



CHANCELLOR OF JUSTICE

# 2009 OVERVIEW OF THE CHANCELLOR OF JUSTICE

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

Statistics of proceedings

Tallinn 2010

**OFFICE OF THE CHANCELLOR OF JUSTICE**

KOHTU 8 STREET

15193 TALLINN

Phone: +372 693 8404

Fax: +372 693 8401

Homepage: <http://www.oiguskantsler.ee>

T r a n s l a t i o n

Margus Puusepp

D e s i g n

AS Vaba Maa

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**PART I**

**CHANCELLOR OF JUSTICE  
AS THE PREVENTIVE MECHANISM**

## I INTRODUCTION

We can talk about human rights in the modern sense since 10 December 1948 when the United Nations General Assembly adopted the Universal Declaration of Human Rights. Although it is not an ordinary binding international treaty, its provisions have become accepted as customary international law. Prohibition of torture is contained in Article 5 of the Universal Declaration of Human Rights: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” This prohibition is considered an absolute human right and a fundamental value of a democratic society, from which no derogations are permissible in a state governed by rule of law (including in crisis situations or in times of war).

In addition to the UN Universal Declaration of Human Rights, the right not to be subjected to torture, cruel, inhuman or degrading treatment or punishment (further in the text also called ill-treatment) is also included in other global as well as regional human rights instruments.<sup>1</sup> Specific mention could be made of the relevant topical convention – the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entry into force 26 June 1987), which entered into force in respect of Estonia on 20 November 1991. Naturally, the prohibition of torture is enshrined in different national constitutions (e.g. § 18 of the Estonian Constitution).

If someone in Europe was asked whether torture is permissible, the obvious first reaction would be “No”. In developed countries, ordinary people understand torture as something which happened in the past or which in today’s world could occur only in uncivilised societies. Torture is associated with something savage – something which civilised, cultural and “intelligent” nations no longer practice.

However, when describing a child abduction case from Germany where a police officer threatened a criminal with torture in order to save the life of an abducted innocent child,<sup>2</sup> or creating an example of a terrorist captured by the state when it is known that they have information about a planned terrorist act which may result in dozens, if not hundreds, of victims, the answer may be different. At least these examples would make a person reflect longer and doubt before answering.

The current decade has significantly changed people’s understanding of torture – it has become a reality which may happen even today, including in the so-called civilised countries. First and foremost, the example of the actions of US authorities in the Guantánamo Bay detention camp can be given in this context. Officially authorised interrogation methods in the camp included stripping detainees naked, exploiting individual fears and phobias (e.g. threatening with dogs), forced “inversing” of sleep cycles, prolonged interrogations of up to 20 hours etc<sup>3</sup>. Not all the above examples necessarily amount to torture but could be categorised among the so-called milder forms of ill-treatment. However, all these techniques had been authorised by the government. The absolute nature of the prohibition of torture as a human right has begun to crumble and this has inevitably raised some existential questions about humanity and the permissible limits of power and actions by civilised nations.

Therefore, it is particularly important that countries become aware of the necessity to fight ill-treatment and of the importance of prevention. An expression of such efforts on the international level is the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 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.

The aim of the Optional Protocol is to organise regular visits by independent international and domestic institutions to places of detention in order to prevent ill-treatment. For this, the document establishes a two-tier system of institutions providing regular visits to places of detention – first, setting up the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, SPT<sup>4</sup>) and, second, setting up, designating or maintaining at the domestic level at least one visiting body (national preventive mechanism, NPM) by each State Party.

In Estonia, the Chancellor of Justice performs the functions of the national preventive mechanism since 18 February 2007.

1 For a longer lists of instruments, see p. 53 of the Chancellor of Justice 2008 Overview.

2 For more detail, see E. Hilgendorf. Piinamine õigusriigis. [Torture in a rule of law] – *Juridica* 2004, No 10, p 661 ff; W. Gropp. Füüsilise jõu kasutamise õiguslikud alused. Daschneri kaasus ja Saksamaa lennuohutusseadus. [Legal bases for use of physical force. The Daschner case and the German aviation security law] – *Juridica* 2007, No 2, p 75 ff; European Court of Human Rights judgment of 30 June 2008 in case No 22978/05, *Gäfgen v. Germany*.

3 See: Commission on Human Rights. Situation of detainees at Guantánamo Bay. E/CN.4/2006/120, 27.02.2006. Available online: [http://ap.ohchr.org/documents/sdpage\\_e.aspx?b=1&cse=61&t=9](http://ap.ohchr.org/documents/sdpage_e.aspx?b=1&cse=61&t=9).

4 Internet homepage: <http://www2.ohchr.org/english/bodies/cat/opcat/index.htm>.

The issues such as what constitutes ill-treatment and how to distinguish between different forms of ill-treatment (torture, cruel, inhuman or degrading treatment or punishment), what requirements the preventive mechanism must meet and what are its functions, how to define a “place of detention”, were analysed in more detail in the 2008 Overview of the Chancellor’s activities<sup>5</sup> and the explanations and other relevant references are also available on the Chancellor of Justice homepage<sup>6</sup> under the OPCAT section. Therefore, they will not be presented again in this report.

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 establishments.

The choice of places of detention to be inspected by the Chancellor of Justice each year is based on the criteria discussed and agreed by the Chancellor’s advisers responsible for inspection visits. 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). The plan is drawn up with the consideration that some scope is left for *ad hoc* visits.

In 2009, 25 inspection visits were carried out and 37 places of detention were visited. Ten of these were unannounced visits, in 15 cases the Chancellor gave a short advance notice of his upcoming visit (i.e. one day prior to the visit), and the remaining were announced visits. By comparison, 40 places of detention were visited in 2008 and 18 in 2007.

The choice of establishments inspected in 2009 was mostly based on the need to inspect places of detention systematically, i.e. visit each establishment at least once every three years. The level of problems in terms of guaranteeing fundamental rights in a particular establishment was also taken into account (e.g. extremely poor conditions of detention, a vulnerable group of detainees, etc). In addition, circumstances having attracted the Chancellor’s attention (e.g. information obtained from the media or from petitions to the Chancellor) and requiring immediate verification were also taken into account.

By types of establishments, the inspection visits in 2009 can be categorised as follows:

1. police establishments – 6 visits, 15 places of detention inspected (7 unannounced and 8 with a short advance notice);
2. courts – 1 visit, 3 places of detention inspected (3 with a short advance notice)<sup>7</sup>;
3. Defence Forces – 4 visits, 4 places of detention inspected (4 announced);
4. prisons – 2 visits, 2 places of detention inspected (2 announced);
5. providers of involuntary emergency psychiatric care – 4 visits, 4 places of detention inspected (2 unannounced and 2 announced);
6. providers of special welfare services – 4 visits, 4 places of detention inspected (1 unannounced and 3 announced);
7. special schools – 1 visit, 1 place of detention inspected (1 announced);
8. providers of rehabilitation services to children with addiction problems – 1 visit, 1 place of detention inspected (1 unannounced);
9. expulsion centre – 2 visits, 2 places of detention inspected (2 announced)<sup>8</sup>.

Experts were used in inspection visits on three occasions in 2009. The experts included a psychiatrist (Expulsion Centre), a representative from the Estonian Union for Child Welfare (Tallinn Children’s Shelter), and an expert from the Health Care Board (Tartu Prison).

Organising of inspection visits is regulated by the “Guidelines for conducting Chancellor of Justice inspection visits”, approved by the Chancellor of Justice order No 1-4/28 of 4 December 2007, which establishes rules and principles for preparing and conducting inspection visits, as well as follow-up proceedings. The guidelines also contain a checklist of items to be observed while touring the inspected establishments. A guideline document “Structure of the summary of an inspection visit” has also been drawn up, containing instructions on the type and presentation of information to be included in an executive summary of an inspection visit.

During the inspection visits, the Chancellor pays particular attention to communicating with persons in a place of detention. For this, the Chancellor provides an opportunity for reception for all individuals present in the place of detention, as well as persons close to them, and members of the staff. Interviews with detainees as well as staff of the detention facility may also be conducted. Interviewees are selected on a random basis, considering the representation

5 2008 Overview of the Chancellor of Justice Activities. Available online: [http://www.oiguskantsler.ee/public/resources/editor/File/INGLIS-KEELNE\\_KODULEHT/OPCAT/Annual\\_reports/Overview\\_2008.pdf](http://www.oiguskantsler.ee/public/resources/editor/File/INGLIS-KEELNE_KODULEHT/OPCAT/Annual_reports/Overview_2008.pdf)

6 Available online: <http://www.oiguskantsler.ee/?menuID=316> Including references to the main relevant international instruments and guidance materials.

7 More specifically, 5 courts located in 3 courthouses were visited (courthouse of Tartu County Court, Tartu Administrative Court and Tartu Court of Appeal are in the same building).

8 I.e. the same establishment was inspected twice during the same year.

of persons of different ages, cultural backgrounds and gender. The Chancellor and his staff also always talk to people in the place of detention while touring the establishment.

Different informational material is always taken to the inspected places of detention with the aim to help people whose liberty has been restricted better understand their fundamental rights and freedoms and effectively make use of different complaint mechanisms. The main type of information material distributed at places of detention includes a booklet explaining the competences of the Chancellor of Justice together with a complaint form, a leaflet containing information about state legal aid and a brochure on patient rights.

As a result of inspection visits, a summary is compiled, containing recommendations and proposals to the inspected establishment and other relevant authorities. Summaries of inspection visits are also published on the Chancellor of Justice website immediately after sending them to the addressees<sup>9</sup>. In publishing the summaries, the requirements of data protection are taken into account (i.e. personal data or other sensitive data is not disclosed).

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

During the reporting year, a separate section “Väärkohtlemise ennetamine” (OPCAT section in the English version of the homepage) on the prevention of ill treatment was added to the Chancellor of Justice homepage, explaining the principles related to ill-treatment and its prevention, describing the activities of the Chancellor as the national preventive mechanism, and providing references to the relevant main legal acts and guidelines.

At the beginning of 2009, the Office of the Chancellor of Justice set itself an aim that during the year, in each field (police, border guard, etc), at least one article on ill-treatment and/or the Chancellor’s competence with regard to it would be published in specialised press, as well as articles for the wider public on the International Day in Support of Victims of Torture (26 June) and on the International Human Rights Day (12 December).

- E. Liblik. Inimõigused hoolekandeesutustes. [Human rights in social welfare institutions] – *Sotsiaaltöö* No 1 (February) 2009;
- M. Amos. Eesti vanuripoliitika – ellu jäävad tugevamad. [Estonian policy on the elderly – survival of the toughest] – *Maaleht* 26.03.2009;
- I. Teder. Väärkohtlemise valus hind. [Painful price of ill-treatment] – *Eesti Päevaleht* 26.06.2009;
- K. Albi. Põhiõigused lühiajalisel kinnipidamisel. [Fundamental rights in short-term detention] – *Piirist Piirini* No 3 (8) 2009;
- J. Konsa. Õiguskantsler kui väärkohtlemise ennetusasutus. [Chancellor of Justice as the national preventive mechanism] – Police Intranet, September 2009;
- K. Žurakovskaja. Inimõigused ei ole vaid jõulukalkunite tühine vahepala. [Human rights are not just an interlude between Christmas turkeys] – *Maaleht* 10.12.2009;
- K. Žurakovskaja. *The Chancellor of Justice of Estonia - wiping out torture, inhuman and degrading treatment in places of detention: existing mechanism and practical experience.* – *World Ombudsmen, Volume 2, Tashkent 2009*;
- E. Liblik. *Human rights in social welfare institutions.* – *European Ombudsmen Newsletter* No 12 (2009).

In addition, officials from the Office of the Chancellor organised training events and information days for staff in places of detention and other relevant persons, for example police officers and workers of social welfare institutions.

At the same time, it was also considered important to train officials of the Office of Chancellor of Justice on the prevention of ill-treatment. For this, a training course on interviewing was organised, dealing with different interviewing techniques and teaching how to take into consideration factors such as the age of interviewees or other circumstances. A visit to the Dutch ombudsman’s office was also organised to learn about the ombudsman’s methods in supervising the activities of the police.

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. The main event in this context was the cooperation visit of an international delegation of supervisory bodies for the prevention of ill-treatment to Estonia from 28 September to 1 October. The delegation included representatives from the following organisations:

- Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), established under the UN Convention against Torture;
- European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), established under the Council of Europe Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

<sup>9</sup> Summaries of inspection visits are available online: <http://www.oiguskantsler.ee/?menuID=331>.



- International Association for the Prevention of Torture (APT);
- Council of Europe.

During the four-day study and cooperation visit, working methods of supervisory bodies for the prevention of ill-treatment were discussed at a seminar. Foreign experts explained the duties of the Subcommittee on Prevention of Torture and the national preventive mechanisms under the Convention against Torture. Foreign guests were given an overview of the practice of the Estonian Chancellor of Justice as the national preventive mechanism. Exchange of experience on the methodology of conducting inspection visits took place. Together with the guests, inspection visits to Tartu Prison, the Expulsion Centre, Tapa Special School and the police detention centre of the law enforcement department of the North Police Prefecture were carried out. Summaries and conclusions of the visits were drawn up and future steps of international cooperation were planned.

