Special School for girls requiring special educational measures due to behavioural problems (case No 7-9/102058).

In addition, the Chancellor visited five substitute homes in 2011: Tapa Children's and Youth Home (case No 7-9/120506), non-profit association Maria Children's Centre (case No 7-9/120507), Kohtla-Järve Children's Home (case No 7-8/111392), non-profit association Vahtramägi (case No 7-9/111393) and non-profit association Peeteli Church Social Centre (case No 7-6/111647).

The Chancellor had given advance notice of all the visits. The following main violations were found during the inspections: smaller number of staff than required, shortage of space, shortcomings in maintaining connections between siblings from the same family, and in the activities of rural municipality or city authorities as guardians of children in substitute homes.

#### 1. Shortage of staff

The Chancellor found that the number of teachers in several substitute homes was smaller than required by law. Under the Social Welfare Act, there should be at least one teacher per each family of eight children. However, not all the substitute homes complied with this requirement.

For example, in one substitute home only one teacher was present at night, being responsible for the welfare and safety of eleven children. In another substitute home there was only one teacher at work per ten children round the clock. In the third substitute home there were 28 children and young people but only three teachers were at work at any time – thus each teacher was responsible for more than eight children.

The Chancellor found that the existence of a sufficient number of educational staff is important to ensure the safety and welfare of each child. The smaller the number of children per teacher, the more time the teacher can spend on each child. Personal approach to children is one of the most important components in achieving the substance and aims of the substitute home service. Emergencies (e.g. a fire) may also happen during the night when children are asleep.

On this basis, the Chancellor proposed to the heads of the respective substitute homes to ensure that at any time as many educational staff are present as required by law.

#### 2. Shortage of space

It was also found in several substitute homes that more children had been placed in bedrooms than allowed. According to the health protection requirements applicable to the substitute home service, there may be up to two children in each bedroom and there should be at least 6 m<sup>2</sup> of floor space for each child. However, not all the establishments complied with this requirement. In at least two of the establishments three or more children had been accommodated in some bedrooms. In one substitute home a suspicion arose that there would not be enough bedrooms for all the children soon to be accommodated there, and thus it would be impossible to ensure the living conditions prescribed by the health protection requirements.

The Chancellor found that accommodating three or more children in one bedroom constitutes a violation of the health protection requirements applicable to the substitute home service, and proposed to the heads of the respective establishments to accommodate one to two children in each bedroom, depending on the size of the room and the available floor space for each child.

### 3. Siblings from the same family

The Chancellor found that some substitute homes had not sufficiently contributed to maintaining and strengthening the connections between siblings from the same family.

Under the current legislation and in accordance with international recommendations, separation of siblings from the same family in the course of the substitute home service should be avoided. Raising brothers and sisters together or at least ensuring their regular communication during the stay in a substitute home is necessary for maintaining the identity of a child, including their family relationships. Everyone's right to the inviolability of family life and the state's duty to contribute to promoting family life is stipulated by the Constitution.

Two examples can be given from one substitute home where siblings from the same biological family live in different families in the substitute home. In one of the cases, four siblings from the same biological family have been placed in three different families in the substitute home.

At least in one case it was also found that the form of substitute care offered to siblings from the same family was different. For example, some of the siblings were under the guardianship of a local authority and living in a substitute home while another sibling had been appointed a natural person as a guardian and was living in the guardianship family rather far from the substitute home. These siblings can rarely communicate with each other and some of them cannot communicate to the same extent with others (e.g. the guardianship family invites one of the siblings in the substitute home for visits but not another sibling).

Other family connections play an important role in the life of children deprived of parental care and family environment. The sense of identity of a child can also be maintained with the help of brothers and sisters with whom the child has grown or closely communicated so far. Alienation of siblings from each other may reduce the general feeling of safety of children and increase disconnection.

On this basis, the Chancellor recommended to the head of the substitute home taking into account the right of siblings from the same family to maintain their bonds when creating substitute families. For this, the Chancellor recommended placing siblings to live in the same family in the substitute home, except when this is contrary to the interests of the child.

The Chancellor also recommended to the head of the substitute home and the respective local authority to support maintaining and strengthening connections between siblings when the form of substitute care of the children is different (e.g. one of them lives in a substitute home and another one in a guardianship family).

### 4. Activities of rural municipality or city administrations in performing the guardianship functions

The Chancellor also found shortcomings in the activities of some rural municipality and city administrations in performing the functions of guardianship of children.

As in practice the local authority of a child's residence usually performs the functions of a guardian of a child living in a substitute home, it is necessary and required under the current legislation that the local authority should monitor the child's well-being during the stay in a substitute home. For example, the local authority should initiate drawing up a case management plan of a child in a substitute home and monitor its implementation. Thus, a local authority representative should be constantly informed about the life and development of a child in a substitute home. Periodic revision of a child's case management plans and visiting of a child

during their stay in a substitute home are necessary and required by the law in order to enable a local authority to perform its guardianship functions. It is the duty of a local authority to make the relevant proposals with regard to a case management plan and assess the suitability of a service provider for each particular child.

The inspection revealed cases where a representative of the local authority of a child's residence had not visited a child at least twice a year and had not revised the child's case management plan at least once a year as required by the legislation.

The Chancellor found that by failing to perform their duties these local authorities had violated the law and, due to their omissions, the rights of children to development and well-being may not be ensured.

On this basis, the Chancellor proposed to the respective local authorities to monitor constantly the development of children under their guardianship and in substitute homes, including visiting the children at least twice a year and reviewing their case management plans at least once a year to assess the suitability of the service and the service provider for the needs of each child.

The Chancellor has sent the summaries of the inspection visits with his proposals and recommendations to the respective substitute homes, as well as the respective rural municipality or city administrations and county administrations. The Chancellor had not yet received any feedback by the time of drawing up this report. The Chancellor will carry out a follow-up inspection in one year to verify compliance with his proposals and recommendations.

The Chancellor will continue inspection visits to substitute homes in 2012. On the basis of the collected information, the Chancellor will draw up an analysis of the substitute home service by the end of 2012 in order to ascertain how the rights of children in substitute homes are guaranteed both during their stay in a substitute home and after leaving the substitute home. If necessary, the Chancellor will make proposals and recommendations to the legislator for improving the situation.



## IV. PROMOTING THE RIGHTS OF CHILDREN

### 1. Studies and analyses

As noted above, besides supervisory functions the tasks of the ombudsman for children also include raising awareness of and promoting the rights of children. In order to better plan his awareness-raising work the ombudsman for children considered it necessary to carry out a comprehensive study to find out how much people know about the rights of children and what is the general attitude of society to these rights. The ombudsman also considered it necessary to prepare the methodology for measuring the welfare of children and establish regular monitoring of the welfare of children. To obtain funding for these studies, the Chancellor's Office submitted two applications to the Fund of Wise Decisions: in cooperation with the Ministry of Social Affairs for monitoring the rights of children and parental education, and in cooperation with Statistics Estonia for analysing the welfare of children. The money was received for monitoring the rights of children and parental education.

The monitoring of the rights of children and parental education will ascertain society's awareness and attitudes with regard to the rights of children, their involvement and being a parent. Both children and adults will be surveyed. The monitoring will be carried out by the PRAXIS Centre for Policy Studies and its results will be published in 2012. In the opinion of the ombudsman for children, the monitoring should become regular in order to assess the changing of attitudes in society as well as the efficiency of the awareness-raising of the rights of children.

The ombudsman for children still considers it important to prepare the methodology for measuring the welfare of children and establish regular monitoring of the welfare of children. During the reporting year, the ombudsman in cooperation with Statistics Estonia made preparations for drawing up a concept of the welfare of children.

In addition, the ombudsman for children prepared an overview of child poverty in 2011<sup>30</sup>, based on the information available from Statistics Estonia and in-depth interviews with child protection workers from different local authorities in Estonia, organised in cooperation with the non-profit association Chamber for the Protection of the Interests of Children (*Laste Huvikaitse Koda*). The overview contained an analysis of the changing patterns of child poverty in the recent years and, on the basis of interviews, examples of problems and shortcomings related to poverty were given. Poverty inhibits the development of children and their opportunities to fully realise their inborn talents. In the case of child poverty, several interlinked problems occur: exclusion and deprivation in comparison to their peers, health and behavioural problems, lower self-esteem, more restricted social network. All these, in turn, affect the future life of children and their ability to cope as adults. At the end of the overview the ombudsman for children made several proposals for improving the situation. The results of the overview were published at the beginning of 2012.

At the end of 2011, in cooperation with the Data Protection Inspectorate and relevant experts the ombudsman for children drew up guidelines<sup>31</sup> on how to notify about children in need. With these guidelines, the ombudsman for children wished to motivate society to be more attentive to problems of children and to encourage everyone to notify about cases of ill-treatment of children, but also about situations where primary needs of children are not met. The guidelines emphasise that data protection requirements are not an obstacle to notifying about children in need. The guidelines also serve as a useful reference material for specialists working with children in the fields of education, medicine, social work, police work etc, helping them to better

30 Available in Estonian at [http://lasteombudsman.ee/sites/default/files/ylevaade\\_vaesus\\_ja\\_sellega\\_seotud\\_prob-leemid\\_lastega\\_peredes.pdf](http://lasteombudsman.ee/sites/default/files/ylevaade_vaesus_ja_sellega_seotud_prob-leemid_lastega_peredes.pdf).

31 Available in Estonian at [http://lasteombudsman.ee/sites/default/files/abivajavast\\_lapsest\\_teatamine\\_ja\\_andmekaitse\\_-\\_juhend.pdf](http://lasteombudsman.ee/sites/default/files/abivajavast_lapsest_teatamine_ja_andmekaitse_-_juhend.pdf).



implement the legal requirement to notify about the needs of children and provide assistance while complying with the principles of personal data protection.

In 2011, an adviser to the ombudsman for children also participated in the Ministry of Education and Research study project "The price of interrupted education". The results of the project will be published in 2012.