In addition, the Chancellor of Justice and his advisers attended various international events on ill-treatment, where they also delivered presentations:

21–24 April	Nele Parrest attended the conference on the experience of implementing OPCAT in Montenegro, where she also made the presentations “ <i>Promotion of the NPMs and the OPCAT</i> ”, “ <i>The operational modalities of the NPM</i> ”;
5–6 November	Indrek Teder and Nele Parrest attended the first meeting of the European national preventive mechanisms and the conference dedicated to the 20th anniversary of the CPT “New Partnerships for Torture Prevention in Europe” in Strasbourg, Nele Parrest also made the presentation “ <i>Ensuring the effective implementation of the recommendations of the preventive bodies</i> ”;
23–26 November	Nele Parrest, Indrek-Ivar Määrits, Igor Aljošin and Mari Amos participated in a study visit on OPCAT in Slovenia ;
24–27 November	Ksenia Žurakovskaja attended the seminar “OPCAT implementation and creation of the national preventive mechanism in Azerbaijan” in Baku, where she also made a presentation;
27–29 November	Raivo Sults attended the seminar “ <i>Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Role and Functions of OPCAT National Preventive Mechanisms</i> ” in Armenia, where he also made the following presentations: (1) <i>NPM Mandate</i> ; (2) <i>Follow-up</i> ; (3) <i>Co-operation between NPMs and other important actors</i> ;
7–8 December	Indrek Teder and Nele Parrest attended the roundtable “Conditions of detention in Europe” in Brussels.

In addition to the above, issues of constitutionality of regulations concerning the prevention of ill-treatment were analysed in 2009 and problems were found on three occasions (Availability of the rehabilitation service for children with addiction problems, case No 7-8/090336; Refusal of transfer of a foreigner for serving a judicially imposed sentence, case No 6-1/081872; Permission of smoking in a prison cell, case No 6-3/081677; Constitutionality of internal rules of a police detention centre,<sup>10</sup> case No 6-3/082020). A number of proceedings carried out within the Chancellor’s competence as ombudsman also relate to the prevention of ill-treatment, including general conclusions concerning administrative practice developed on the basis of them (Playing music in an exercise yard, case No 7-4/071019; Provision and documentation of health care in Võru police detention centre, case No 7-4/081421).

The following part contains an overview of a “special project” in 2009 concerning the conditions of detention. Then the inspection visits made by the Chancellor to different places of detention in 2009 are described, highlighting systematic shortcomings that were detected.

<sup>10</sup> The analysis concerned the following issues: restrictions on the use of the telephone and correspondence by a prisoner serving a disciplinary punishment in a police detention centre; restriction of the right to receive parcels by a prisoner serving a disciplinary punishment in a police detention centre; legal clarity of the regulation on the right to receive visits by a prisoner serving a disciplinary punishment in a police detention centre.

## II. CONDITIONS OF SHORT-TERM DETENTION

In 2008, the Chancellor of Justice started a project concerning police and border guard authorities with the aim to obtain an overview of the conditions in police and border guard detention facilities and to make a proposal for legal regulation of the conditions of short-term detention.

Although different authorities have been granted the right for short-term detention of individuals, currently there are no norms in the Estonian legal order stipulating clearly the rights of individuals with regard to their conditions of detention, i.e. the rights which must be ensured in case of short-term detention of up to 48 hours. Considering the short duration of such detention, it is not necessarily justified to ensure all the rights established under the Imprisonment Act and other legal acts regulating imprisonment or misdemeanour detention. At the same time, deprivation of liberty results in extensive interference with fundamental rights of individuals and, therefore, humane treatment must be guaranteed.

Within the project concerning the conditions of short-term detention, the Chancellor analysed the actual situation in police and border guard buildings where individuals are detained short-term with regard to compliance with international requirements and recommendations, and the current domestic legislation on imprisonment and misdemeanour detention.

### 1. The conditions in police and border guard short-term detention facilities

In order to obtain an overview of the situation in buildings used for short-term detention, in the period from September 2008 to January 2009 advisers to the Chancellor of Justice visited detention cells within the area of administration of the Ministry of Internal Affairs – border patrolling stations and road border crossing points, as well as police departments and constable points.

#### 1.1 Border guard

The majority of the visited border guard buildings were modern and with good living conditions. It is also important to note that occupancy of the cells in the visited border guard facilities was low – there were a number of cells which had never been used for detention of individuals.

Mostly the cells in the border guard facilities were furnished with a hard plank bed or a bunk. The cells had floor heating or central heating, lighting and some cells also a window. The toilet was mostly located in a room close to the cell and the detainees were free to use it; however, in some places detainees had to contact a guard to use the toilet. In most cases, detainees receive bedclothes and a towel. Depending on a place of detention, detainees could also have access to a shower upon request, but not everywhere.

Monitoring of detainees was done through video surveillance equipment in the cells as well as a small observation window/hatch in the door. Some cells were equipped with a call button. The border guard facilities had 24-hour guard presence.

At the time of the inspection visits, catering of detainees was organised differently in the North-East and South-East Border Guard Region. In some buildings of the North-East Border Guard Region, catering of detainees was organised with support from the border patrolling station (i.e. the detainees receive the same food as border guard officials), while in Narva road border crossing point catering was dependent on possibilities and it was arranged by persons in charge of misdemeanour proceedings. If detainees had money, they had to pay themselves for the food. The South-East Border Guard Region had established a uniform internal regulation, under which detainees receive a fixed-price dry food ration once a day.

Health care to detained individuals in border patrolling stations and road border crossing points was ensured through the ambulance service in the particular region. The Chancellor of Justice was given assurances that officers in charge of detainees had undergone first aid training.

#### 1.2 Police

It is hard to draw overall conclusions with regard to the inspected police facilities, as the living conditions and occupancy of the cells varies considerably. For example, the cells in Mustvee constable point had relatively good living conditions but they were rarely used. In contrast, occupancy rates of the cells, for example, in the East Harju County

police department of the North Police Prefecture have constantly been very high (there are only two cells) and the living conditions in them are poor. Differences definitely also arose from whether persons were detained overnight or not. However, in general the situation of the cells in police facilities was unfortunately much worse than in the border guard.

The inspected cells can generally be divided in two categories: sobering-up cells and the so-called ordinary detention cells.

In all the police facilities, the cells used for sobering up had floor heating. In some police facilities, the floor heating could be regulated individually in each cell, thus making it possible to keep different temperature in different cells, which is necessary for example in the case of sobering up. As a rule, there was no other furnishing in the cells (an exception was e.g. Narva police department which had sleeping places resembling a camp bed covered with rubber<sup>11</sup>).

The cells not used for sobering up were mostly furnished with a hard plank or bed (an exception was e.g. downtown police department of the North Police Prefecture which did not have sleeping places), they had floor heating and artificial lighting (in Harju County western police department of the North Police Prefecture some cells also had a window). Even when the cells had a hygiene corner it was not, as a rule, partitioned from the rest of the cell. In several police facilities, the toilet was in a separate room.

However, the inspections revealed that some cells where the furnishing was suitable for sobering up, i.e. they had no furnishing at all, were also used for detention on other occasions besides sobering up.

Monitoring of detainees was organised similarly to the border guard facilities in the form of video surveillance or visual observation through a window/hatch in the door. However, it should be noted that the police detention cells had no call buttons or the buttons were not working. An important problem was also the small number of staff servicing the cells.

No established uniform arrangements for catering of persons in police cells existed. In several places (e.g. the downtown police department of the North Police Prefecture) food for persons detained as suspects was allegedly brought by the investigator in charge of the criminal proceedings, but no specific regulation or order for this existed.

In some police facilities, there were problems with providing access to clean drinking water for detainees. Plastic bottles with questionable hygiene were used as drinking water vessels. Such practice was employed, for example, in Harju County western and eastern police departments of the North Police Prefecture).

Medical assistance was organised through the ambulance service. The Chancellor was offered assurance that the staff had undergone first aid training.

## 2. Legal analysis of short-term detention

### 2.1 Constitutional background and the corresponding judicial case-law

Under § 20 of the Constitution, everyone has the right to liberty and security of person. If persons are involuntarily deprived of their liberty, its permissibility must be verified in the light of § 20(2) of the Constitution, which establishes the permissible grounds for deprivation of liberty. The grounds for the deprivation of liberty under § 20(2) of the Constitution can be divided in two: those normally used in offence proceedings (clauses 1 and 3) and those mostly used in cases of administrative detention (clauses 2, 4, 5, 6). Additionally, § 20 of the Constitution gives rise to the requirement that deprivation of liberty may not be arbitrary but must take place in the cases and pursuant to the procedure established by law.<sup>12</sup>

Under § 21(2) of the Constitution, no one may be deprived of liberty for more than forty-eight hours without a specific authorisation of a court.

The requirement of respect for human dignity of persons held in places of detention arises first and foremost under § 18 of the Constitution and Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). According to the case-law of the European Court of Human Rights, degrading treatment occurs if the manner of detention goes beyond the inevitable inconvenience or suffering normally con-

<sup>11</sup> The Chancellor's advisers last visited Narva police department in March 2008 but not in the context of this issue.

<sup>12</sup> The Supreme Court Criminal Law Chamber ruling of 21 June 2006, No 3-1-1-59-06, par 7: "Deprivation of liberty may not be executed with direct reference to § 20 of the Constitution, because, according to the introductory part of the second paragraph of the same section, the cases and procedure of deprivation of liberty must also be established separately by law."

nected with legitimate medical treatment or punishment.<sup>13</sup> The conditions of detention must ensure the preservation of the health and wellbeing of the detained persons. In assessing the conditions of detention, the combined effect of the circumstances must be taken into account, such as furnishing of the cells, hygiene condition, and duration of placement in the detention facility. Absence of a purpose does not rule out violation of Article 3 of the ECHR by the state.

The Supreme Court has also underlined that human dignity is a basis for all fundamental rights and the purpose of protection of fundamental rights and freedoms. The requirement of treatment in line with human dignity also extends to detainees.<sup>14</sup>

The requirement of ensuring the security of detained persons arises under § 13, 14, 16 and 19 of the Constitution.

Under § 16 of the Constitution, everyone has the right to life. This right is protected by law. No one may be arbitrarily deprived of their life. Similar regulation to § 16 of the Constitution is established under Article 2 of the ECHR. § 16 of the Constitution establishes the subjective right of persons to life, and the state has the corresponding obligation not to deprive a person of their life. In addition, § 16 also includes the objective obligation of the state to protect human life. More indirectly, the purpose of protecting life is served by various state measures in the fields of public policy and security, national defence and health protection, etc.<sup>15</sup>

§ 13(1) of the Constitution establishes the general norm that everyone has the right to the protection of the state and of the law and, under § 14, the guarantee of rights and freedoms is the duty of the legislative, executive and judicial powers, and of local authorities. Under § 19(2), everyone must honour and consider the rights and freedoms of others and observe the law in exercising their rights and freedoms and in fulfilling their duties (validity of fundamental rights in relations between private individuals).

These and several other provisions of the Constitution laying down fundamental rights, thus, give rise to the duty of protection by the state, obliging the state to take positive measures in certain cases, including to protect one individual against the unlawful attacks by another individual. The duty of protection by the state is particularly important in a situation where a person, as a result of applying the powers of public authority, is placed in a facility of public authority without a possibility to leave at will.

The European Court of Human Rights has also emphasised that Article 2 of the ECHR obliges states not only to refrain from taking of life but also establishes a positive obligation to act. This means an obligation to take appropriate preventive measures to ensure the preservation of life and health of individuals – to protect an individual from another individual or, in particular circumstances, from himself. The Court especially emphasises the duty of protection by the state with regard to the persons in custody.<sup>16</sup> For example, the Court has found that the state had failed to fulfil its duty of protection in a case where a dangerous mentally ill detainee had killed his cellmate,<sup>17</sup> and in a case where a detainee had committed suicide in the cell.<sup>18</sup>

## 2.2 Requirements of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

The CPT has noted that custody by the police is in principle of relatively short duration. Consequently, physical conditions of detention cannot be expected to be as good in police establishments as in other places of detention where persons may be held for lengthy periods. However, certain elementary material requirements should be met even in cases of short-term detention.<sup>19</sup> The same principle applies in cases of detention by other administrative authorities.

The CPT has further noted that all police cells should be of a reasonable size for the number of persons they are used to accommodate. The cells should have adequate lighting and ventilation. Adequate lighting is lighting which is sufficient for reading (except during sleeping periods). Preferably, cells should enjoy natural light.<sup>20</sup>

13 The European Court of Human Rights judgment of 2 July 2009 in *Kochetkov v. Estonia*, par. 40. For distinction between different forms of ill-treatment, see the Chancellor of Justice 2008 Overview, p 53 ff.

14 Supreme Court Administrative Law Chamber judgment of 22 March 2006, No. 3-3-1-2-06, par. 10.

15 P. Roosma. Kommentaarid §-le 16. – Juura. Eesti Vabariigi põhiseadus. Kommenteeritud väljaanne. [Comments on § 16 – Constitution of the Republic of Estonia. Commented edition] Tallinn 2008, § 16 comment 3.

16 See e.g. European Court of Human Rights judgment of 16 October 2008 in *Renolde v. France*, par 80 ff.

17 European Court of Human Rights judgment of 14 March 2002 in *Paul and Audrey Edwards v. the United Kingdom*.

18 European Court of Human Rights judgment of 16 October 2008 in *Renolde v. France*.

19 CPT Standards, CPT/Inf/E(2002)1 – Rev. 2006, p 8, par 42.

20 CPT Standards, CPT/Inf/E(2002)1 – Rev. 2006, p 8, par 42. See also the CPT Report to the Estonian Government on the visit to Estonia from 23 to 30 September 2003, CPT/Inf (2005)6, par 23; CPT Report to the Greek Government on the visit of 20 to 27 February 2008, CPT/Inf (2008)3, par 25.