## 2. Advisory body to the ombudsman for children

In 2011, an advisory body to the ombudsman for children was established to involve children in the work of the ombudsman. Participation in the work of the advisory body provides children an opportunity to express their views on issues which they find important and draw attention to problems in society about which they are concerned. The work of the advisory body is regulated by a statute<sup>32</sup>.

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

In 2011, members of the advisory body met twice: in May for the first preparatory meeting and in November in full composition. During the meetings, advisers to the Chancellor explained the competence and priorities of the ombudsman for children, and representatives of youth organisations highlighted problems in society which are of concern to young people and suggested possibilities how the ombudsman for children could increase awareness among children and young people of their rights. An exchange of views on the content, wording and design of the homepage of the ombudsman for children also took place. At the meeting in November, the statute regulating the principles and procedure of operation of the advisory body was adopted, and the role of the advisory body and possibilities of young people themselves in promoting awareness of their rights were debated.

## 3. Training and presentations

On 19 October 2011, a free training session at the Office of the Chancellor of Justice was held. All the cooperation partners of the ombudsman for children as well as other people working with children or interested in the rights of children were welcome to participate. The training was carried out by the professor of children's rights Wouter Vandenhole from the University of Antwerp.

Professor Vandenhole, an internationally recognised expert on human rights and children's rights, explored different social images of children and gave an overview of the main international instruments, guidelines and recommendations on the rights of children, with a focus on the key principles such as prohibition of discrimination, putting the child's interests first, the right to life, the right to cope, the right to development, the right to participation and inclusion, etc. Recent case-law of the European Court of Human Rights, the European Court of Justice and the European Committee of Social Rights was also analysed.

Representatives from the Ministry of Social Affairs, the Ministry of Justice, the Ministry of Education and Research, the Police and Border Guard Board, circuit prosecutors' offices, courts, the

32 Available in Estonian at [http://lasteombudsman.ee/sites/default/files/IMCE/nouandva\\_kogu\\_statuut.pdf](http://lasteombudsman.ee/sites/default/files/IMCE/nouandva_kogu_statuut.pdf).

Union for Child Welfare, the Chamber for the Protection of the Interests of Children, the Association of Pupils' Representative Bodies, the Assembly of Student Councils, the association SOS Children's Village, the Association of Parents, Tallinn Social Welfare and Health Board, the Education Board, the Sport and Youth Board were invited to participate in the training.

Officials from the Children's Rights Department delivered presentations at various regional seminars for child protection and social workers in Rapla, Valga, Pärnu, Hiiu, Viljandi, Võru, Harju and Saare counties, and at the basic training course for the youth police at Muraste Police and Border Guard College. Advisers from the Children's Rights Department also spoke at a social welfare conference organised by the Ministry of Social Affairs in Tartu, spring school of the Estonian Association of Pupils' Representative Bodies, and the conference "Erinevus rikastab" (Enriched by diversity). Advisers from the department also participated at the conference of the Union for Child Welfare, conference of the Chamber for the Protection of the Interests of Children, and the "own experience" seminars of the child protection workers.

In the framework of the project of the Union for Child Welfare, officials from the Children's Rights Department trained school students on the rights of children. Training on the rights of children was also provided to the staff of one substitute home and three kindergartens.

#### 4. Local cooperation

In 2011, officials from the Children's Rights Department in the Office of the Chancellor met with representatives of various state agencies but also with representatives of non-profit associations and organisations to discuss protecting and promoting the rights of children: among them, for example, the Union for Child Welfare, the Chamber for the Protection of the Interests of Children, the Association of Mothers, the Association of Parents, non-profit association *Tere, Sõber!*, SEB Bank's Charity Fund, the organisation *Ühise Eesmärgi Nimel* (YEN) uniting young people from substitute homes.

In cooperation with the Chamber for the Protection of the Interests of Children, child protection workers were interviewed to obtain a comprehensive overview of the problems of child poverty.

#### 5. International cooperation

On 6–7 April 2011, in the framework of the joint project of the Council of Europe and the European Commission „Promoting independent national non-judicial mechanisms for the protection of human rights“ the third thematic workshop “The role of National Human Rights Structures in protecting and promoting children's rights in social welfare institutions“ was held in Tallinn. In this framework, the Chancellor of Justice Indrek Teder hosted representatives of national human rights institutions from 24 European countries, among whom many were from the offices of ombudsmen, as well as several international, regional and national experts.

Discussions in the workshop focused on how to better protect and promote the rights of children in social welfare institutions, what is the practice in different countries, and what alternatives exist to placement of children in social welfare institutions.

In the framework of international cooperation, the staff of the Children's Rights Department visited the ombudsman for children in France, the French Ministry of Justice and the organisation ONED (*Observatoire national de l'enfance en danger*) dealing with child protection and promoting the rights of children.

In the framework of the meeting of ombudsman of Baltic countries in autumn, advisers to the children's ombudsmen also met and agreed to organise a meeting of the children's ombudsmen of Baltic countries in Estonia in 2012.

Head of the Children's Rights Department of the Chancellor's Office attended the meeting of the European Network of Ombudspersons for Children (ENOC) in Poland.

## 6. Participation in the activities of other institutions

In 2011, officials from the Children's Rights Department also participated in the activities of other institutions: Andres Aru participated in the work of the Ministry of Social Affairs steering group on the development plan for children and families. Andra Reinomägi participated in the work of the steering committee of the Ministry of Education and Research project "The assessment of the effects of interruption of education on the basis of data from Estonia, and determination of a regular assessment model and the need for information in Estonia". Andres Aru was a member of the editorial board of the magazine *Märka Last* published by the Union for Child Welfare.

## 7. Drawing competition for children

In May 2011, the Chancellor of Justice as the ombudsman for children organised a drawing competition for children "Minul on õigus ..." (I have the right ...), inviting children to draw about their rights. With the competition the organisers wished to inform children and young people about the existence of the ombudsman for children and establish contact with them; to invite children, parents and teachers to discuss the rights of children and to encourage children to find out more about their rights. The ombudsman for children invited children to draw about what comes to their mind when thinking about the rights of children. In case of interest, the UN Convention on the Rights of the Child could be used. The author of each drawing could complete the title sentence of the competition, so as to give an individual title to their own drawing.

Children all over Estonia submitted 1008 drawings to the competition. Children depicted creatively many areas of their rights, such as the right to home and family, the right to education, free time, own opinion, clean environment, etc. The drawings reflected important things which make children happy, but also painful problems. Pictures with titles such as "I have the right to both parents", "I have the right to live with my real father", "I have the right not to be sacrificed to drinking", "I have the right to be protected from violence", "I have the right to talk when I'm being bullied" tell us about problems that children have.

Winners of the competition were selected by a jury including Indrek Teder and staff of the Children's Rights Department. The jury evaluated an original and creative approach, the wish and ability to notice, recognise and figure out one's rights. The prizes to winners in three age categories were handed over during the open day held on 1 June on the international child protection day. The pictures submitted to the competition are valuable material which will be used in the future work of the ombudsman for children, but also in promoting the rights of children, on the homepage of the ombudsman for children, in publications, etc.

## 8. Open day on the international child protection day

On 1 June, the child protection day, the Chancellor of Justice held an open day for children and young people in his Office.

During the open day the ombudsman for children and advisers from the Children's Rights Department explained the activities and priority topics of the ombudsman for children and replied to questions. Discussions were held about the rights of children, problems which are important for children, and consideration of the opinion of children in policy-making. It was also possible to have a tour of the interesting and historical building where the ombudsman for children works.

An exhibition of the drawings submitted to the competition "I have the right ..." was displayed. The Chancellor of Justice Indrek Teder thanked all the children, schools and kindergartens who had participated in the competition and handed over prizes to the authors of the three best drawings in each age group.

More than a hundred children together with parents or other accompanying persons visited the Chancellor's Office during the open day.

## 9. Roundtable „How to know that a child has a problem?“

In 2011, the ombudsman for children started cooperation with the Black Nights film festival to raise awareness of the rights of children. In cooperation with the Children's Rights Department of the Chancellor's Office and the love films festival tARTuFF in Tartu a roundtable "How to know that a child has a problem?" was held in Tartu on 12 August 2011. The youth film "Hold Me Tight" by the Danish director Kaspar Munk, shown on Tartu Town Hall Square, served as an introduction to the roundtable.

The roundtable was chaired by the head of the Children's Rights Department Andres Aru. Participating in the debate were a social pedagogy teacher and a family therapist, a psychologist, a representative of parents and grandparents, and a young person who had participated as a support person in the School Peace programme organised under the aegis of the Union for Child Welfare.

The following topics were debated: what is the role of a parent in guiding and supporting the development of a child; how to recognise that a child has a serious problem and needs assistance; what can a parent do to help a child out of a crisis; when and who should be contacted if you are unable yourself to provide the necessary assistance to a child.

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

At the Black Nights film festival in autumn 2011 a special programme on the rights of the child was introduced as a sub-programme of the Just Film children's and youth films.

One of the tasks of the ombudsman for children is to inform about the rights of children, including raising important topics and generating discussion. Estonia's own film festival which is recognised equally by children, young people and adults definitely offers an excellent opportunity for this. The ombudsman for children has chosen audiovisual art as one of the means to inform about the rights of children, as this medium attracts audiences of all ages. A good film provides food for further reflection and different subjects for discussion.

To be shown within the special programme on the rights of children as part of the children's and youth films festival Just Film, the ombudsman for children selected films which drew attention to issues important for children and young people, which were suitable for watching together with friends, parents and classmates, and which stimulated debate about the substance of the film and the rights of children. Head of the Chancellor's Office Children's Rights Department Andres Aru introduced the activities of the ombudsman for children and the special film programme on the rights of the child in the atrium of Solaris centre on 18 November 2011. The five selected films were shown twice during the festival. During one of the showings of each film a debate with the audience was held. The debate was chaired by an adviser to the ombudsman for children, and in each debate at least one expert participated in the exchange of views. Cooperation of the ombudsman for children with the Black Nights film festival will continue in 2012.