All cells must be clean and in good order. The CPT has noted that persons obliged to stay overnight in custody should be guaranteed appropriate sleeping conditions. For this, the cells should have a bed or a bunk and clean mattresses and blankets. Mattresses and blankets should be cleaned according to the need. Cells should be equipped with a means to rest, such as a chair or a bench.<sup>21</sup> The CPT has pointed out that persons accommodated in cells for sobering up should not be placed on a bare floor but they should be provided with a mattress with washable covering.<sup>22</sup>

The CPT in its standards has emphasised the need for constant monitoring and guaranteeing of security in the cells by the police. For example, the CPT has found that the duty of care by the police in respect of persons in their custody includes the responsibility to ensure their safety and physical integrity. It follows that the proper monitoring of custody areas is a direct duty by the police. Appropriate steps must be taken to ensure that persons in police custody are always in a position to readily enter into contact with custodial staff.<sup>23</sup>

In its state reports the CPT has also pointed out that proper monitoring of custody areas is an integral component of the police's duty of care. This implies that there should be an ongoing presence of police officers in the vicinity of the cells and the situation of persons detained should be regularly monitored through direct visual control. It is also important that means should exist (e.g. a call system) enabling detained persons to attract the attention of a police officer.<sup>24</sup>

The CPT has emphasised that detained persons should be ensured access to drinking water and be given food according to the need. The food should be served at regular times and at least one full meal per day should be provided.<sup>25</sup> The CPT has found it unsatisfactory when food is not provided to persons who are detained for more than a couple of hours.<sup>26</sup>

Persons in police custody should have access to a toilet facility according to the need and be offered means to wash themselves. The toilet should be clean and detainees should be afforded sufficient privacy in using them.<sup>27</sup> In other words, the conditions of detention should be organised in a way as to enable individuals to have access to the toilet at any time. The CPT has found it unsatisfactory when persons had to wait for a long time (i.e. up to one hour) to have access to the toilet.<sup>28</sup>

Persons in police custody should have access to washing facilities and, when necessary, have a possibility to change clothes and take a shower. The CPT has pointed to the need to provide detainees with appropriate personal hygiene items (e.g. soap, towel, toothpaste etc), but in different reports it is stated differently whether these should be provided to persons held overnight<sup>29</sup> or for longer than 24 hours.<sup>30</sup>

In addition, the CPT has noted that all persons held for more than 24 hours should, as far as possible, be offered outdoor exercise every day.<sup>31</sup>

### 3. Short-term detention and definitions related to this

One of the aims of the analysis by the Chancellor of Justice was to define short-term detention and the concepts related to this.

- (1) Short-term detention within the meaning of the analysis by the Chancellor of Justice is deprivation of liberty for up to 48 hours within offence proceedings or administrative proceedings.

21 See the CPT Report to the Estonian Government on the visit of 23 to 30 September 2003, CPT/Inf (2005)6, par 23; CPT Report to the Greek Government on the visit of 20 to 27 February 2008, CPT/Inf (2008)3, par 25.

22 See the CPT Report to the Finnish Government on the visit of 7 to 17 September 2003, CPT/Inf(2004)20, par 23; CPT Report to the Finnish Government on the visit of 7 to 17 June 1998, CPT/Inf(99)9, par 20, 23; CPT Report to the Finnish Government on the visit of 20 to 30 April 2009, CPT/Inf(2009)5, par 23-24.

23 CPT Standards, CPT/Inf/E(2002)1 – Rev. 2006, p 13, par 48.

24 See the CPT Report to the Croatian Government on the visit of 4 to 14 May 2007, CPT/Inf(2008)29, par 25, 27; CPT Report to the Estonian Government on the visit of 23 to 30 September 2003, CPT/Inf (2005)6, par 20.

25 CPT Standards, CPT/Inf/E(2002)1 – Rev. 2006, p 8, par 42; CPT Report to the Estonian Government on the visit of 23 to 30 September 2003, CPT/Inf (2005)6, par 23; CPT Report to the Norwegian Government on the visit of 3 to 10 October 2005, CPT/Inf(2006)14, par 28-29.

26 CPT Report to the Danish Government on the visit of 29 September to 9 October 1996, CPT/Inf(97)4, par 23; CPT Report to the Finnish Government on the visit of 7 to 17 June 1998, CPT/Inf(99)9, par 24.

27 Report to the Greek Government on the visit of 20 to 27 February 2008, CPT/Inf (2008)3, par 25; CPT Report to the Finnish Government on the visit of 20 to 30 April 2008, CPT/Inf(2009)5, p 22.

28 CPT Report to the Finnish Government on the visit of 7 to 17 September 2003, CPT/Inf(2004)20, par 21.

29 CPT Report to the Estonian Government on the visit of 23 to 30 September 2003, CPT/Inf (2005)6, par 23; CPT Report to the Greek Government on the visit of 20 to 27 February 2008, CPT/Inf (2008)3, par 25.

30 CPT Report to the Swedish Government on the visit of 15 to 25 February 1998, CPT/Inf(99)4, par 12; CPT Report to the Estonian Government on the visit of 23 to 30 September 2003, CPT/Inf (2005)6, par 23.

31 CPT Report to the Estonian Government on the visit of 23 to 30 September 2003, CPT/Inf (2005)6, par 23.

- (2) Short-term detainee is a person deprived of liberty for up to 48 hours within offence or administrative proceedings and enjoying the rights applicable to short-term detention.
- (3) An authority organising short-term detention is an establishment, body or person who has the right under the legislation to deprive persons of liberty for up to 48 hours.
- (4) A short-term detention room is a designated area of a building where a person deprived of liberty within offence or administrative proceedings is held.

#### 4. Standards applicable to short-term detention

The analysis by the Chancellor of Justice was in many aspects based on the requirements of the CPT. However, the Chancellor in his proposals for drawing up minimum standards also took into consideration the administrative capacity of Estonia and the current situation in places of detention. Thus, the standards presented as a result of the Chancellor's analysis constitute minimum requirements while CPT's standards are an aim which should definitely be sought.

According to the Chancellor's assessment, the list of rights of short-term detainees should depend on the duration of a person's stay in a detention cell. During the first 24 hours detained persons should be ensured the conditions of detention in line with primary human needs but, as time proceeds, the rights of the person expand. Therefore, it is reasonable to distinguish between detention of up to 24 hours and detention from 24 to 48 hours.

According to the Chancellor's assessment, the description of basic conditions of detention should be based on the availability of the following essential conditions or services: the overall conditions of a cell; food; toilet, washing facilities and hygiene items; possibility of exercise in open air; health care; security.

##### 4.1 Overall conditions in a cell

Considering the state's possibilities and established practice, short-term detainees should be ensured a decent cell in line with human dignity, i.e. a cell which is clean and has sufficient lighting (preferably natural lighting), ventilation and adequate temperature. The latter may vary depending on a person's health and, in case of new buildings or buildings undergoing renovation, possibilities for maintaining different temperature in the cells should be created.

As a sleeping place, a bed or a plank (except in case of sobering up) should be preferred. Provision of bedding (mattress, bedclothes) is not always practical (e.g. in case of heavily intoxicated persons) if a person is held for up to 24 hours.

In using rooms for short-term detention, the requirement of minimum floor space per detainee established in § 6(6) of the Minister of Justice Regulation No 72 of 30 November 2000 "Internal prison rules" should definitely be observed.<sup>32</sup>

In addition, in cells with no sleeping place (bed or plank), persons should be provided with a chair (except in case of sobering up) which should be fixed to the floor or wall (e.g. in case of floor heating).

##### 4.2 Catering

Short-term detainees should be guaranteed at least the amount of drinking water established under the Minister of Social Affairs Regulation No 150 of 31 December 2002 "Food norms in custodial institutions", as well as a clean drinking water vessel (either a disposable or a reusable disinfected cup or other suitable vessel).<sup>33</sup> It is impermissible to provide a reused water bottle or other similar vessel, the hygiene of which raises serious doubts. Procurement of proper drinking water vessels is not an unreasonable financial expense.

In case of detention for up to 24 hours, catering should mostly proceed from the principle of reasonableness and the needs of each short-term detainee should be considered individually. It may be presumed, for example, that persons detained for purposes of sobering up do not always need to be provided food. At the same time, participants in a proceeding (e.g. a suspect) should definitely be provided basic food after reasonable time has passed from placing the person in detention. Failure to provide food may, inter alia, violate exercising of the right to defence by a person.

<sup>32</sup> According to § 6(6) of the "Internal prison rules", there should be at least 2.5 m<sup>2</sup> of floor space per detainee in a room or a cell.

<sup>33</sup> According to § 3(5) of the Regulation, 1.2 to 1.5 litres of drinking water a day should be provided to a detainee.

Persons staying in a place of detention for more than 24 hours should be guaranteed catering in accordance with the requirements under the above regulation of the Minister of Social Affairs.

Regardless of the duration of detention (less than 24 hours or 24 to 48 hours), the health and diseases (e.g. diabetes) of detainees should in any case be taken into account when providing meals.

The Chancellor in his analysis also reached the conclusion that organisation or catering needs a clear regulative framework (until the relevant legislation is drafted, it could be regulated in the form of in-house instructions, etc), so that, on the one hand, detainees have a clear idea of when and how they would be provided meals and, on the other hand, equal treatment of all persons would be guaranteed. In addition, the existence of clear regulative provisions would, for example, eliminate the risk that officials could exploit the possibility of provision of meals to subject persons to procedural measures.

### **4.3 Washing facilities, toilet and hygiene articles**

Short-term detainees should be guaranteed access to the toilet at any time. The unique conditions in each place of detention, including the aspects of arranging supervision, should be taken into account. As a rule, detainees should be able to use the toilet at the first opportunity and without considerable delay, but definitely not later than 30 minutes after expressing the relevant wish. Special consideration should be given to persons who have specific requirements due to health.

With regard to the possibility of washing, the Chancellor found that each detainee should be ensured the opportunity to take care of at least basic personal hygiene, i.e. the possibility to wash hands and face. Persons held for longer than 24 hours should, as far as possible, be ensured better washing possibilities by having access to a shower.

### **4.4 Possibility of exercise in open air**

During his inspection visits, the Chancellor has repeatedly noted that the existence of exercise yards enabling effective supervision is problematic for both the border guard and the police. Moreover, even many police detention centres do not offer a possibility of exercise in open air. The creation of possibilities for exercise in open air is also the most resource-intensive of all the above rights.

Nevertheless, the Chancellor formed the opinion that in the near future a possibility of exercise in open air (walking) should be ensured to all the persons detained for more than 24 hours.

### **4.5 Health care**

According to the standards developed by the Chancellor of Justice, in case of short-term detention the health condition of the detained persons should be recorded and, where necessary, they should be provided health examination by the ambulance service. In addition, staff responsible for detention should undergo periodic training to revise their knowledge and skills of first aid.

### **4.6 Security**

One of the main requirements in case of any detention of individuals is the guarantee of personal security in detention cells. This presumes sufficient monitoring of detainees.

Monitoring may be arranged either through video surveillance or other visual observation (i.e. through an observation window or hatch in a door). At the same time, it is important to ensure that other fundamental rights are not excessively interfered with in doing this. For example, persons should have certain privacy in using the hygiene corner, i.e. the hygiene corner should not be within the visible area of video surveillance or the observation window or hatch in the door. The frequency of checking the cells by officials should also be established, for example, in the relevant job description, internal rules, or other document.

In addition, detainees should be able to contact officers on their own initiative. For this, the cells should either have call buttons or the officer's location (work desk, etc) should be within the hearing range to respond to calling or knocking.<sup>34</sup>

<sup>34</sup> Supreme Court Administrative Law Chamber judgment of 12 November 2007 No. 3-3-1-70-07.

## 5. Conclusion

Short-term detention of up to 24 hours:

- the cell must be lit, clean and heated;
- in case of absence of floor heating, the cell must have a plank bed or a bed with a mattress (exceptions in case of sobering up where safety of a person is the priority);
- a person must have constant access to clean drinking water from a clean drinking vessel;
- provision of meals must take place in accordance with clearly established principles, proceeding from the principle of reasonableness and, whenever necessary, considering the specific requirements arising from the health of a person;
- access to the toilet should be guaranteed at the first opportunity and without an excessive delay, but not later than 30 minutes after the expression of the relevant wish. Special consideration should be given to persons who have specific requirements due to health;
- persons should be able to perform basic hygiene procedures (primarily washing the hands and face);
- security of persons should be ensured through sufficient monitoring (video surveillance, observation through a window or hatch in a door, periodic checking of the cells, etc);
- written record of the health of a person at the time of placement in the cell should be made and, whenever necessary, ambulance service and first aid by the staff should be provided.

Short-term detention of 24 to 48 hours (in addition to the above rights):

- the cell should have a plank bed or a bed with a mattress and, as far as possible, with other bedding;
- the provision of meals should comply with the Minister of Social Affairs Regulation No 150 of 31 December 2002 “Food norms in custodial institutions”;
- persons should be able to take care of their personal hygiene, including the opportunity to use the shower and receive basic hygiene articles;
- persons should be guaranteed the possibility of minimum one hour of exercise in open air every day.

The Chancellor of Justice forwarded the results of his analysis of the conditions of short-term detention to the Ministry of Internal Affairs. During the meeting held in the Office of the Chancellor of Justice with representatives from the Ministry of Internal Affairs and the Border Guard Board, a consensus was reached on the issue of the necessity of regulative provisions on short-term detention. However, considering the creation of the merged police and border guard establishment on 1 January 2010, it was found to be practical to discuss the topic of short-term detention further after the creation of the new establishment. Nevertheless, it was noted that organisation of catering should be resolved as an urgent matter and the relevant principles should be established in in-house guidelines until the adoption of the relevant legislation.

In 2010, the Chancellor of Justice will continue to follow the progress of drawing up the standards of short-term detention.