## 11. Homepage and Facebook profile

To inform about the rights of children and explain the institution and activities of the ombudsman for children, the ombudsman created a Facebook profile<sup>33</sup> during the reporting year and made preparations for opening his homepage.<sup>34</sup> The homepage of the ombudsman for children is accessible for the public since March 2012.

## 12. Presentations, speeches and lectures

The ombudsman for children and his advisers delivered several presentations, speeches and lectures during the reporting year, the most important ones being listed below:

10 March, I. Teder, presentation „All the Children“ at the conference „Estonia’s Road to Tolerance“ organised by the British Council, in Tallinn.

6–7 April, A. Aru, presentation at the seminar „3rd Thematic Workshop on the Role of National Human Rights Structure in the Protection and Promotion of the Rights of Children in Care“ in the Office of the Chancellor of Justice.

8 April, I. Teder, welcome speech at the general meeting of the Estonian Association of Pupils’ Representative Bodies, in Tallinn 32nd Secondary School.

26 April, A. Aru, overview presentation on the Children’s Rights Department of the Chancellor’s Office at the information day for child protection workers of counties, in the Ministry of Social Affairs.

8 September, A. Aru, presentation at the seminar „Ainult õnnelikust lapsest saab väärtust loov täiskasvanu“ [Only happy children become value-creating adults].

23 September, A. Aru, presentation at the coordination assembly for the prevention and reduction of juvenile offences, on the topic “Rights of child offenders and young offenders in juvenile committees and in the process of application of the Juvenile Sanctions Act”.

28 September, A. Aru, presentation at the conference „Laste ja perede huvikaitse – keda huvitab?“ [The protection of interests of children and families – who cares?] organised by the Chamber for the Protection of the Interests of Children.

29 September, A. Reinomägi, presentation “Cooperation principles of the ombudsman for children for the protection of the rights of children” at the Ministry of Social Affairs seminar „Koostöös tulemusteni“ [In cooperation towards results].

17 November, I. Teder, speech at the conference „Kuidas elad, Eestimaa laps?“ [How are you doing, children in Estonia?] organised by the Union for Child Welfare.

25 November, I. Teder, presentation at the citizen’s day on the topic of the rights and duties of children, for pupils of grades 7–9, in Tallinn 21st Secondary School.

8–9 December, A. Aru, presentation „Moving towards total abolition of corporal punishment in Estonia (Legal framework and attitudes)“ at the Nordic seminar on corporal punishment „A Chance to Grow Up in a Favourable Atmosphere – say NO to Violence“, in Espoo.

33 See [www.facebook.com/lasteombudsman](http://www.facebook.com/lasteombudsman).

34 See [www.lasteombudsman.ee](http://www.lasteombudsman.ee).

19 December, A. Aru, presentation „Lasteombudsmani peamised ülesanded ja roll, sh laste õiguste tagamine alaealiste komisjonides“ [The main tasks and role of the ombudsman for children, including in guaranteeing the rights of children in juvenile committees] at the information day for juvenile committees, in Tallinn.

### 13. Articles, opinions, interviews

A. Aru. Õiguskantsler teeb ettevalmistusi lasteombudsmani ülesannete täitmiseks. [The Chancellor of Justice is preparing to perform the functions of the ombudsman for children] – *Sotsiaaltöö* No 1/2011, p 8.

A. Aru, A. Reinomägi, M. Pais. Samm-sammult lapsesõbralikuma ühiskonna poole. [Step by step towards a more child-friendly society] – *Sotsiaaltöö* No 4/2011.

A. Aru. Õiguskantsler laste õiguste eest. [Chancellor of Justice for the rights of children] – *Märka Last*, Spring 2011.

A. Aru. Kuidas teatada abi vajavast lapsest? [How to notify about a child in need?] – *Märka Last*, Autumn 2011.

I. Teder. Kõik lapsed Eestis on võrdsed. [All children in Estonia are equal] – *Postimees*, In Russian 14 March 2011.

A. Reinomägi. Suur on suur vaid väikese kõrval. [Big is big only next to a small] – *Eesti Päevaleht.ee* 1 June 2011.

A. Reinomägi. Õigusloome mõjutab igäühe inimõigusi. [Law-making affects the human rights of all] – *Postimees.ee* 9 December 2011.

Interview with the Chancellor of Justice as ombudsman for children „Indrek Teder: küsigem laste arvamust!“ [Indrek Teder: Let’s ask the opinion of children!]. – *Pere ja Kodu* October 2011.

Andres Aru gave four television interviews for news programmes of different channels on the topics related to the activities of the ombudsman for children and the rights of children.

Indrek Teder, Andres Aru and Andra Reinomägi spoke in the series “Children’s stories” consisting of three radio programmes on Vikerraadio radio station, talking about the work of the ombudsman for children, the rights of children, the drawing competition organised by the ombudsman for children and an open day in the Chancellor’s Office held on the international child protection day. In addition, Andres Aru gave six interviews to radio news programmes on the work of the ombudsman for children and the rights of children.

## PART III

### STATISTICS OF PROCEEDINGS

## 1. General outline of statistics of proceedings

### 1.2. Petition-based statistics

In 2011, the Chancellor of Justice received 2122 petitions.

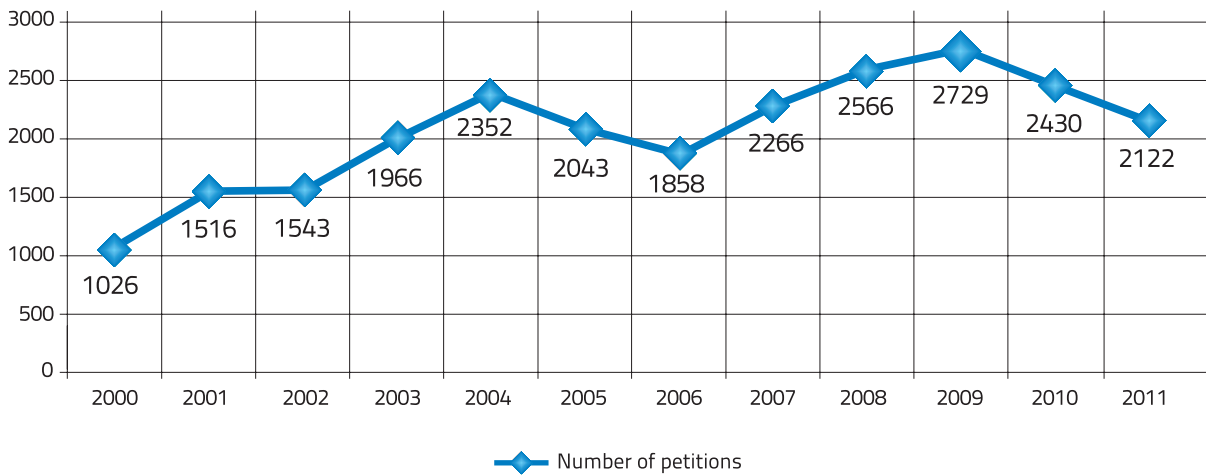


Figure 1. Number of petitions 2000–2011

### 1.3. Statistics based on cases opened

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

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

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

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

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

During the reporting year, the Chancellor opened 1739 cases (see Table 1), which is 1% less than in 2010. As at 1 February 2012, 1635 of the cases had been completed, in 28 cases follow-up proceedings were being conducted and 76 cases were still being investigated. In 395 cases substantive proceedings were conducted, and in 1344 cases no substantive proceedings were initiated for various reasons. 72 cases were opened on the Chancellor's own initiative, and 53 inspection visits were conducted.



Table 1. Distribution of cases by content

Type of case	Number and proportion of cases opened				
	2007	2008	2009	2010	2011
Cases accepted for proceedings, including	474 27.2%	480 24.7%	449 22.1%	480 24%	395 22.7%
constitutional review proceedings	150 8.6%	151 7.8%	124 6.1%	168 8.4%	127 7.3%
ombudsman proceedings	252 14.5%	258 13.3%	231 11.4%	214 10.7%	186 10.6%
special proceedings	72 4.1%	71 3.7%	94 4.6%	98 4.9%	82 4.7%
Non-substantive proceedings of cases	1266 72.8%	1464 75.3%	1584 77.9%	1523 76%	1344 77.3%
Total cases, including	1740	1944	2033	2003	1739
own-initiative proceedings	70 4%	66 3.5%	82 4%	75 3.7%	72 4.1%
inspection visits	28	33	49	42	53