### III. POLICE DETENTION FACILITIES

#### 1. General outline

In 2009, the police used 34 different buildings for detaining individuals. During the reporting year, the Chancellor of Justice visited 15 of them. The inspected facilities included the following:

1. Eastern police department of the North Police Prefecture;
2. East Harju County police department of the North Police Prefecture;
3. Jõhvi police detention centre of the East Police Prefecture (Inspection visit to Jõhvi police detention centre of the East Police Prefecture, case No 7-7/090496);
4. Tartu police detention centre of the South Police Prefecture (Inspection visit to Tartu police detention centre of the South Police Prefecture, case No 7-7/080613);
5. Police detention centre of Rapla police department of the West Police Prefecture (Inspection visit to police detention centres of the West Police Prefecture, case No 7-7/091137);
6. Police detention centre of Pärnu police department of the West Police Prefecture (Inspection visit to police detention centres of the West Police Prefecture, case No 7-7/091137);
7. Police detention centre of Kuressaare police department of the West Police Prefecture (Inspection visit to police detention centres of the West Police Prefecture, case No 7-7/091137);
8. Police detention centre of the law enforcement department of the North Police Prefecture (Inspection visit to the police detention centre of the North Police Prefecture, case No 7-7/091801);
9. Police detention centre of Võru police department of the South Police Prefecture (Inspection visit to the police detention centres of the South Police Prefecture, case No 7-7/091829);
10. Police detention centre of Valga police department of the South Police Prefecture (Inspection visit to police detention centres of the South Police Prefecture, case No 7-7/091829);
11. Police detention centre of Narva police department of the East Police Prefecture (Inspection visit to police detention centres of the East Police Prefecture, case No 7-7/100052);
12. Kohtla-Järve police department of the East Police Prefecture;
13. Kiviõli constable point of the East Police Prefecture;
14. Police detention centre of Rakvere police department of the East Police Prefecture (Inspection visit to police detention centres of the East Police Prefecture, case No 7-7/100052);
15. Tapa constable point of the East Police Prefecture.

In eight cases, the Chancellor gave the administration of the police prefectures an advance notice of his upcoming visit, mostly one day before the beginning of the visit. In seven cases the visit was made without advance notice.

Four of the inspected police facilities were constable points or police departments where persons are detained short-term. In the remaining police facilities, persons are held for longer periods and they also execute misdemeanour detention and custody pending trial.

In addition, on a short advance notice the Chancellor also visited court buildings where the police hold persons for short term while performing the task of escorting detainees to court:

1. Tartu County Court Tartu courthouse;
2. Tartu Administrative Court Tartu courthouse;
3. Pärnu County Court Pärnu courthouse;
4. Pärnu County Court Rapla courthouse;
5. Tartu Court of Appeal.

The Chancellor's choice of the police establishments to be inspected was based on the time passed from the previous visit, the seriousness of problems posed by the particular facility in terms of the guarantee of fundamental rights, and also the project for developing standards of short-term detention. Some visits were also conducted for follow-up purposes (e.g. to the police detention centre of Kuressaare police department of the West Police Prefecture and to Tartu police detention centre of the South Police Prefecture).

With regard to the inspected establishments, the biggest changes in 2009 were related to the opening of the new downtown police department of the North Police Prefecture and closing down of the detention cells in Jõgeva and Põlva police departments of the South Police Prefecture.

In general, the recurring problem found during the inspection visits was still related to poor living conditions (e.g. the police detention centre of Kuressaare police department, police detention centre of Rakvere police department) which was mostly reflected in serious depreciation of the cells and absence of an exercise yard.

Shortcomings in living conditions occurred both in police detention centres as well as other police facilities used for short-term detention of individuals.

With regard to living conditions in the rooms used by the police, the police facilities in the East Police Prefecture can be offered as a negative example. The only positive exception is the new Jõhvi police detention centre where living conditions are good. Problems with living conditions also exist in several police detention centres in the West Police Prefecture, in particular in Kuressaare and Haapsalu. The conditions of detention in Võru and Valga police departments of the South Police Prefecture are also comparable to the latter, although the overall picture is slightly better due to small repairs carried out in both buildings, thus giving the cells a fresher appearance.

In analysing the living conditions and making recommendations, in 2009 the Chancellor proceeded to a large extent from the country's general economic situation but nevertheless emphasised that, regardless of shortage of budgetary resources for larger construction and repair projects, at least the renovation of the existing police buildings should continue.

Another serious shortcoming described in the summaries of the inspection visits was related to proper recording of information in documents concerning the detainees, including personal files.

The Chancellor found problems with drawing up materials concerning the detainees, for example, in Jõhvi police detention centre of the East Police Prefecture and in the police detention centre of the law enforcement department of the North Police Prefecture. The most common problem with the documentation was the absence of a signature of a detainee or of the person performing the measure. The Chancellor noted that in many cases there were shortcomings with documenting the introduction of rights to detainees.

To improve the situation, the Chancellor asked the police to pay more attention to properly drawing up the documents. As a result of the Chancellor's recommendations, training days in the prefectures were organised and the attention of the officers dealing with drawing up the documents was drawn to the problems.

The third problem found in the majority of the police facilities was also directly related to introducing to the detainees their rights. Upon admission to a police detention centre or a police department, many detainees have not sufficiently understood their rights and duties in a place of detention.

In general, on the basis of complaints made by detainees during interviews, two aspects can be mentioned. Mostly detainees do not know much about their rights of complaint or, more specifically, about the competence of the complaint bodies, which may have an impact on the effective protection of a person's rights. Secondly, there is widespread ignorance or uncertainty concerning the list of items allowed in a cell.

The Chancellor recommended that the Police Board in cooperation with the prefectures should draw up a short information package of rights and duties for detainees, also including an overview of the key rights of complaint. The Police Board drew up the relevant materials at the end of 2009.

The fourth problem common for the police detention facilities inspected in 2009 and to which the CPT has also repeatedly drawn attention was notifying of a person's close ones about their detention and documenting it properly.

Inspection visits to Jõhvi police detention centre, police detention centre of Pärnu police department, police detention centres of the North Police Prefecture, Võru and Valga police detention centres revealed that personal files of detainees did not always contain a note that a person's close ones had been notified about their location, i.e. their presence in a particular police detention facility.

To improve the situation, the Chancellor recommended to the prefectures that during study days, training seminars, in circulars, etc, they should explain to police officers the need of notifying a person's close ones about their detention. The prefectures responded positively to the Chancellor's proposal and provided relevant instructions to officers.

The fifth shortcoming prevalent in the majority of the inspected police establishments was related to the long and constant stay of persons detained pending trial in a police detention facility.

Interviews with detainees in detention cells of different police facilities and with police officers, as well as examination of the books of registration of operations in police facilities, revealed that on average persons in custody stayed in police cells for one consecutive month, but in some cases the length of stay was longer. The Chancellor also referred to these problems in the summaries of inspection visits to the police detention centre of the North Police Prefecture, Võru and Valga police departments, Jõhvi police detention centre and the police departments of the West Police Prefecture.

In today's custodial system in Estonia it is inevitable that, instead of a pre-trial detention facility, persons remanded in custody are also temporarily held in police detention centres.<sup>35</sup> It is also obvious that police detention centres are not able to ensure to persons remanded in custody for up to six months (or even longer as a defendant) all the rights prescribed by legislation. The main problem is providing access to health care, exercise in open air, in some cases also possibility to continue acquiring education.

In the current situation, the Chancellor of Justice found that the maximum acceptable duration of stay in police facilities by a person remanded in custody is one month. The Chancellor is aware that the stay of persons remanded in custody in police detention facilities is not a problem directly caused by the police, but the difficulty lies in cooperation between the police and prisons, which is often affected by constantly high occupancy rates of pre-trial custody wards of prisons. Due to this, the Chancellor proposed to the Police Board that together with the Ministry of Internal Affairs and the Ministry of Justice they should map the current situation of stay of persons remanded in custody in police detention centres and try to find possibilities to limit the time of stay to one month.

In response to the Chancellor's proposal, the Ministry of Internal Affairs once again started a discussion with the Ministry of Justice to reduce the number of remand prisoners held by the police. The exchange of correspondence between the ministries was also covered by the media.<sup>36</sup>

The following part provides a brief overview of other shortcomings found during each inspection visit but not mentioned above as they cannot be directly considered an overall problem common for all police detention centres.

## 2. Inspection visit to Jõhvi police detention centre of the East Police Prefecture

On 13 May 2009, advisers to the Chancellor of Justice carried out an announced visit to Jõhvi police detention centre of the East Police Prefecture. This is the newest and most modern police detention centre in Estonia, opened in summer 2008.

In addition to the general problems common for all police detention facilities in 2009, several detainees in Jõhvi police detention centre claimed during interviews that officers of the detention centre were transferring different items from one cell to another. According to the detainees, the transfer of items includes both the property of the detention centre (e.g. books, newspapers) as well as personal belongings of detainees.

The Chancellor noted that, on the one hand, transfer of items between cells may be to the liking of detainees but, at the same time, it may bring about negative consequences.

First, an officer may unsuspectingly contribute to communication between the cells. Namely, the transferred items may contain messages which could, for example, endanger criminal proceedings. Secondly, the transferred items may endanger the security of the detention centre, for example by assisting in the preparation of an escape, inflicting of self-injury, attacking of another detainee or officer, etc. Thus, in general it could be concluded that transferring of items between cells poses a danger to the security of the detention centre, including to persons in the centre whose security the detention centre is obliged to guarantee.

The Chancellor found that the activity of the officers could be in conflict with the norms obliging a head of a police detention centre to take measures to prevent communication between cells.

On this basis, the Chancellor proposed to terminate transferring of personal belongings of detainees between the cells and to draw the attention of the officers of the detention centre to the fact that transfer of items between cells is not lawful and may endanger the security of the detention centre. In case of transfer of items which are the property of the detention centre, the items should be inspected before their transfer.

The Police Board replied to the Chancellor's summary of the visit that officers of a police detention centre are prohibited to transfer personal belongings of detainees from one cell to another, except newspapers which are inspected before transfer to make sure they do not contain any notes written by the detainees. This is also explained during training seminars, emphasising that such behaviour is unlawful and may endanger the security in a detention centre.

In addition, the detainees noted that better conditions for taking care of personal hygiene should exist in the detention centre. Interviews with detainees revealed that the detention centre provided a possibility to wash once a week, but according to the detainees this was not enough. In particular, female detainees complained about the modest pos-

35 Under § 90(2) of the Imprisonment Act, custody pending trial is served in wards prescribed for custody pending trial in maximum-security prisons or in police detention centres.

36 E.g. the *Eesti Päevaleht*, available online: <http://www.epl.ee/artikkel/484922> (01.03.2010).

sibilities to take care of personal hygiene. However, they also mentioned that, if they expressed a wish, some officers gave them a bucket of warm water in the cell in the evening.

The Chancellor noted that in today's society the majority of people consider it normal to have access to a shower once a day or every two days and could not imagine anything less. Although according to internal rules of police detention centres access to washing facilities should be provided at least once a week, this definitely constitutes only a minimum requirement. In line with the principle of human dignity, police detention centres should strive to ensure a more frequent possibility for washing. This applies in particular in case of female detainees and detainees with health problems.

It should be noted that obviously not all the detainees have necessarily similar hygiene habits. However, a police detention centre, in line with the principle of human dignity, should ensure the frequency of taking care of personal hygiene that meets the needs of detainees. Detention centres should find additional resources to enable detainees to take better care of their personal hygiene (possibilities for washing oneself as well as washing the clothes). A clear regulation for this should also be adopted and the frequency and times of using the shower should be established in the daily schedule or in other rules regulating the work of a detention centre.

On this basis, the Chancellor proposed to the East Police Prefecture to find additional washing possibilities at least for female detainees and detainees with health problems and establish this in the daily schedule of the detention centre or in some other document.

The Police Board in its reply affirmed that officers in Jöhvi police detention centre have been authorised to allow female detainees to use the shower more often than once a week. This also applies to detainees with disease symptoms.

Another problem that was revealed during interviews with the detainees concerned contradictory information about the arrangements for correspondence in the detention centre.

Some detainees claimed that the letters they receive have been opened and the staff of the detention centre monitor the content of the letters. Some persons also had problems with obtaining envelopes and stamps, as the detention centre has no shop where they could be purchased. According to the detainees, when they do not have an envelope they give an open letter to an officer who later puts it in an envelope.

The head of the detention centre affirmed that messages contained in a person's letter were not read deliberately, officers only comply with the duty established by law to verify the existence of prohibited items in an envelope. The head of the detention centre also explained that persons who do not have postage stamps or envelopes are provided with them at the expense of the detention centre.

The Chancellor found that from the point of view of guaranteeing confidentiality of messages the detention centre should take measures to eliminate the risk of violating confidentiality of messages. Officers in their work should take into consideration the fact that, in case of accepting a letter without an envelope from a detainee, inevitably doubts may arise whether the duty to ensure confidentiality of messages is complied with. The Chancellor admitted that during the inspection visit he had received contradictory information about reading the messages in letters of the detainees by the officers of the detention centre. Nevertheless, the Chancellor recommended that during meetings, training seminars or other events officers of the detention centre should be explained the importance of confidentiality of messages.

The Police Board in its reply affirmed that officers of the police detention centre do not deliberately read any messages contained in letters of any detainees, but they only comply with the duty established by legislation: to verify the existence of prohibited items in an envelope. Persons who do not have postage stamps or envelopes in the detention centre are provided with them at the expense of the detention centre, and detainees can also receive stamps and envelopes in a parcel. The Police Board explained that letters arrive in the detention centre through Viru Prison and there have been cases where an envelope had been opened. The addressee of the letter was informed about this. During a study day, the importance of confidentiality of messages would also be emphasised.

In addition, in the summary of his visit to Jöhvi police detention centre the Chancellor also dealt with an issue concerning an agreement concluded with a health care worker for providing health care services in the East Police Prefecture and in the police detention centre.

The object of the agreement is the provision of health care services in the police detention centre – provision of daily medical assistance to detainees and performing the initial health examination. According to clause 1.2 of the agreement, the quality of the work (i.e. provision of health care services) should meet the requirements normally applicable to such work. Clause 1.3 of the agreement also establishes that the prefecture has the right to perform

regular monitoring of the provision of health care services. Clause 4 of the agreement establishes the responsibility of the parties, according to which the parties are responsible for violation of their duties under the agreement if the violation was caused wrongfully.