## 2. Opinions of the Chancellor of Justice

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

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

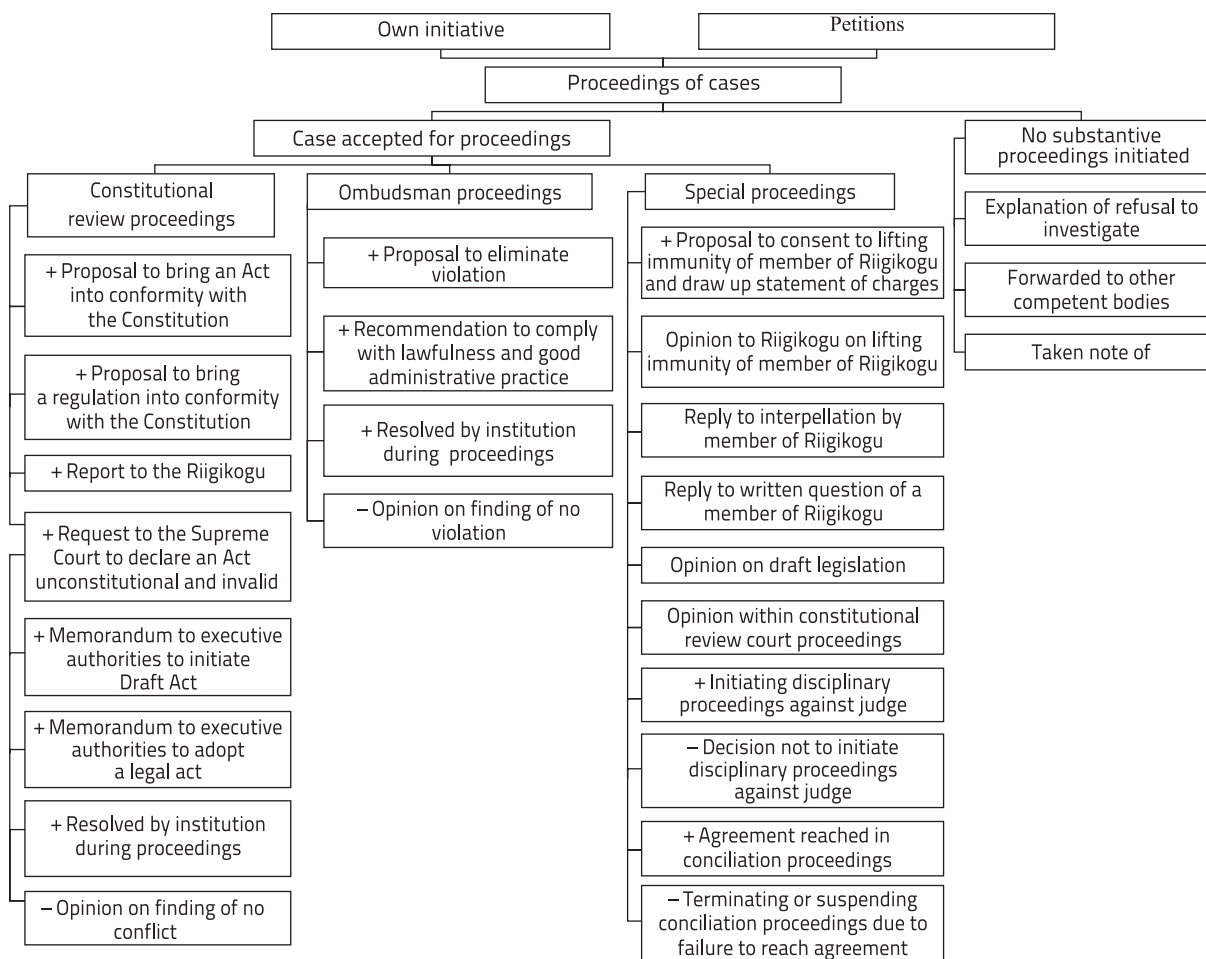


Figure 2. Distribution of cases opened and outcome of proceedings

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

A conflict was found:

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

No conflict was found:

- an opinion stating a finding of no conflict.

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

A violation was found:

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

No violation was found:

- an opinion stating a finding of no violation.

**The Chancellor’s opinions in special proceedings**

- 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.

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

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

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

The Chancellor opened 127 cases to review the constitutionality and legality of legislation of general application, which makes up 87.3% of the total number of cases and 32% of the total number of substantive proceedings of cases. Of these, 112 were opened on the basis of petitions and 15 on own initiative.

Within constitutional review proceedings the following were scrutinised:

- conformity of Acts with the Constitution (87 proceedings, of these 77 based on petitions by individuals and 10 on own initiative);
- conformity of Government regulations with the Constitution and Acts (5 proceedings, all based on petitions by individuals);
- conformity of regulations of Ministers with the Constitution and Acts (6 proceedings, of these 5 based on petitions by individuals and 1 on own initiative);
- conformity of regulations of local councils and rural municipality and city administrations with the Constitution and Acts (27 proceedings, of which 1 based on application by County Governor and 22 based on petitions by individuals and 4 on own initiative);
- conformity of other legislation with the Constitution and Acts (2 proceedings, both based on petitions by individuals) (see also Figure 3).

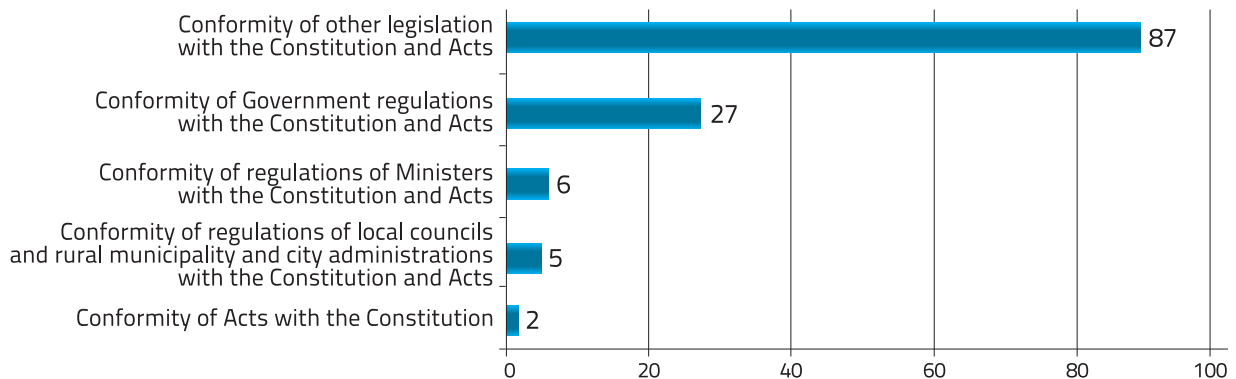


Figure 3. Distribution of constitutional review proceedings

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

- proposal to bring an Act into conformity with the Constitution (1 case);
- request to the Supreme Court for declaring legislation of general application unconstitutional and invalid (1);
- report to the Riigikogu (1);
- memorandum to executive authorities for initiating a Draft Act (9);
- memorandum to executive authorities for adopting a legal act (9);
- problem resolved by the institution during proceedings (7);
- opinion stating a finding of no conflict (66) (see also Figure 4).

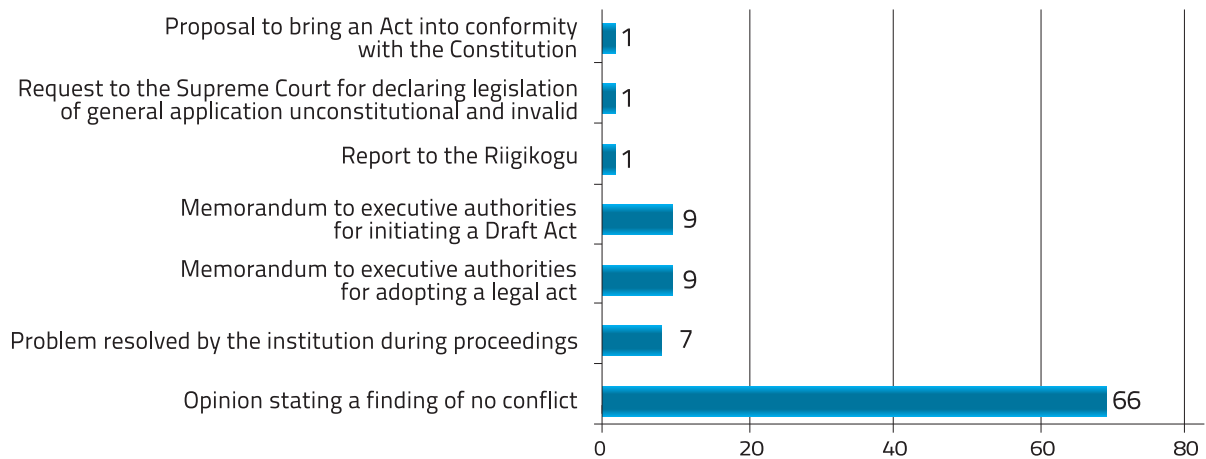


Figure 4. Chancellor's opinions upon review of conformity with the Constitution and Acts

In case of proceedings for review of conformity with the Constitution and Acts, the Chancellor found conflict with the Constitution or an Act in 21% of the cases. In 2010, the indicator was on the same level, i.e. 22%.

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

The Chancellor initiated 186 proceedings for verification of legality of activities of the state, local authorities, other public-law legal persons or of a private person, body or institution performing a public function. This makes up 10.7% of the cases opened and 47% of the total number of substantive proceedings. Of these, 129 were based on petitions by individuals and 57 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 (113 proceedings, of these 94 based on petitions by individuals and 19 on own initiative);
- activities of a local government body or agency (33 proceedings, of these 24 based on petitions and 9 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 (40 proceedings, of these 11 based on petitions and 29 on own initiative) (see also Figure 5).

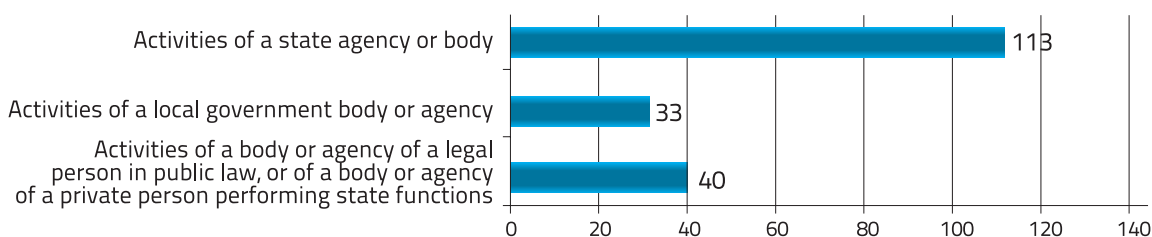


Figure 5. Distribution of cases opened for scrutiny of activities of persons, agencies, and bodies

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

- proposal to eliminate a violation (6);
- recommendation to comply with lawfulness and good administrative practice (48);
- resolved by the institution during the proceedings (16);
- opinion stating a finding of no violation (77) (see also Figure 6).