From the point of view of fundamental rights of detainees, it is important to ensure the independence of health care workers and to properly record the provision of a service as well as a possible ill-treatment.

The Chancellor reached the opinion that the agreement concluded between the prefecture and the health care worker was very general. It does not clearly stipulate the liability of the parties concerning the issue of damages caused to a detainee; who guarantees the availability of medical equipment and medicines; what exactly are the tasks of the health care worker and what are its limits (e.g. referral to a specialist doctor), etc. The agreement also lacks provisions on the protection of personal data and handling of documents. It should be important for the detention centre that the agreement also establishes the requirement of a proof of competence or registration of the health care worker for the entire duration of the agreement, and failure to comply with this condition (e.g. when the Health Care Board suspends the health care worker's right to operate) should be a basis for terminating the agreement.

As the independence of a health care worker should also exist seemingly (not only substantively), the agreement should also contain the relevant provisions, i.e. on independence of the health care worker, duty to strictly record the condition of a detainee and the procedure for notifying about cases of ill-treatment – whom the health care worker should notify in case of suspicion of (police) ill-treatment. Such provisions would help to ensure independence (also seemingly).

Above, the aspects important in terms of possible ill-treatment of detainees were mentioned. The Chancellor found that, in view of the very general wording of the current agreement for the provision of health care services, the prefecture would be advised to consult with experts from the Health Care Board in order to draw up an agreement which takes into account the conditions and possibilities in the police detention centre.

The Police Board replied that the Health Care Board would be consulted and the Chancellor's recommendations would be taken into consideration when concluding the new agreement, in order to guarantee to the detainees a health care service in line with the requirements of the legislation.

### **3. Inspection visit to Pärnu, Rapla and Kuressaare police detention centres of the West Police Prefecture**

On 30 June 2009, advisers to the Chancellor of Justice carried out an inspection visit on a few days' advance notice to Pärnu and Rapla police detention centres of the West Police Prefecture and on 3 July 2009 to Kuressaare police detention centre of the same prefecture.

The Chancellor has previously inspected all the three detention centres and has paid particular attention to the conditions of detention in Pärnu and Kuressaare police detention centres. The Chancellor has previously visited Rapla police detention centre as part of proceedings for resolving a complaint submitted by an individual.

The biggest problems found during the inspection visits were already described above: notification of close ones about a person's detention, proper recording of information in personal files and, in the case of Kuressaare police department, also very poor living conditions.

In addition to the above, upon examination of the job description of the specialist medical assistant providing the health services in Pärnu police detention centre, some problematic aspects arose with regard to ensuring independence,<sup>37</sup> which were also described in the summary of the inspection visit to Jõhvi police detention centre of the East Police Prefecture.

Similarly to Jõhvi police detention centre, the Chancellor found that from the aspect of fundamental rights of detainees it is important to guarantee the independence of a health care worker in the provision of health services, including in proper recording of possible instances of ill-treatment.

To resolve the situation, the Chancellor proposed adding in the job description provisions for ensuring independence of the specialist medical assistant in Pärnu police detention centre and, if necessary, doing it in cooperation with the Health Care Board.

The West Police Prefecture in its reply noted that no previous problems had occurred in connection with the provi-

37 The job description was approved by the order No 64 of the Prefect of the West Police Prefecture on 18 April 2006.

sions in the health care service provider's job description and the prefecture did not consider it immediately practical to start amending the job description. However, it was noted that in connection with the launching of the merged Police and Border Guard Board and the related change of tasks of officials, job descriptions would also be amended at the end of 2009 or the beginning of 2010.

The inspection visit also revealed that in Rapla police detention centre detainees receive only one warm meal a day, at lunch. For breakfast and dinner, detainees receive hot tea and a bread roll. In other visited police detention centres, detainees also receive a warm meal for dinner in addition to lunch<sup>38</sup>.

The Chancellor admitted that the sum of the daily allowance for provision of meals to detainees does not leave much flexibility in the choice of food. Depending on the location of a police detention centre, there may also be problems with finding a suitable service provider in the particular area. However, it is important that the West Police Prefecture should try to find a caterer who is able to offer warm meals for both lunch and dinner for detainees in Rapla police detention centre.

With regard to this issue, the Chancellor recommended to the West Police Prefecture to enable detainees in Rapla police detention centre to have warm meals at least twice a day, similarly to Pärnu and Kuressaare police detention centres.

The West Police Prefecture in its reply noted that the prescribed sum of daily allowance for catering of detainees in the police detention centre does not allow making different choices in the provision of meals. However, the prefecture took note of the Chancellor's recommendation and began looking for a suitable service provider who could offer warm meals for both lunch and dinner within the prescribed daily allowance.

#### **4. Inspection visit to the police detention centre of the law enforcement department of the North Police Prefecture**

On 30 September 2009, advisers to the Chancellor of Justice, observers from the SPT (UN Subcommittee on Prevention of Torture) and the Council of Europe carried out an inspection visit on a short advance notice (24 h) to the police detention centre of the law enforcement department of the North Police Prefecture.

In the detention centre, the above-mentioned problems with recording of data in personal files of detainees, notifying of close ones, use of the exercise yard, holding of persons remanded in custody in the police detention centre, and ensuring of possibilities for detainees for taking care of personal hygiene were found.

#### **5. Inspection visit to police detention centres of Võru and Valga police departments of the South Police Prefecture**

On 15 October 2009, advisers to the Chancellor of Justice carried out unannounced inspection visits to police detention centres of Võru and Valga police departments of the South Police Prefecture.

In the detention centres, the Chancellor found problems already described above, including proper recording of data in personal files of detainees, notifying of close ones about a person's stay in the detention centre, and holding of persons remanded in custody in the police detention centres in combination with poor living conditions.

#### **6. Inspection visit to police detention centres of Narva and Rakvere police departments of the East Police Prefecture**

On 3 December 2009, advisers to the Chancellor of Justice carried out unannounced inspection visits to police detention centres of Narva and Rakvere police departments of the East Police Prefecture.

Examination of personal files during the inspection visit revealed that Narva and Rakvere police detention centres also had some shortcomings in the recording of data in the documents concerning detainees, which the Chancellor pointed out in the summary of the inspection visit.

In both police detention centres, the biggest problem is depreciation of the facilities and poor living conditions. Besides the heavily depreciated rooms (including the cells), neither of the detention centres has an exercise yard and, therefore, detainees have no access to open air.

38 E.g. normally porridge is served for dinner in Pärnu police detention centre and soup in Kuressaare detention centre.

With regard to the poor conditions in the detention centre, it could, for example, be mentioned that in both detention centres cells have no sufficient natural light, as the windows are made of almost non-transparent blocks of glass or are lacking at all. In both detention centres, hygiene corners are not partitioned from the rest of the cell and in Rakvere the pay phone intended for detainees was not working.

Due to depreciation, absence of natural light, etc, the overall appearance of the detention centres is depressing and leaves an unhygienic impression.

In addition to the above-described living conditions, in one sobering-up cell in Rakvere police detention centre two metal rings were found attached to the side of a plank bed. The staff claimed that aggressive detainees were chained to them by handcuffs. The building of Rakvere police department (not the detention centre) had a couple of small cells with metal chains attached to the wall. The officers claimed that the cells had not been used for a long time and were unable to explain the purpose of the chains.

On this basis, the Chancellor recommended to the East Police Prefecture to guarantee that detention of individuals in Narva and Rakvere police detention centres is as short as possible and that, in case of detention for more than one month, detainees would be transferred to Jõhvi police detention centre or, in cooperation with the Ministry of Justice, to Viru Prison.

In addition, in connection with the living conditions, the Chancellor proposed to the East Police Prefecture to remove the above-mentioned rings from the cell in Rakvere police detention centre and metal chains from the cells in Rakvere police department.

The East Police Prefecture replied that it had been agreed with the heads of Narva and Rakvere police detention centres that all detainees in respect of whom procedural acts have been carried out, as well as persons serving a misdemeanour detention who have been imposed a long-term detention by the court, would be transferred to the modern Jõhvi police detention centre. In addition, it was noted that the metal rings from the plank bed and chains from the cells in Rakvere police department had been removed.

#### IV. EXPULSION CENTRE

On 6 May 2009, the Chancellor of Justice carried out an own-initiative inspection visit to the Citizenship and Migration Board expulsion centre (Inspection visit to the expulsion centre, case No 7-7/090438).

The expulsion centre is a structural unit of the Citizenship and Migration Board (since 1 January 2010 the Police and Border Guard Board) under the area of government of the Ministry of Internal Affairs. Its task is to execute detention of persons subject to expulsion. The Chancellor's previous visits to the expulsion centre took place in 2004 and 2007.

On 30 September 2009, advisers to the Chancellor carried out a follow-up visit to the expulsion centre to verify compliance with the Chancellor's recommendations.

The following part contains an overview, by breakdown to different topics, of the Chancellor's recommendations in connection with the circumstances ascertained during the inspection and the replies of the Citizenship and Migration Board (CMB) to the recommendations. The situation of compliance with the recommendations ascertained during the follow-up visit and the CMB's additional reply on compliance with the recommendations made after the follow-up visit are also described. Finally, the additional recommendations made after the follow-up visit (i.e. those not made during the initial visit) are presented.

The inspection visit raised a number of issues in connection with the application of security measures, including restraining measures.

First, the decisions on the application of security measures examined during the inspection visit showed that, in case of violations, security measures are often applied during a longer period (up to several weeks) and mostly several types of security measures are applied simultaneously. The Chancellor recommended to the centre to ensure that in deciding the application of security measures the circumstances of the incident giving rise to the use of security measures are taken into account and a measure which helps to eliminate the danger posed by the individual while least interfering with their rights is used, and that the application of the measure is terminated immediately when the grounds for its use cease to exist. The Chancellor also recommended ensuring compliance with the duty to provide the reasons for applying a security measure.

The Citizenship and Migration Board in its reply explained that security measures in the expulsion centre would be applied in line with the principles described in the recommendations, and an in-house training seminar would be organised for the staff of the centre to update their knowledge of drawing up administrative acts, paying particular attention to the duty of reasoning, principle of proportionality and purposeful use of security measures.

During the follow-up visit it was found that in the period after the Chancellor's recommendations security measures in the centre had only been applied for medical reasons. Therefore, during the follow-up visit it was not possible to verify the implementation of the above principles in practice.

Second, the inspection visit revealed that after admission to the centre, all individuals were placed in a separate locked room for the monitoring of their health on the basis of a decision for the application of a security measure, as there was no information about the health of the persons to be expelled. The Chancellor pointed out that the law does not provide a basis for applying a security measure in such cases, and therefore the centre's practice is contrary to the law. On this basis, the Chancellor made a recommendation to change the practice of applying security measures. The Chancellor also recommended observing the principle according to which, in order to assess the health of an individual placed in the centre and generally prevent the risk of ill-treatment, the general practitioner or a nurse of the expulsion centre would examine the person immediately after their admission to the centre.

In its written reply, the Citizenship and Migration Board noted that it had done everything it could to comply with the recommendation. However, the doctor is not permanently present in the centre and due to financial difficulties the CMB is not able to ensure 24-hour presence of a nurse. The CMB will try to find solutions for improving the situation and changing the practice, so as to cause the least inconvenience for a person placed in the centre while at the same time avoiding the spread of infectious diseases.

The follow-up inspection revealed that the centre continued its earlier practice of placing persons, on the basis of a decision for the application of a security measure, in a separate locked room for the monitoring of their health after admission to the centre. During interviews with the doctor of the centre and the persons to be expelled it was also found that medical examination of persons was not arranged immediately after arrival but generally it took place after the reply to the infectious diseases test was received. Thus, the Chancellor's recommendations had not been complied with and there was also no action for implementing the recommendations.



On this basis, the Chancellor repeated the reasoning for his recommendation and asked for submission of a detailed action plan for implementing the recommendations relating to initial health examination.

In its additional reply the CMB explained that a medical nurse was present in the centre every day and the persons to be expelled were referred to the nurse after admission to the centre. The CMB would take into consideration the Chancellor's recommendation to change the practice of applying security measures and would only use placement in a separate locked room as a medical security measure in cases when a person's health situation could pose a real danger to the persons to be expelled or to others. This decision would be made on the basis of a person's own statements or assessment by the centre's medical staff.

Third, the inspection visit revealed that the application of the security measures, including restraining measures (i.e. straps, handcuffs, restraint-jacket), was not approved by a doctor. The Chancellor noted that the CPT in its practice has developed guarantees which should be observed when using security measures, especially restraining measures, because the danger of ill-treatment in such situations is very high. On this basis, the Chancellor made the following recommendations for consultation with a doctor in case of applying security measures: (1) in case of application of restraining measures, as well as use of coercion in connection with the application of other security measures, ensure immediate medical examination or notify the doctor immediately and arrange medical examination at the first opportunity; (2) in case of a person with seriously disturbed behaviour, suicidal person or a person who has previously been in need of psychiatric assistance, to ensure psychiatric consultation at the first opportunity; (3) in case of application of restraining measures for more than two hours, arrange psychiatric consultation in any case; (4) in case of placement in an isolation room for several days (due to aggression or restlessness), carry out psychiatric consultation.

The CMB explained that the centre's medical worker is notified when force is used for restraining a person. The centre's medical worker would also be immediately notified when a person requests it or on the basis of an initiative of a member of staff to assess possible injuries or carry out treatment. According to the contract for the provision of psychiatric services, the service is normally provided once a week. The person in respect of whom a security measure has been applied is always asked whether they wish to have an appointment with a psychiatrist (also psychologist). In case of oral expression of the relevant wish, the person is ensured psychiatric and psychological consultation at the first possible opportunity. When necessary, e.g. in a situation where a person has previously been in need of psychiatric or psychological assistance, the general practitioner of the centre (in certain cases also an official of the centre) refers the person to a consultation with a psychiatrist or psychologist even without a relevant request. The CMB noted that, within its possibilities, it would always try to implement the recommendations concerning psychiatric consultation.