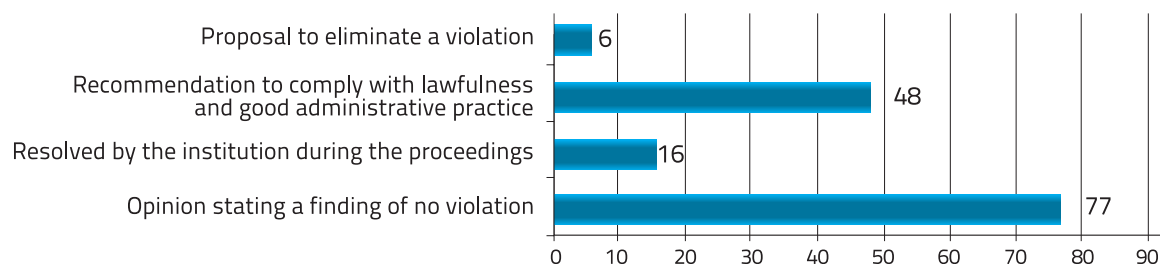


Figure 6. Chancellor's opinions upon scrutiny of activities of agencies and institutions performing public functions

In proceedings initiated for scrutiny of activities of persons, agencies and bodies, the Chancellor found a violation of the principles of good administration and lawfulness in 37.6% of the cases. In 2010, the indicator was 30.4%.

### 2.3. Special proceedings

There were 82 special proceedings during the reporting year, i.e. 4.7% of the total number of cases opened and 20.8% of the total number of substantive proceedings,

Special proceedings are divided as follows:

- providing an opinion on a legal act within constitutional review proceedings (17 proceedings);
- replying to interpellations by members of the Riigikogu (2 proceedings);
- replying to written questions by members of the Riigikogu (4 proceedings);
- initiating disciplinary proceedings against judges and other proceedings relating to the activities of courts (33 proceedings);
- opinions on draft legal acts and documents (11 proceedings);
- other activities arising from law (15 proceedings).

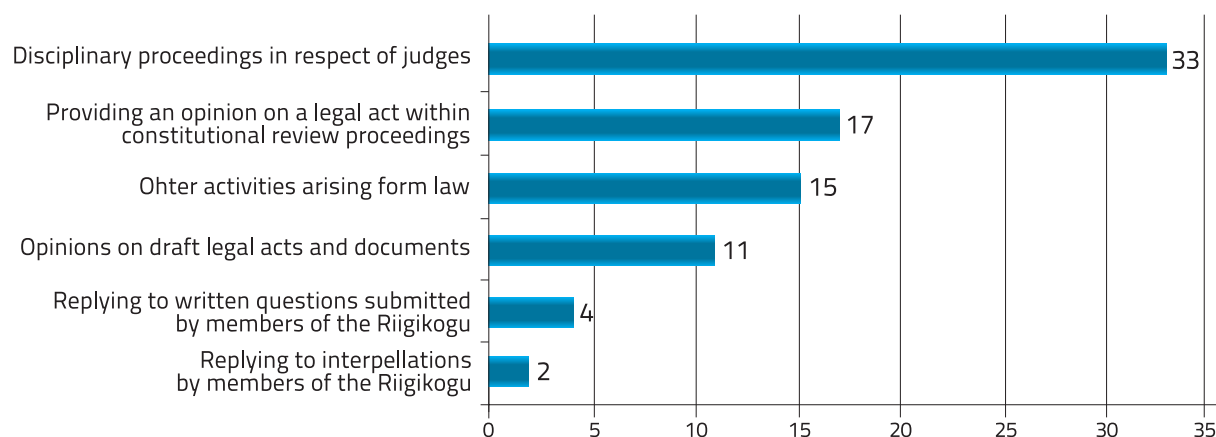


Figure 7. Distribution of special proceedings

Similarly to the previous years, the largest number of special proceedings, i.e. 40.2%, were related to initiating disciplinary proceedings against judges and other proceedings relating to the activities of courts (25 and 8 proceedings respectively).

## 2.4. Cases without substantive proceedings

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

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

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

In 2011, the Chancellor declined to open substantive proceedings in 1344 cases, which makes up 77.3% of the total number of cases.

Proceedings were not opened for the following reasons:

- lack of competence by the Chancellor (507 cases);
- the individual could file an administrative challenge or use other legal remedies (414 cases);
- judicial proceedings or compulsory pre-trial proceedings were pending in the matter (195 cases);
- petition did not comply with requirements under the Chancellor of Justice Act (115 cases)
- a petition was manifestly unfounded (98 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) (see also Figure 8).

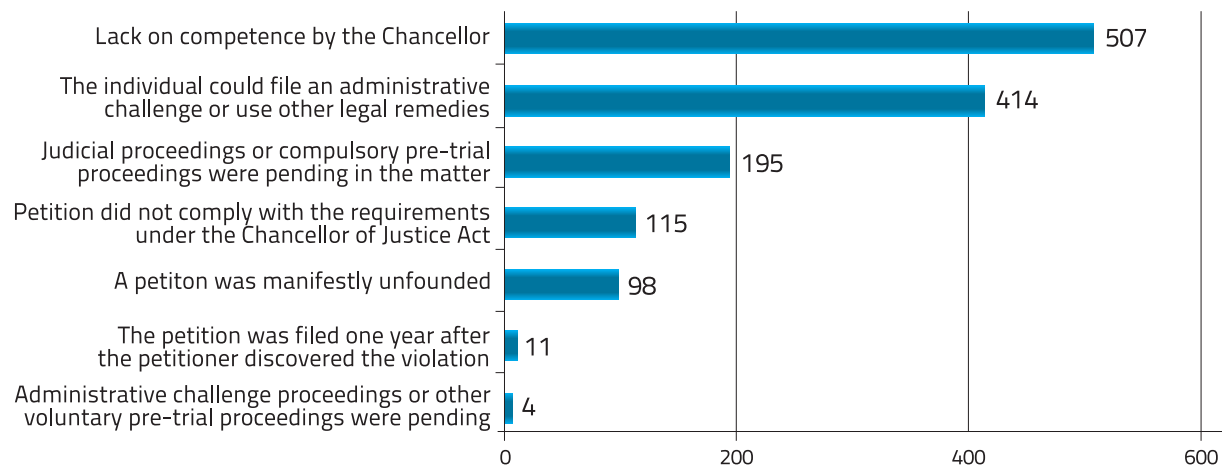


Figure 8. Reasons for declining to initiate proceedings of petitions

In case of petitions declined for proceedings, the competence of the Chancellor, Acts and other legislation were explained to the petitioners. The steps taken on the basis of petitions in 2011 could be divided as follows:

- an explanatory reply was given (1174 cases);
- a petition was forwarded to competent bodies (90 cases);
- a petition was taken note of (81 cases) (see also Figure 9).

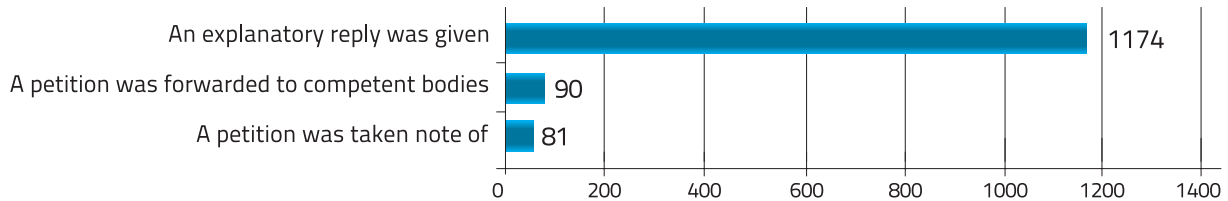


Figure 9. Distribution of replies in case of declining to accept a petition for proceedings

### 3. Distribution of cases by respondents

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

- the state (1228 cases);
- local authorities (245 cases);
- a legal person in private law (174 cases);
- a natural person (49 cases).
- a legal person in public law, except local authorities (15 cases) (see also Figure 10).

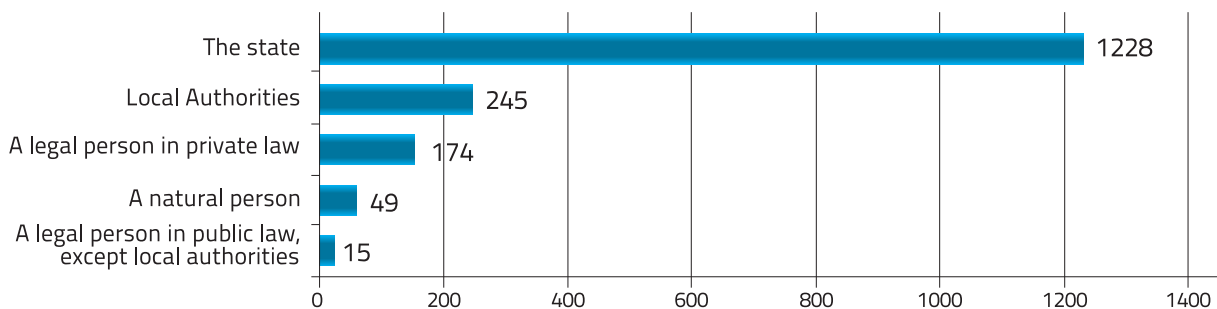


Figure 10. Distribution of cases by respondents

Distribution of cases opened in 2010 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.<sup>35</sup>

<sup>35</sup> Table 2 includes only those agencies and institutions in respect of whom the Chancellor carried out proceedings. In addition, it should be noted that the Table only includes proceedings initiated in 2011 and the outcomes of those proceedings. The Table does not include the Chancellor's opinions submitted to the supervised agencies as a result of proceedings initiated in the previous years. The Chancellor's opinions presented by date of issue are available in Estonian on the Chancellor's homepage at <http://oiguskantsler.ee/et/seisukohad/viimased-seisukohad>.

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 or the Chancellery of the Riigikogu	41	15	2	0	26
Supreme Court or other courts, except registry departments	208	35	0	3	173
President of the Republic or Office of the President	1	0	0	0	1
Government of the Republic or Prime Minister	6	1	0	0	5
Chancellor of Justice or Chancellor's Office	15	0	0	0	15
<b>Area of government of the Ministry of Education and Research</b>	<b>36</b>	<b>9</b>	<b>2</b>	<b>3</b>	<b>27</b>
Ministry of Education and Research	23	5	2	2	18
Agency subordinate to the Ministry of Education and Research	9	3	0	0	6
Language Inspectorate	4	1	0	1	3
<b>Area of government of the Ministry of Justice</b>	<b>463</b>	<b>98</b>	<b>5</b>	<b>13</b>	<b>365</b>
Ministry of Justice	143	44	5	4	99
Agency subordinate to the Ministry of Justice	1	1	0	0	0
Bar Association	5	2	0	0	3
Data Protection Inspectorate	3	1	0	0	2
Health Insurance Fund	2	0	0	0	2
Harku Prison	8	1	0	0	7
Murru Prison	2	0	0	0	2
Tallinn Prison	61	12	0	3	49
Tartu Prison	96	15	0	3	81
Viru Prison	60	14	0	3	46
Bailiffs	48	2	0	0	46
Notaries	4	2	0	0	2
Chamber of Bailiffs and Trustees in Bankruptcy	1	1	0	0	0
Prosecutor's Office	29	3	0	0	26
<b>Area of government of the Ministry of Defence</b>	<b>17</b>	<b>11</b>	<b>0</b>	<b>3</b>	<b>6</b>
Ministry of Defence	7	3	0	0	4
Agency subordinate to the Ministry of Defence	10	8	0	3	2
<b>Area of government of the Ministry of the Environment</b>	<b>44</b>	<b>10</b>	<b>0</b>	<b>1</b>	<b>34</b>
Ministry of the Environment	41	10	0	1	31
Agency subordinate to the Ministry of the Environment	1	0	0	0	1



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
Environmental Board	1	0	0	0	1
Land Board	1	0	0	0	1
<b>Area of government of the Ministry of Culture</b>	<b>5</b>	<b>5</b>	<b>5</b>	<b>5</b>	<b>5</b>
Ministry of Culture	5	0	0	0	5
<b>Area of government of the Ministry of Economic Affairs and Communications</b>	<b>67</b>	<b>21</b>	<b>2</b>	<b>2</b>	<b>46</b>
Ministry of Economic Affairs and Communications	49	17	2	0	32
Competition Board	2	0	0	0	2
Roads Administration	8	2	0	2	6
Consumer Protection Board	5	1	0	0	4
Technical Surveillance Authority	1	0	0	0	1
Maritime Administration	2	1	0	0	1
<b>Area of government of the Ministry of Agriculture</b>	<b>5</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>4</b>
Ministry of Agriculture	2	0	0	0	2
Agricultural Registers and Information Board	3	1	0	0	2
<b>Area of government of the Ministry of Finance</b>	<b>60</b>	<b>15</b>	<b>0</b>	<b>1</b>	<b>45</b>
Ministry of Finance	40	11	0	0	29
Tax and Customs Board	18	4	0	1	14
Statistics Estonia	2	0	0	0	2
<b>Minister for Regional Affairs, county administration, or subordinate agencies</b>	<b>10</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>8</b>
<b>Area of government of the Ministry of Internal Affairs</b>	<b>143</b>	<b>41</b>	<b>4</b>	<b>10</b>	<b>102</b>
Ministry of Internal Affairs	39	15	4	0	24
Agency subordinate to the Ministry of Internal Affairs	6	3	0	1	3
Security Police Board	5	1	0	0	4
Police and Border Guard Board	90	22	0	9	68
Rescue Board	3	0	0	0	3
<b>Area of government of the Ministry of Social Affairs</b>	<b>90</b>	<b>19</b>	<b>5</b>	<b>3</b>	<b>71</b>
Ministry of Social Affairs	49	15	5	2	34
Agency subordinate to the Ministry of Social Affairs	2	1	0	0	1
Social Insurance Board	25	3	0	1	22
Health Board	10	0	0	0	10
Labour Inspectorate	1	0	0	0	1
Unemployment Insurance Fund	3	0	0	0	3
State Agency of Medicines		0	0	0	0
<b>Area of government of the Ministry of Foreign Affairs</b>	<b>7</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>4</b>
Ministry of Foreign Affairs	7	3	0	0	4
<b>State Chancellery</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>
National Archived	1	0	0	0	1
<b>National Electoral Committee</b>	<b>3</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>2</b>

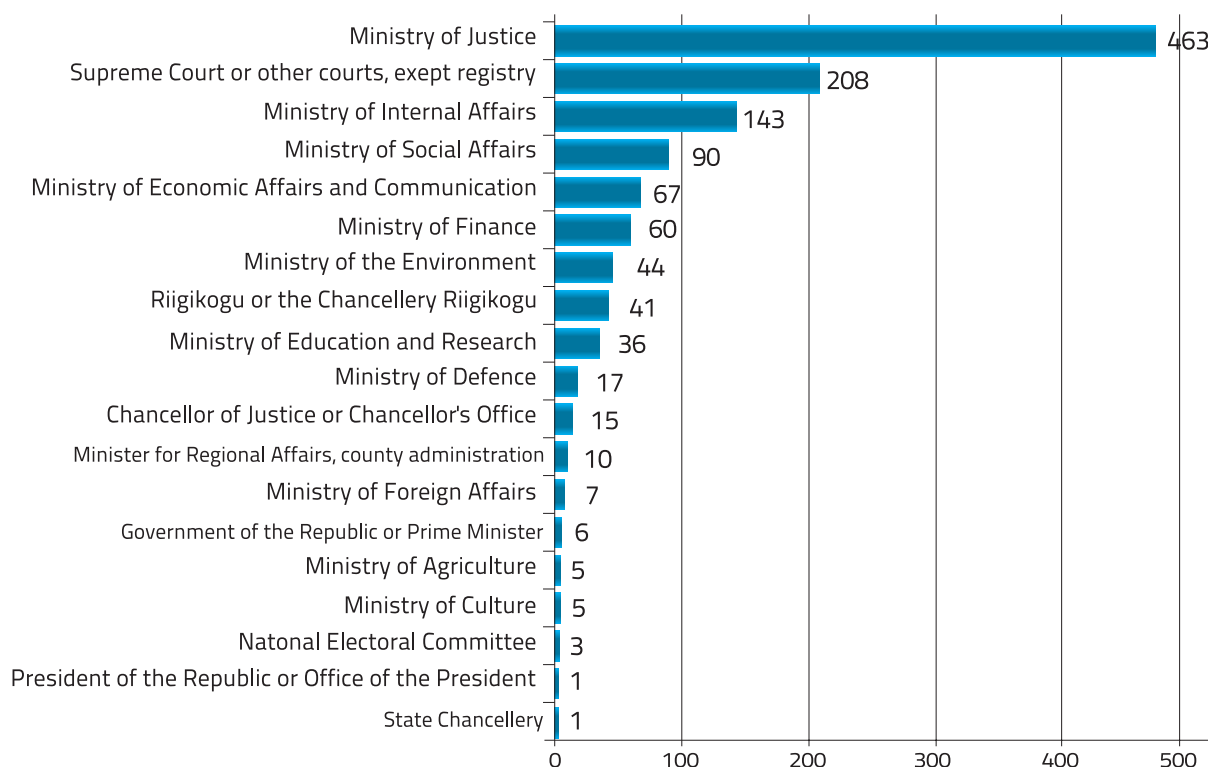


Figure 11. Distribution of cases by respondents on state level

Similarly to the previous years, the largest number of proceedings fell within the area of government of the Ministry of Justice (see Figure 11). The majority of these were still related to criminal enforcement law and imprisonment law (see also Table 5) and were initiated on the basis of petitions by prisoners. In 79% of the proceedings within the area of government of the Ministry of Justice, no substantive proceedings were initiated, in 2010 this indicator was 85%.

As earlier, there is a large number of proceedings concerning the work of courts. In comparison to 2010, the number of proceedings concerning the area of government of the Ministry of Education and Research has almost doubled. In the case of other agencies, the distribution is similar to the previous year.

Similarly to 2010, among local authorities the largest number of proceedings was in respect of Tallinn city and Harju County local authorities. The smallest number of proceedings was initiated in respect of Hiiu County local authorities (see Figure 12).

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

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
Harju County local authorities, except Tallinn city	34	13	3	3	21
Tallinn	64	13	1	3	51
Hiiu County local authorities	1	0	0	0	1
Ida-Viru County local authorities, except Narva city	15	4	1	1	11
Narva	12	0	0	0	12

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
Jõgeva County local authorities	9	3	1	0	6
Järva County local authorities	7	1	0	0	6
Lääne County local authorities	5	3	1	0	2
Lääne-Viru County local authorities	9	2	0	0	7
Põlva County local authorities	5	0	0	0	5
Pärnu County local authorities	22	9	0	2	13
Rapla County local authorities	4	1	0	0	3
Saare County local authorities	6	3	0	0	3
Tartu County local authorities, except Tartu city	7	1	0	1	6
Tartu	12	3	0	0	9
Valga County local authorities	12	4	1	2	8
Viljandi County local authorities	8	1	0	0	7
Võru County local authorities	9	1	0	1	8