The follow-up inspection revealed that in case of application of security measures the centre's medical worker was notified and carried out direct evaluation of the situation only when the officials or security staff considered it necessary and when the medical worker was present in the centre. Also, the situation was not directly evaluated by a psychiatrist/psychologist, but they were consulted only during their regular visit to the centre. There were also no in-house guidelines on notification and consultation in these situations, and consultations carried out by telephone were not registered or a written record of them made.

All this demonstrated that the relevant practice in the centre had not been changed and no action plan for implementing the recommendations existed. The Chancellor repeated his recommendations and asked to submit a detailed action plan for implementing the recommendations.

The CMB replied that in future the general practitioner and psychiatrist or psychologist of the centre would always be notified about the application of security measures and, at the first possible opportunity, the person would be referred to an appointment with the centre's medical nurse and general practitioner. In case of using restraining measures and coercion, immediate medical examination of the person is ensured or the centre's general practitioner is informed immediately; at the request of the person, an ambulance is called.

Fourth, the inspection visit revealed that there was no constant direct monitoring of a person placed in a separate locked room when also restraining measures were simultaneously applied in respect of the person. Therefore, the Chancellor recommended that direct and constant monitoring of a person should be ensured in case of application of restraining measures.

The CMB in its written reply noted that the guidelines for security staff would be amended to comply with the recommendation, introducing the obligation to carry out monitoring every 5 to 10 minutes. The recommendation would be implemented in cooperation between officials and security staff and, during the application of security measures, a person would be monitored at 5 to 10 minute intervals.

The follow-up inspection revealed that the guidelines for security staff had not been amended. The head of the centre explained that in essence this would mean the creation of one more security staff position for which the CMB has no resources. Thus, the centre had no action plan for implementing the recommendation.

The Chancellor repeated his recommendation and explained additionally that the aim is to ensure direct and constant monitoring of a person and prevent possible self-injury, etc. In view of the conditions in the expulsion centre, the Chancellor proposed that in case of application of restraining measures direct and constant monitoring of a person in at least 5-minute intervals should be ensured. This means that the condition of a specific person should be taken into account. If the person's condition so requires, monitoring in 5-minute intervals may not be sufficient and constant uninterrupted monitoring may be necessary. This should be decided based on the circumstances of the particular incident and the condition of the person. Thus, to comply with the recommendation it is not sufficient to fix a specific interval for monitoring of persons in the guidelines for security staff but the circumstances of each particular case should be taken into account.

The CMB informed the Chancellor that it would guarantee direct and constant monitoring of persons in at least 5-minute intervals in case of application of restraining measures and would amend the guidelines for security staff accordingly. The CMB also agreed with the Chancellor's opinion that monitoring of persons should be decided on a case by case basis and, to comply with the recommendation, it is not sufficient to fix a specific time interval in the guidelines for security staff.

Fifth, the inspection visit revealed that handcuffs were used when escorting persons outside the centre, although the use of handcuffs had not been noted on the authorisation for stay outside the centre and no justification for their use had been given. On this basis, the Chancellor recommended that a decision for use of handcuffs in case of a person's stay outside the centre should be made in accordance with the requirements of competence, form and substantive legality. The Chancellor also found that the relevant decisions contained other shortcomings with regard to form and, therefore, the Chancellor recommended that a decision for the application of a security measure should contain all the relevant information, including the exact time of starting the application of a security measure.

The CMB in its written reply noted that the attention of the officials would be drawn to the need to record more precisely the use of handcuffs in case of a stay outside the centre and to increase the level of detail recorded in the decision for the application of security measures. The use of handcuffs as a restraining measure in case of escorting is based on the assessment of a person's likelihood of escape, aggressiveness, as well as previous, present and potential behaviour, the ability of the escort team to ensure the safety of themselves and others in a situation of danger, and the real risk of escape. A relevant note on the use of restraining measures is made on the authorisation for stay outside the expulsion centre.

Examination of files during the follow-up visit showed that, in case of use of handcuffs, the authorisation for stay outside the centre and the escort plan contained a reference to the legal basis and a generic justification ("behaviour may be unpredictable"). However, the documents did not include any factual reasoning based on which a person's behaviour was considered to be unpredictable. Thus, the assessment of the behaviour was not linked to any factual circumstances to be taken into account in threat assessment and mentioned in the CMB reply.

The Chancellor explained that, in case of use of handcuffs, factual (situational) justifications for the relevant assessment of behaviour should also be presented in addition to a generic statement. On this basis, the Chancellor asked to ensure compliance with the duty of reasoning in using handcuffs, so that factual reasons for the use of handcuffs are given.

The CMB replied that it would ensure compliance with the requirements of competence, form and substantive legality in deciding the use of handcuffs in case of a person's stay outside the centre. The duty of reasoning would be complied with by presenting the factual reasons for the use of handcuffs. Decisions on the application of a security measure would also contain all the relevant information, including the exact time of starting the application of a security measure.

Sixth, the inspection visit revealed that the expulsion centre had no integrated register on the use of security and restraining measures, which made it difficult to verify the frequency and circumstances of such cases. The Chancellor recommended that the centre should establish an integrated register on application of security measures, containing all the cases of their application, the type of the measure applied, the justification for application, period of application, notes on consultation with a doctor and existence of any health problems or injuries.

The CMB noted in its written reply that all the data on the use of security measures are registered in the database of persons who have stayed or are staying in Estonia without a legal basis, but the database does not allow making detailed statistical enquiries about the circumstances of the use of the measures. The relevant proposal would be submitted to the information technology and development centre of the Ministry of Internal Affairs and the additional functionalities in the information system would be introduced immediately when financial resources for this are allocated.

The follow-up inspection revealed that implementing the recommendation and adding the additional functionality in the information system is not likely in the near future due to the lack of funds. The Chancellor noted that the relevant register could also be maintained by the centre itself by using less complicated means (e.g. as a table drawn up on paper or electronically) until the information system is updated. On this basis, the Chancellor repeated his recommendation to introduce immediately the relevant register in the centre and asked to be notified how the CMB intends to comply with the recommendation.

The CMB replied that information on the time and circumstances of applying security measures is reflected in the CMB's information system. To record the information in a book format, the CMB in cooperation with the information technology and development centre of the Ministry of Internal Affairs would explore possibilities for implementing the relevant developments and finding the necessary funds.

In addition to problems with security measures, the inspection visit revealed that possibilities for spending free time in the centre were limited. Most of the possibilities included passive activities, while the range of purposeful activities was very limited. On this basis, the Chancellor recommended considering the expansion of the range of activities offered to persons who stay in the centre for a longer period, taking into consideration, as much as possible, the specific needs of persons.

The CMB in its written reply explained that the average duration of stay in the expulsion centre is up to three months and no major changes with regard to spending free time are needed. In case of allocation of funds, new means for spending free time would be procured. First and foremost, purchasing of books is considered, because the literature available for the residents of the centre is outdated by nature.

Interviews during the follow-up visit with residents of the centre revealed that possibilities for spending free time were particularly limited for speakers of languages used less widely in this region – e.g. there were no books, magazines, television programmes, etc. at all available in Arabic. At the same time, during the follow-up visit several persons speaking only Arabic were staying in the centre. The Chancellor also pointed out the fact ascertained during the inspection visit that in the period from 1 May 2007 to 1 May 2009 eleven persons had been held in the centre for more than six months, the maximum period of stay in this period being twenty months. At the time of the follow-up inspection, one person had stayed in the centre for one year and three months, and one person for more than six months. On this basis, the Chancellor repeated his recommendation to improve possibilities for spending free time in the centre. In view of the origin of persons staying in the centre, the Chancellor asked to consider expanding the possibilities of spending free time for speakers of different languages, and asked to be notified about a more detailed action plan for complying with this recommendation.

The CMB replied that the expulsion centre would continue to take into consideration the interests of persons to be expelled and allows them to receive parcels containing means for spending free time which are not prohibited in the centre. The centre makes it possible for persons to engage in creative activities: drawing, painting, handicraft. Persons who have done painting have received painting instruments by parcels and the centre also offers instruments for drawing. The CMB tries to acquire new literature for the centre, so that books in as many languages as possible currently spoken in the centre would be available.

The inspection visit also revealed that the information materials distributed to persons placed in the centre contained no information about certain rights. Therefore, the Chancellor made a recommendation to amend the information materials with regard to the following issues: (1) add information that upon placement in the centre a person has the right to inform their close ones about the detention at the expense of the centre, (2) add information that a person has the right of recourse to the Chancellor of Justice in case of any complaints about the activities of the centre, and the relevant complaint would be forwarded free of charge; (3) revise the subsection on translation and state explicitly that a person is entitled to receive a translation of any administrative acts restricting their rights.

In its written answer with regard to the recommendations made after the inspection visit the CMB indicated that in the process of updating the information materials the CMB would revise their content and add the right of persons to notify their close ones about the detention. However, the CMB noted that the information materials already contain a reference to a possibility of recourse to the Chancellor of Justice at the expense of the centre if the person lacks the necessary financial means under § 26<sup>11</sup>(6) of the Obligation to Leave and Prohibition on Entry Act. At the same time, the CMB did not consider it necessary to add in the information materials the obligation to translate administrative acts imposing burdens on a person. According to the current practice, a person is informed about the possibility to involve an interpreter or a translator at the person's expense (as established by the Administrative Procedure Act) and the person is ensured translation of the operative part of an administrative act, and in exceptional cases a written translation of the whole administrative act may be made. As the officials of the CMB speak the languages which are most common among the persons to be expelled, the administrative act is translated orally to a person and it is assured that the person understands its content. The CMB does not have financial resources for providing full translations of administrative acts.

The follow-up inspection revealed that the following sentence had been added to the information materials: “A person to be expelled has the right to one phone call within Estonia at the expense of the Citizenship and Migration Board in order to notify his or her close ones about the detention”. This was also added in the materials in Russian and English. The head of the centre explained that in certain cases calling abroad is also allowed, but correspondence of the phone number to the person’s statements is verified and, in case of contradictions concerning the target country of the call, the call is refused.

As a result of the follow-up visit, the Chancellor of Justice additionally clarified the following issues concerning information presented in the information materials.

According to the first sentence of § 21(1) of the Constitution, everyone who is deprived of his or her liberty shall be informed promptly, in a language and manner which he or she understands, of the reason for the deprivation of liberty and of his or her rights, and shall be given the opportunity to notify those closest to him or her. The CPT also considers the opportunity to notify a third person about the detention an extremely important guarantee for the prevention of ill-treatment. The Chancellor explained that the right of a person to inform their close ones about the detention should be interpreted widely and the persons should be left a certain choice whom they wish to notify. The Chancellor also considered it unjustified to limit the calls with the territory of Estonia as noted in the information materials. As was already mentioned, the follow-up inspection revealed that in practice in certain cases the centre also allows to notify persons outside Estonia.

The information materials contain a reference according to which, in case of absence of financial resources, a person to be expelled is entitled to assistance from the centre for correspondence with state agencies in Estonia. Thus, the information materials contain a general reference to the possibility to contact state agencies and the letter is forwarded at the expense of the centre only if the person has no financial resources. The Chancellor explained in this regard that, under § 24 of the Chancellor of Justice Act, if a petition is filed with the Chancellor of Justice by a detainee the relevant agency shall promptly forward the petition to the addressee at the agency’s expense without examining the contents of the petition. Thus, a petition addressed to the Chancellor of Justice must be forwarded to the Chancellor at the expense of the centre regardless of whether a person has any financial resources. The Chancellor also reached the opinion that the information materials should contain an explicit reference to the right of recourse to the Chancellor of Justice considering the Chancellor’s competence, as the Chancellor’s activities are directly related to monitoring the conditions of detention.

With regard to arranging translations, the Chancellor pointed out that in response to a request for information the CMB had explained that persons to be expelled are provided a written translation to the language they understand of all the decisions of refusal made in respect of them; the remaining decisions in respect of the persons to be expelled, correspondence, etc, is translated at the request of a person to be expelled to the language they understand. In 2007, the Chancellor of Justice proposed that in line with the principle of reasonableness the centre should provide written translations of all the replies to the applications of persons to the language they understand. Thus, the Chancellor had drawn the attention of the CMB to the fact that, in view of the nature of the expulsion centre and considering the principle of good administration, the centre should ensure translation of the replies by the administrative authority to applications of persons to be expelled, but especially translations of burdening administrative acts, to a wider extent than required by the general regulation concerning translation under the Administrative Procedure Act. The CMB had also informed the Chancellor that translations in the centre are organised accordingly. However, it can be seen from the information materials that in case of involvement of a translator/interpreter the persons to be expelled themselves have to cover the expense of translation, for which they may not have the resources. Thus, the information materials contain misleading information about the rights of persons to be expelled.

On this basis, the Chancellor of Justice asked the following amendments to be made in the information materials: (1) add in the materials the right to notify close ones and remove the restriction allowing to call only within Estonia, (2) add information about the right of recourse to the Chancellor of Justice at the expense of the centre, also mentioning the Chancellor’s competence, (3) add information that persons to be expelled are entitled to receive a written translation, in a language they understand, of burdening administrative acts and other decisions of refusal made in respect on them; the remaining decisions, correspondence, etc, are translated at the request of a person to be expelled to the language they understand.