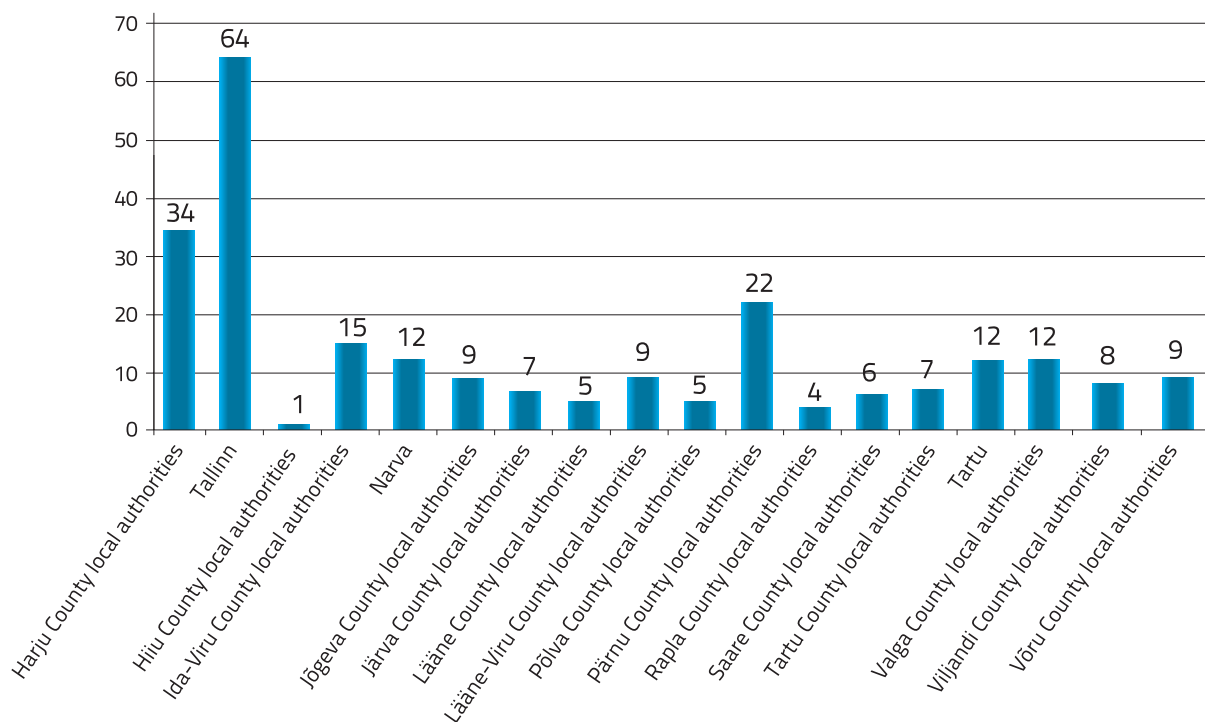


Figure 12. Distribution of cases by respondents on local government level

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.<sup>36</sup>

In 2011, the Chancellor sent seven memorandums to local authorities, asking to adopt a legal act. In two cases the local authority resolved the conflict during the proceedings.

Upon scrutinising lawfulness of local government activities, the Chancellor made three proposals to local authorities for eliminating a violation, and made 9 recommendations for compliance with the principles of lawfulness and good administration. In five cases the local authority resolved the problem during the proceedings.

*Table 4. Outcome of constitutional review proceedings and ombudsman proceedings on local government level*

Constitutional review proceedings		
Memorandum to executive authority for adopting a legal act		
1.	Jõgeva Rural Municipality Council	Conflict of Jõgeva Rural Municipality Council regulation No 3 of 26 February 2009 "The procedure for the granting and payment of social benefits in Jõgeva rural municipality", § 5 subsections 4 and 5, with the Constitution
2.	Kohtla-Järve City Council	Conflict of Kohtla-Järve City Council regulation No 45 of 27 October 2010 "Establishment of the distance heating area in Kukruse and Sompa districts in Kohtla-Järve city", § 9, with the Constitution
3.	Otepää Rural Municipality Council	Conflict of Otepää Rural Municipality Council regulation No 1-6-7 of 24 March 2011 "The conditions and procedure for the designation of a municipal school according to a child's residence" with the Constitution
4.	Tallinn City Administration	Conflict of Tallinn City Administration regulation No 28 of 14 March 2011 "The conditions and procedure for the designation of a municipal school according to a child's residence" with the Constitution
5.	Tallinn City Council	Constitutionality of Tallinn City Council regulation No 16 of 3 March 2005 "The procedure for issuing the taxi licence and vehicle licence card, and establishing the rules for the provision of taxi services", § 16 clause 1
6.	Rae Rural Municipality Council	Conflict of § 37 of Rae Rural Municipality Statutes with the Constitution
7.	Vormsi Rural Municipality Council	Conflict of Vormsi Rural Municipality Council regulation No 18 of 29 November 2010 "The procedure for the granting and payment of social benefits from Vormsi rural municipality budget, and the procedure for the provision of social services", § 5(4), and Vormsi Rural Municipality Council regulation No 19 of 29 November 2010 "The size of the grant paid to students resident in Vormsi rural municipality, and the conditions and procedure for its payment", § 3(1) clause 1, with the Constitution

Resolved by the institution during the proceedings

1.	Tallinn City Council	Conflict of Tallinn City Council regulation No 46 of 17 December 2009 "Boat tax in Tallinn" with the Constitution
2.	Vasalemma Rural Municipality Council	Conflict of Vasalemma statutes (§ 29(2)) approved by Vasalemma Rural Municipality Council regulation No 8 of 22 March 2005, with the Local Government Organisation Act

<sup>36</sup> Table 4 "Outcome of constitutional review proceedings and of ombudsman proceedings on local government level" contains all the opinions of the Chancellor of Justice submitted to local authorities in 2011, including opinions provided within the proceedings initiated in the previous years. All the opinions are available in Estonian on the Chancellor's homepage at <http://oiguskantsler.ee/et/seisukohad/viimased-seisukohad>.

## Ombudsman proceedings

## Proposal to eliminate a violation

1.	Kohtla-Järve City Administration	Activities of Kohtla-Järve City Administration in the provision of the support person service
2.	Tallinn City Administration	Activities of Tallinn City Administration in the processing of an administrative challenge
3.	Saue Rural Municipality Administration	Activities of Saue Rural Municipality Administration in the designation of a school according to a child's residence

## Recommendation to comply with lawfulness and the principle of good administration

1.	Local authorities in Estonia	Circular on the issue of maintenance payments to children in substitute homes
2.	Kuusalu Rural Municipality Administration	Activities of Kuusalu Rural Municipality Administration in replying to an enquiry by an individual
3.	Pärnu City Administration	Activities of Pärnu City Administration in designating the area of Pärnu women's beach
4.	Pärnu City Administration	Activities of Pärnu City Administration in the processing of enquiries by individuals
5.	Saue Rural Municipality Administration	Activities of Saue Rural Municipality Administration in the designation of a school according to a child's residence
6.	Tahkuranna Rural Municipality Administration	Activities of Tahkuranna Rural Municipality Administration in the processing of enquiries by individuals
7.	Tallinn City Administration	Activities of Tallinn City Administration in establishing the ID card based payment system on public transport in Tallinn and in replying to an enquiry by an individual
8.	Tallinn City Administration	Activities of Tallinn City Administration in renovating a building designated as immovable monument
9.	Võru Rural Municipality Administration	Activities of Võru Rural Municipality Administration in performing construction supervision and in replying to an enquiry by an individual

## Resolved by the institution during the proceedings

1.	Harku Rural Municipality Administration	Activities of Harku Rural Municipality Administration in granting a kindergarten place and compensating the costs of child minding
2.	Harku Rural Municipality Administration	Activities of Harku Rural Municipality Administration in the processing of a request by a company
3.	Karula Rural Municipality Administration	Activities of Karula Rural Municipality Administration in granting social housing to an individual
4.	Luunja Rural Municipality Administration	Activities of Luunja Rural Municipality Administration in the processing of a detailed plan and in replying to an enquiry by an individual
5.	Otepää Rural Municipality Administration	Activities of Otepää Rural Municipality Administration in replying to an enquiry by an individual

#### 4. Distribution of cases by areas of law

Similarly to previous years, in 2011 the largest number of cases was opened in connection with criminal enforcement procedure, imprisonment law and social welfare law. At the same time, the number of proceedings relating to criminal enforcement procedure and imprisonment law has dropped the most in comparison to the previous year: by 179 proceedings.

In comparison to 2010, the number of proceedings has also dropped in the areas of criminal and misdemeanour court procedure, non-profit associations and foundations law, social welfare law and pre-trial criminal procedure.

The biggest increase occurred in proceedings in the areas of financial law, education and research law, law of obligations and environmental law.

Table 5. Cases opened by areas of law

Area of law	Number of cases
Criminal enforcement procedure and imprisonment law	295
Social welfare law	102
Law of obligations	83
Criminal and misdemeanour court procedure	74
Administrative law (administrative management, administrative procedure, administrative enforcement, public property law, etc)	69
Enforcement procedure	66
Financial law (incl. tax and customs law, state budget, state property)	64
Education and research law	64
Civil court procedure law	62
Pre-trial criminal procedure	57
Social insurance law	55
Other public law	46
Family law	46
Health law	46
Environmental law	44
Local government organisation law	40
Energy, public water supply and sewerage law	36
Citizenship and migration law	34
Building and planning law	33
Protection of personal data, databases and public information, state secrets law	31
Administrative court procedure law	30
Traffic regulation law	30
Labour law (including collective labour law)	29
Police and law enforcement law	28
Public service	23
Ownership reform law	23
Misdemeanour procedure	23
State legal aid	18
Electoral and referendum law, political parties law	18
Government organisation law	17
Non-profit associations and foundations law	15
National defence law	13
Ownership law (including intellectual property law)	12
Company, bankruptcy, and credit institutions law	12
Other private law	11
International law	11
Economic and trade management and competition law	10
Telecommunications, broadcasting, and postal services law	10
Transport and road law	9
Language law	8
Succession law	7
Animal protection, hunting, and fishing law	6
Substantive penal law	5
Consumer protection law	5
Agricultural law (including food and veterinary law)	3
Heritage law	2
Notarial law	2
Constitutional review court procedure law	2

### 5. Distribution of cases by regions

Still the largest number of petitions and cases opened on the basis of them was from the largest cities, including Tallinn (464 cases) and Tartu (286 cases) (see Figure 13). Among the counties, the largest number of proceedings were still in relation to Ida-Viru County and Harju County. 181 proceedings were initiated on the basis of petitions from Ida-Viru County, followed by 124 proceedings on the basis of petitions from Harju County. As before, the smallest number of proceedings was in relation to Hiiu County (5 cases). 33 proceedings were initiated on the basis of petitions received from abroad.