The CMB in its additional reply explained that an amendment would be introduced in the information materials, stating that “persons to be expelled are entitled to a phone call at the expense of the Citizenship and Migration Board in order to notify their close ones about the detention”. At the same time, the CMB noted that it cannot affirm that the budgetary resources of the Police and Border Guard Board would allow to guarantee calling outside Estonia. The information materials will also contain the point explaining that “persons to be expelled have the right of recourse to the Chancellor of Justice at the expense of the Citizenship and Migration Board if they have any complaints concerning the activities of the centre”. However, the CMB also noted that it did not consider it necessary to amend the sub-

section on translation, as written translations of the centre's decisions are provided to persons to be expelled according to financial resources available to the CMB. If the CMB's budget allows, in addition to the decisions restricting the rights of persons the remaining replies given by the centre are also translated to the language the person understands. Also, under the Administrative Procedure Act, persons themselves are required to take care of involving a translator/interpreter if they do not understand Estonian.

In addition to the above problems in connection with security measures, possibilities for spending free time and information materials, following his inspection visit the Chancellor repeated the recommendation made to the centre already in 2007, to enable persons staying in the centre for a longer period the possibility to use a refrigerator. The CMB in its written reply explained that it did not consider procuring a refrigerator to be justified. As a result of his follow-up visit, the Chancellor repeated his recommendation to enable persons staying in the centre for a longer period the possibility to use a refrigerator. The CMB in its reply announced that it was still of the opinion that the risks associated with providing a refrigerator were proportionally greater for the persons to be expelled and for the centre than the benefits it would offer, and therefore it did not consider it practicable to procure a refrigerator.

Considering the issues raised during the follow-up inspection in connection with compliance with the Chancellor's recommendations and in order to improve guarantees for the prevention of possible ill-treatment, the Chancellor made the following additional recommendations as a result of his follow-up inspection visit:

- 1) to ensure that persons are able to notify their close ones or another person of their choice about the detention and ensure the right of notification also outside Estonia if the person so requests;
- 2) to record in the file of a person to be expelled that they have been able to notify a third person about their detention and, for this purpose, include in the file information about the time of the phone call and the number dialled together with an affirmation by the person;
- 3) to amend the form of the decision on the application of security measures, so that it contains information whether and when the centre's medical worker and psychiatrist examined the person, assessed the person's situation or when a consultation by telephone was carried out;
- 4) to make a record of consultations carried out with medical staff by telephone;
- 5) to add, in all the documents drawn up by the centre which have been translated to a person to the language they understand, a note about oral translation and maintain a copy of the written translation in the file. The relevant note should indicate when, to what extent and who translated/interpreted the document (including the name and status (official, translator/interpreter)) and the confirmation by the person to be expelled for whom the translation was made.

The CMB informed the Chancellor that it would add in the information materials a point about notifying close ones about a person's detention. In the future, a written request for a phone call is added to a person's file, with a note that the person has been able to notify someone close to them about their detention in the centre, at the expense of the CMB, and the information recorded would contain the time of the phone call, the number dialled and the confirmation by the person. The centre will adopt the practice according to which a decision on the application of security measures would contain a note in the form of a report concerning consultation with a medical worker, psychologist or psychiatrist (time and manner of consultation). The book for registration of security measures will also contain a summary of the consultation with a doctor, psychologist or psychiatrist. All the written translations will be added in a person's file alongside the original document. With regard to interpretation, an official will make a note on the operative page of the relevant request, and a written confirmation of receiving the interpretation is taken from the person to be expelled.

In the course of the follow-up inspection, additional issues concerning registration of the persons to be expelled, translation/interpretation, allowing of visits, verification of criminal records data of persons coming to visit, voluntary nature of health examinations, possibility of dental treatment, and flexibility of the daily schedule arose. The Chancellor will form an additional opinion with regard to these issues.

The Chancellor will carry out an additional follow-up visit to the expulsion centre to verify compliance with his recommendations in 2010.

## V. THE DEFENCE FORCES

### 1. General outline

During the reporting period, there were nine units of the Defence Forces in Estonia where persons are performing their conscript service obligation. All the units where conscript service is performed fall under the supervision of the Chancellor of Justice as the national preventive mechanism.

During the reporting period, the Chancellor carried out four inspection visits to units of the Defence Forces: on 22 July 2009 to the Headquarters and Signal Battalion (Inspection visit to Headquarters and Signal Battalion, case No 7-7/090815), on 28 August 2010 to the Artillery Battalion (Inspection visit to the Artillery Battalion, case No 7-7/091054), on 12 October 2009 to the Naval Base (Inspection visit to the Naval Base, case No 7-7/091366) and on 9 November 2009 to the Logistics Battalion (Inspection visit to the Estonian Logistics Battalion, case No 7-7/091477).

The Chancellor's choice of the inspected establishments was based first and foremost on the need to conduct an inspection visit at least once every three years to all the units of the Defence Forces dealing with conscript training. The Chancellor scheduled the inspection visits to take place at the time when new conscripts first arrived in the training centre, i.e. the time immediately following the arrival of new conscripts in the training centre.

In the course of inspection visits carried out during the reporting year, the Chancellor did not find any recurring problems (i.e. problems occurring in all the units). However, some shortcomings may be pointed out which occurred in at least two of the inspected units.

Namely, the inspection visits revealed that the units did not always have a full overview of the number and types of disciplinary punishments imposed on conscripts. For example, the Naval Base and the Logistics Battalion did not have a clear overview of the instances of additional fatigue-duty imposed on conscripts.

The inspection visits also revealed that the units have introduced the so-called "system of minuses" in case of infringements of requirements established by the Defence Forces legislation. Under this system, a conscript receives a minus for each insignificant infringement, and in case of accumulation of a certain number of minuses a disciplinary punishment is imposed on the conscript. Although in principle the system of minuses could be considered permissible in the Chancellor's opinion, it also involves certain problems. To prevent them, the Chancellor recommended that the units should ensure that conscripts are informed for which infringement they received a minus and, in case of carrying out disciplinary proceedings and issuing administrative acts, the requirements of the Administrative Procedure Act should be observed.

### 2. Headquarters and Signal Battalion

The Chancellor's first inspection visit was to the Headquarters and Signal Battalion, which is a unit subordinate to the Commander of the Defence Forces.

During the inspection visit the Chancellor found some shortcomings and made three recommendations to the Headquarters and Signal Battalion for eliminating them.

The inspection visit revealed that the Headquarters and Signal Battalion had established a system of minuses for recording infringements of the Defence Forces legislation by conscripts. The Chancellor pointed out the dangers involved in the use of such a system (see above).

The inspection visit revealed that in case of imposing additional fatigue-duty on conscripts as a disciplinary measure the relevant proceedings were conducted and the punishment was imposed orally. The Chancellor drew the attention of the unit to the fact that, under the current legal regulation, imposing additional fatigue-duty orally is possible but certain procedural steps must be recorded in writing. The Chancellor also recommended that in the future the unit should impose disciplinary punishments on conscripts in writing.

In its reply to the Chancellor, the Headquarters and Signal Battalion found that in many situations (e.g. during field training) it was not possible or would be extremely complicated to carry out proceedings and impose a punishment in writing. However, the unit explained that conscripts could ask for explanations concerning the imposed punishment and the possibility of contesting it. The unit added that after the relevant obstacles cease to exist a conscript may obtain a written administrative act from their superior concerning the imposed disciplinary punishment.

The inspection visit also revealed that the requests of conscripts for a leave pass have generally received only very brief replies from the Headquarters and Signal Battalion and the replies do not contain sufficient justifications. The Chancellor recommended that in issuing and annulling leave passes to conscripts the battalion should observe the requirements established by legislation.

The Headquarters and Signal Battalion found that a leave pass is a battalion commander's recognition to a conscript and it may be granted to a conscript who has demonstrated excellent behaviour and character and diligence in training.

### **3. Artillery Battalion**

The Chancellor's second inspection visit was to the Artillery Battalion. The Artillery Battalion is a unit within the composition of the North-East Defence District whose main activity during the peace-time is to carry out training of artillery operators.

During the inspection visit the Chancellor found some shortcomings and made two recommendations to the Artillery Battalion for eliminating them.

The inspection visit revealed that upon arrival in the service the belongings of conscripts are subject to inspection, while for carrying out the inspection the conscripts were lined up next to each other and were asked to spread their personal belongings on the pavement. The Chancellor recommended that the Artillery Battalion should ensure that during the inspection of their belongings conscripts are not forced to place their belongings on the ground and the belongings should not be shown to those who have no need to see them.

The North-East Defence District replied to the Chancellor that privacy during the inspection of personal belongings of conscripts would be ensured in future.

Interviews with conscripts during the inspection visit also revealed that each Sunday conscripts were obliged to attend the chaplain's lesson. However, the leadership of the battalion affirmed that attendance at the chaplain's lesson was voluntary.

The Chancellor recommended that the battalion explain to conscripts that attendance at the chaplain's lesson was voluntary.

The North-East Defence District explained that the chaplain's lessons did not contain any religious instruction but were mostly concerned with general morale and behaviour in the Defence Forces. According to the North-East Defence District, religious instruction had always been and would continue to be voluntary and this was once again explained to the conscripts.

### **4. Naval Base**

The Chancellor's third visit was to the Naval Base. The Naval Base is a unit subordinate to the Commander of the Navy, with the main task of planning and organising training and ensuring logistical coastal support.

During the inspection visit the Chancellor found some shortcomings and made four recommendations to the Naval Base for improving its practice.

The inspection visit revealed that the Naval Base had no clear and consistent overview of the number and types of disciplinary punishments imposed on conscripts. The Chancellor recommended that in the future the Naval Base should keep records of the number and types of disciplinary punishments.

The Naval Base replied to the Chancellor that information on disciplinary punishments is maintained as part of the record of incentives and disciplinary punishments in respect of each member of the Defence Forces.

The inspection visit revealed that the Naval Base had established a system of minuses for recording disciplinary infringements of conscripts. The Chancellor recommended to the Naval Base to ensure that requirements under the Administrative Procedure Act are observed when imposing disciplinary punishments.

The Naval Base replied that the relevant commanding officers were notified about the incompatibility of the system of minuses with the law and the use of the system was prohibited.

The inspection visit revealed that the level of exercise of different rights by conscripts in the Naval Base (receiving of visitors, use of the mobile phone, visiting the soldiers' leisure centre, etc) was unequal. The Chancellor recommended to the Naval Base to introduce measures to ensure equal treatment of conscripts in the exercise of their rights.

The Naval Base replied that in order to ensure equal treatment of conscripts in the exercise of their rights it planned to regulate the exercise of the rights in internal rules of sub-units which at the time of the reply were being reviewed.

The inspection visit revealed that the furnishing in the detention room in the entry control point of the Naval Base did not comply with the requirements established by the legislation.

The Chancellor recommended to the Naval Base to furnish the detention room so that safe detention and dignity of detained persons is ensured and to partition the toilet from the rest of the cell.

The Naval Base replied that furnishing of the detention room is based on the consideration that it is intended for short-term detention of persons who behave aggressively against themselves or others and, therefore, it is not considered necessary to include in the room items which can be used for injuring oneself or others. The Naval Base also explained that the toilet would be partitioned from the rest of the cell by elevated walls.

## 5. Logistics Battalion

The Chancellor's fourth inspection visit was to the Logistics Battalion. The Logistics Battalion is a unit within the Defence Forces Logistics Centre with the main task of ensuring logistical training in the Defence Forces and preparing logistical units for the time of war, for military operations as well as reserve units performing logistical functions.

During the inspection visit the Chancellor found some shortcomings and made five recommendations for eliminating them.

The inspection visit revealed that the Logistics Battalion had no clear overview of the number and types of disciplinary punishments imposed on conscripts. The Chancellor recommended that in the future the Logistics Battalion should keep precise records of all the disciplinary punishments imposed on conscripts.

The Logistics Battalion replied that all the relevant members of the battalion would be informed that incentives and disciplinary punishments should be entered on the record of incentives and disciplinary punishments of each respective member of the Defence Forces within three days by the responsible person. The Logistics Battalion also replied that, if necessary, the lawyer of the battalion would carry out necessary training.

The inspection visit revealed that under the internal rules of the Logistics Battalion conscripts may receive visitors for one hour once a week. The leadership of the battalion explained that this was only the so-called control period and conscripts could extend the time of receiving the visitors. The Chancellor found that the internal rules did not mention a conscript's right to extending the time of the visit and did not contain any procedures for extending the time. Therefore, the Chancellor recommended that the battalion should amend the internal rules, so as to make it clear for conscripts that the one-hour visiting time a week is not maximum.

The Logistics Battalion replied that the internal rules would be amended, so that it is clear for conscripts that the one-hour visiting time a week is not maximum.

The inspection visit revealed that conscripts had to receive visitors in open air or in an unheated shelter. The Chancellor recommended to the battalion to ensure that conscripts could receive visitors indoors in a heated room.

The Logistics Battalion explained that due to shortage of space it was not possible to ensure that conscripts could receive visitors indoors in a heated room. The battalion admitted that the conditions of receiving visitors were not very good in winter but, when necessary, one or several large heated military tents are set up outside.

The inspection visit revealed that the clause in the internal rules of the battalion, under which persons who are ill are prohibited from receiving visitors, was interpreted so that receiving of visitors was prohibited for all the conscripts who had been imposed one of the regimes listed in the internal rules (including, for example, a regime under which a conscript would attend all classes but does not participate in physical exercises). The Chancellor found that prohibition of receiving of visitors should not be an automatic consequence of imposing a regime and recommended that in the future the battalion should allow receiving of visitors for all conscripts, except those whose condition of health prevents it.



The Logistics Battalion replied that the internal rules would be amended, so that sick persons whose health permits could also receive visitors.

The inspection visit revealed that, during the health examination of conscripts upon their arrival in the battalion, third persons were present in the examination room in addition to the respective conscript and medical staff. The Chancellor found that this constitutes a violation of the requirements of processing sensitive personal data.

The Chancellor recommended that in the future the Logistics Battalion should ensure that no third persons without the right of processing sensitive personal data are present at the time of performing the initial health examination of conscripts.