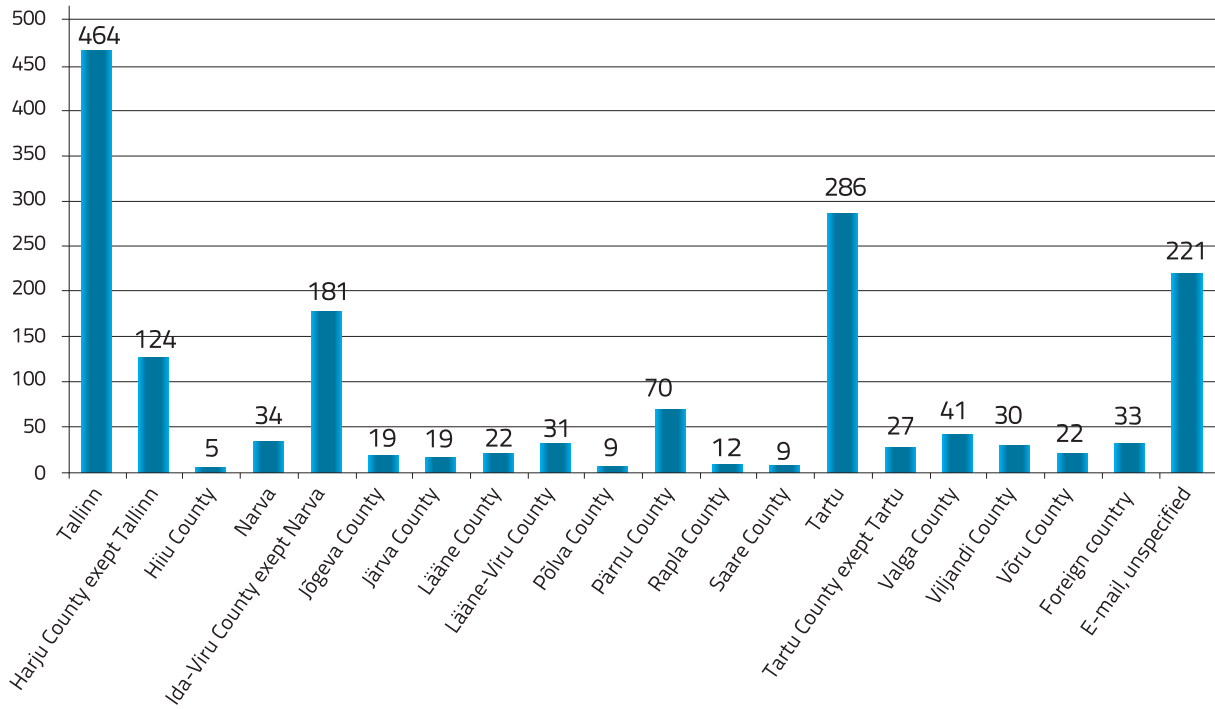


Figure 13. Distribution of cases by location of petitioner

### 6. Language of proceedings

Most petitions are still in Estonian. 1383 cases, i.e. 79.5% of the total number of cases, were opened based on petitions in Estonian (see Figure 14). 259 cases, i.e. 14.9% of the total number of cases, were opened based on petitions in Russian. The number of petitions in English makes up only 1% of the total number of cases opened. One petition was in another language (Finnish).

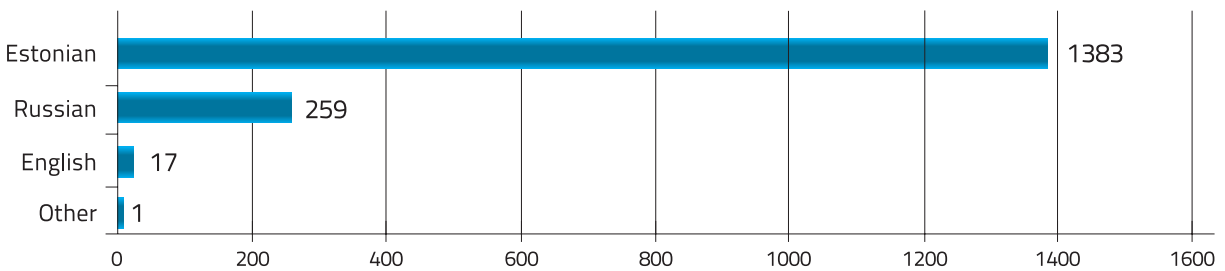


Figure 14. Distribution of cases by language of petition

## 7. Inspection visits

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

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

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

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

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

During the reporting year, the Chancellor made 53 inspection visits, of which 33 were to closed institutions, 14 to open institutions, and 6 to administrative authorities (see Table 6). There were 29 unannounced inspection visits, of which 23 were to closed institutions and 6 to open institutions. The number of visits to closed institutions has been steadily growing since 2009. In comparison to the previous year, the number of visits to open institutions grew almost two-fold during the reporting year.

*Table 6. Inspection visits conducted by the Chancellor of Justice*

	2007	2008	2009	2010	2011
Inspection visits to closed institutions	18	19	25	27	33
Inspection visits to open institutions	5	10	17	6	14
Inspection visits to administrative authorities	5	4	7	9	6
Total inspection visits	28	33	49	42	53
of which, unannounced inspection visits	6	8	4	13	29



## 8. Reception of individuals

In 2011, 140 individuals came to a reception in the Office of the Chancellor of Justice, which is 37 people fewer than in 2010 (see Figure 15).

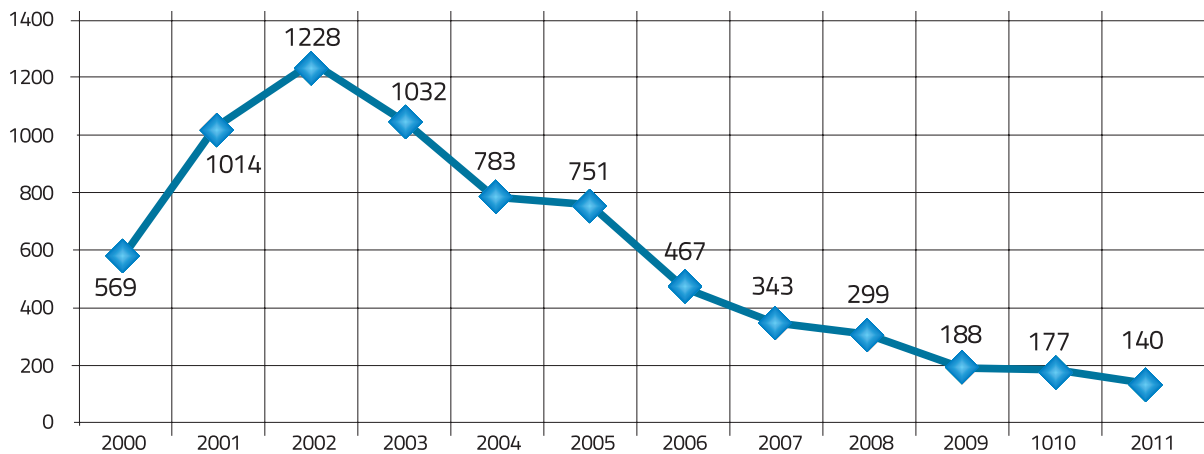


Figure 15. Number of persons coming to reception with the Chancellor in 2000–2011

Similarly to the previous years, the largest number of people coming to a reception were from Tallinn and Harju County (99 and 11 people respectively).

Questions raised during the receptions most frequently concerned issues relating to civil court procedure (14 persons), followed by issues of health law, social insurance law (13 persons in both cases), administrative law (10 persons), environmental law, family law, law of obligations and pre-trial criminal procedure (7 persons in all cases).

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

## 9. Conclusion

Similarly to 2010, the number of petitions received by the Chancellor of Justice decreased during the reporting year. In 2011, the Chancellor received 2122 petitions, which is 13% less than in the previous year. In total, the Chancellor opened 1739 cases, which is 1% less than in the previous year. No major changes have occurred in the distribution of the cases by type. In comparison to the previous year, the proportion of substantive proceedings decreased slightly, mostly on account of constitutional review proceedings. The number of inspection visits grew: 11 inspection visits more were conducted in 2011.

During constitutional review proceedings, in 27 cases (i.e. 21% of the total number of review proceedings) the Chancellor found a conflict with the Constitution or an Act, of which in 7 cases the situation was resolved by the institution in the course of the proceedings. As a result of ombudsman proceedings, the Chancellor found a violation of the principle of good administration and lawfulness in 70 cases (i.e. 37.6% of the total number of ombudsman proceedings), of which 16 were resolved by the institution in the course of the proceedings. In comparison to 2010, the number of proceedings where a conflict or a violation was found decreased slightly with regard to review proceedings. In case of ombudsman proceedings, the percentage of detected violations increased significantly: by 7%. The number of cases resolved by the respondent institution during the proceedings remained on the same level as in the previous year in case of review proceedings, while in case of ombudsman proceedings it declined.

Most cases were still opened based on petitions by prisoners to resolve issues relating to criminal enforcement procedure and imprisonment law falling within the area of government of the Ministry of Justice. In the majority of these cases (79%), no substantive proceedings were initiated. In comparison to 2010, the number of proceedings with regard to the area of government of the Ministry of Education and Research grew almost twofold.

The distribution of proceedings by areas of law has been rather similar over the years. The largest number of proceedings, i.e. 17% of the total number of cases opened, still relate to criminal enforcement procedure and imprisonment law. As previously, a large number of issues relate to social welfare law. The biggest increase has occurred in proceedings relating to financial law, education and research law, law of obligations and environmental law. The latter category also continued to grow steadily in 2010.

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

The proportion of cases opened based on petitions in Estonian has grown from year to year and makes up 80% of the total number of cases. The number of proceedings initiated based on petitions in Russian dropped accordingly, making up 15% of the total number of cases.

The number of inspection visits in 2011 was significantly higher than in 2010. During the reporting year, 53 inspection visits were carried out, of them 33 to supervise closed institutions, 14 to open institutions, and 6 to administrative authorities.

In 2011, 140 individuals came to a reception in the Office of the Chancellor of Justice. Questions raised during the receptions most frequently concerned issues relating to civil court procedure, health law and social insurance law.