The Logistics Battalion replied that an order had been issued that no third persons could be present in the room at the time of performing the health examination of conscripts.

## VI. PRISONS

### 1. General outline

At the end of 2009, Estonia had five prisons, all of them within the area of government of the Ministry of Justice. In 2009, the Chancellor of Justice carried out a comprehensive inspection visit to two prisons. On 11 March 2009, an inspection visit to Murru Prison was made (Inspection visit to Murru Prison, case No 7-7/090079) and on 30 September 2009 to Tartu Prison (Inspection visit to Tartu Prison, case No 7-7/091707).

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

Murru Prison was included among the inspected establishments first and foremost due to the fact that after the opening of Viru Prison the number and structure of prisoners in Murru Prison has changed significantly and the prison buildings have also been renovated. Thus, it was important to ascertain the situation in Murru Prison after the extensive changes. In case of both prisons, it was also taken into account that more than two years had passed from the Chancellor's previous comprehensive visit. The Chancellor's previous inspection visit to Murru Prison took place on 16 April 2007 and to Tartu Prison on 27-28 March 2006.

Three main systematic problems may be highlighted on the basis of inspection visits to prisons in 2009, which, unfortunately, continue to be topical for prisons in Estonia.

First, the conditions prevalent in the last remaining unrenovated prisons deriving from the Soviet period do not enable guaranteeing the rights of prisoners on the level presumed in the 21st century Europe. One such prison is Murru Prison in which several rooms (especially washing rooms for prisoners) did not conform to the requirements during the Chancellor's visit.

During all his inspection visits to prisons which have facilities deriving from the Soviet time and are unrenovated, the Chancellor has made proposals for refurbishing the rooms and the prisons have complied. For example, in Murru Prison, rooms for the provision of health care services have been refurbished and, according to the prison administration, other rooms in a particularly poor sanitary condition are refurbished step by step (washing rooms in 2009).

There are still plans to construct a new complex of buildings for Tallinn Prison (which also has depreciated facilities). However, building the new Tallinn Prison has been delayed due to several court disputes. Yet the Chancellor is glad to note that more than half of all the detained persons in Estonia are held in modern prison facilities (Tartu and Viru Prison).

Secondly, it is still difficult for prisoners to protect their rights by contacting the prison administration and other state agencies, because awareness of prisoners about their rights is not high and they only have limited possibilities to familiarise themselves with the relevant legislation and other materials before contacting state agencies for the protection of their rights. The choice of legislative acts available to prisoners is small, and often the available texts are not the current up-to-date versions.

The Chancellor has consistently emphasised the need to ensure possibilities for prisoners to have access to up-to-date versions of legislation regulating imprisonment. The situation in this regard has significantly improved in the recent years. There are possibilities to access legislation and court judgments through the Internet, and access to legislation in languages other than the state language is also ensured increasingly better.

Thirdly, one of the key problems in 2009 was related to the processing of health data of prisoners. There was widespread practice in prisons, where prisoners had to note information about their health in a request for receiving an appointment with a doctor. The requests were collected by a prison officer who then forwarded them to the health care department.

Having analysed the factual background of the problem and the legal situation, the Chancellor concluded that only persons providing the health care service are entitled to process data about a person's health and only in cases when the processing is registered. Guards and inspectors/contact persons are generally not among providers of health care services and, therefore, they are not entitled to process the relevant data.

In view of the Chancellor's recommendation, on 25 November 2009 a person responsible for the processing of sensitive personal data in prisons was appointed to deal with this field in all prisons.

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

## 2. Murru Prison

Murru Prison is an institution within the area of government of the Ministry of Justice which carries out imprisonment. Murru Prison is a closed prison which also includes an open prison department. The prison has 582 places (including 48 places in the open prison department). Murru Prison is used to execute sentences in respect of persons who have committed sexual criminal offences or traffic-related criminal offences, who are serving sentences of up to six months or have low risk of recidivism and a low threat level, or prisoners aged over 55.

The inspection visit to Murru Prison focused on the above-mentioned possibilities for prisoners to protect their rights, the living conditions in the prison, provision of medical services, but also on the supervision of measures for ensuring the security of the prisoners and the prison.

The interviewed prisoners pointed out that sometimes inspectors/contact persons whose mother tongue was Estonian were unable to provide sufficient explanations in Russian. During interviews with contact persons, they themselves admitted their insufficient knowledge of Russian.

The Chancellor concluded, in view of the fact that inspector/contact persons are at the forefront of prison service, their poor knowledge of Russian may cause problems for prison security and compromise the achievement of objectives of imprisonment and thus legal order in general. Therefore, the Chancellor considered it extremely important to ensure that persons with suitable knowledge and personality traits are hired as inspector/contact persons, and that they receive regular training in the fields which are of central importance for performance of their work (e.g. language training, communication training, etc).

On this basis, the Chancellor made a recommendation to pay attention to raising the qualifications of inspector/contact persons, enabling them to attend various training courses necessary for raising their skills (first and foremost language training) and to facilitate participation of contact persons in such training.

In response to the Chancellor's recommendation, the director of Murru Prison noted that the training programme for inspector/contact persons in the second half of 2009 also includes a Russian language course. The director also noted that the courses would be carried out in Murru Prison, attendance at the courses is counted as working time and the prison would ensure participation for all the relevant staff.

## 3. Tartu Prison

Tartu Prison is an institution within the area of government of the Ministry of Justice which carries out imprisonment and custody pending trial and organises probation supervision. The prison has 479 cells and 938 prisoner places, and the size of a cell is approximately 10 m<sup>2</sup>. Tartu Prison is a closed prison which also includes an open prison department.

The inspection visit to Tartu Prison focused on verification of possibilities for communication, provision of health care services, as well as access to materials necessary for the protection of one's rights. The above-mentioned problem with access to current versions of legislation also existed in Tartu Prison, but the issue was already explained above.

To verify the provision of health care services, an expert from the Health Care Board also participated in the visit. No problems with health care services were found. The inspection visit also revealed the use of an extremely questionable restraining measure of fixing a person to a bed without sufficient monitoring. With regard to this issue, the Chancellor initiated separate proceedings to ascertain the practice of using such restraining measures in Estonian prisons, and the Chancellor will form his opinion based on the findings of the proceedings.

Interviews with prisoners revealed that only one telephone existed for use by the whole accommodation bloc. During the inspection visit, there were 58 prisoners in the accommodation bloc and access to the phone was provided on weekdays at 10.30-12.30 and 15.00-17.00, thus a total of four hours.

Prisoners claimed that, in order to make a phone call, every time after the opening of the cell doors they queued up and it was not rare that some prisoners were not able to make a call because there was only one phone for the large number of prisoners. If a prisoner happens to be among those whose cell door is opened among the last, they might not get an opportunity to call within the same day. Although according to the prisoners the order of opening the cell

doors varied from day to day, it was still difficult to have access to the only phone available for the large number of prisoners. One prisoner also complained that his spouse was a teacher and could not answer the phone on weekdays during the time allocated for making phone calls, and therefore his telephone communication with the spouse was only limited to weekends.

The Chancellor found that, in a situation with a large number of prisoners where access to the telephone is provided only four hours a day, it was not excluded that in some accommodation blocs weaker prisoners or prisoners having less influence were unable to use the telephone even within the minimum extent provided for by legislation. To avoid this risk, the Chancellor recommended that the number of telephones in accommodation blocs should be increased.

During interviews with the prison administration, advisers to the Chancellor were informed that there were plans to install more telephones. Until the installation of additional telephones, the Chancellor asked to consider the possibility to draw up a list for the use of the telephone in accommodation blocs where the number of prisoners per one telephone is more than fifty persons and access to the phone is provided only during four hours a day. This would help to reduce the risk that, depending on the order of opening the cell doors or the influence of a prisoner among others, the right of some prisoners to the use of the phone would become practically non-existent.

Considering the importance of telephone calls for maintaining social links of prisoners, the Chancellor considered it important that in justified cases persons who due to objective circumstances may need to use a phone outside the scheduled periods would be offered this possibility, even if only once a week.

## VII. PROVIDERS OF INVOLUNTARY EMERGENCY PSYCHIATRIC CARE

During the reporting period, there were eleven hospitals providing involuntary emergency psychiatric care in Estonia. In 2009, the Chancellor of Justice carried out inspection visits to four such health care institutions. Two inspection visits were made to institutions not previously visited by the Chancellor: on 27 January 2009 to the psychiatric clinic of the South-Estonian Hospital (Inspection visit to the psychiatric clinic of the South-Estonian Hospital AS, case No 7-9/081957) and on 20 April 2009 to the psychiatric clinic of Tallinn Children's Hospital Foundation (Inspection visit to the psychiatric clinic of Tallinn Children's Hospital Foundation, case No 7-9/090461). One case involved follow-up proceedings concerning an inspection visit made in 2007: on 28 April 2009 an inspection visit to the psychiatric unit of Kuressaare Hospital Foundation (Inspection visit to the psychiatric unit of Kuressaare Hospital Foundation, case No 7-9/090639). In one case, it was also necessary to verify the circumstances of a petition submitted to the Chancellor of Justice: on 17 March 2009 an inspection visit to department No 5 of the psychiatric clinic of the North-Estonian Regional Hospital Foundation (Inspection visit to department No 5 of the psychiatric clinic of the North-Estonian Regional Hospital Foundation, case No 7-9/090378).

Two first ones of the above inspection visits were announced visits scheduled in the Chancellor's annual work plan and the two last ones were unannounced visits. The choice of the inspected institutions was also based on the consideration to carry out at least one visit every three years to each institution.

It was characteristic for all the inspected institutions that the provision of health care services did not comply with the Minister of Social Affairs Regulation No 132 of 15 November 2002, "Standards of living conditions in hospitals". The regulation establishes standard living conditions for the provision of in-patient health care services applicable in hospital wards, recreational and catering facilities and toilets in hospitals. The main problem was non-compliance of furnishings in hospital wards with the regulation, as well as insufficient furnishing of hygiene facilities (e.g. toilets were often lacking paper and soap). In feedback, providers of health care services pointed out that the provisions of the above regulation do not meet the needs of acute psychiatry and in drawing up the provisions psychiatric experts were probably not consulted. If all the items required under the regulation were provided in toilets in acute psychiatric units the health and life of patients could be endangered.

The Chancellor forwarded the opinion of the institutions to the Minister of Social Affairs for analysis and consideration of possible amendments. The analysis by the Minister of Social Affairs showed that in the opinion of the major providers of psychiatric services installing of mirrors, clothes pegs and placement surfaces in toilets in acute psychiatric units was not possible. On this basis, the Minister agreed with the need to introduce exceptions for the provision of acute psychiatric services in the Minister of Social Affairs Regulation No 132 of 15 November 2002, "Standards of living conditions in hospitals". Amendment of the regulation was included in the Ministry of Social Affairs work plan for 2010.

Another major problem is related to limited opportunities for spending free time for persons under treatment with a health care services provider, in particular patients under involuntary treatment. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in its 8th General Report has emphasised the importance of ensuring living conditions as close to everyday life as possible<sup>39</sup>: "37. Psychiatric treatment should be based on an individualised approach, which implies the drawing up of a treatment plan for each patient. It should involve a wide range of rehabilitative and therapeutic activities, including access to occupational therapy, group therapy, individual psychotherapy, art, drama, music and sports. Patients should have regular access to suitably-equipped recreation rooms and have the possibility to take outdoor exercise on a daily basis; it is also desirable for them to be offered education and suitable work." Also under § 8 of the Minister of Social Affairs Regulation No 103 of 19 August 2004, "Requirements for different types of hospitals", in case of provision of psychiatric health care services on the level of a central hospital patients must, *inter alia*, be offered a possibility for outdoor exercise.

In all the institutions inspected in 2009, patients had no possibility for independent outdoor exercise (i.e. without an accompanying attendant assigned by the health care provider). Only in one institution it was possible to be on a balcony independently.

In order to analyse the issue and find solutions, the Chancellor contacted the Health Care Board (since 1 January 2010 the Health Board). The Chancellor explained that the possibility to take outdoor exercise should be organised in a way as to minimise the dependence of the exercise of this right on the discretion of a health care worker. In order to enable persons with restricted liberty to take outdoor exercise, possibilities for creating a closed-off movement and exercise area within the immediate vicinity of the health care provider should be considered, so that patients could spend time there even without a constant supervision of a health care worker.

The Health Board included in its action plan for 2010 a targeted survey to analyse the right and opportunities to take outdoor exercise for persons receiving in-patient treatment with psychiatric care providers, and promised to involve representatives from other institutions and service providers in the analysis.

<sup>39</sup> 8th General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT/Inf (98) 12). Available online at <http://www.cpt.coe.int/en/annual/rep-08.htm>.

## VIII. PROVIDERS OF SPECIAL CARE SERVICES

### 1. General outline

During the reporting period, there were seven social welfare institutions in Estonia, providing 24-hour special care services to persons placed in the institution upon a court ruling and in respect of whom the right of free movement may be restricted for the period of providing the service (i.e. a person is placed in a closed department). In 2009, 32 service providers offered 24-hour special care services in the course of which isolation may be used as a means for restricting the movement of a person (i.e. a person is placed in an isolation room).

In 2009, four inspection visits to 24-hour special care providers were carried out. The inspected institutions were the non-profit association South-Estonian Special Care Services Centre (Inspection visit to the non-profit association South-Estonian Special Care Services Centre, case No 7-9/081892), Erastvere Care Home (AS Hoolekandeteenused) (Inspection visit to Erastvere Care Home (AS Hoolekandeteenused), case No 7-9/090222), Koluvere Care Home (AS Hoolekandeteenused) (Inspection visit to Koluvere Care Home (AS Hoolekandeteenused), case No 7-9/090306) and Koeru Care Centre Foundation (Inspection visit to Koeru Care Centre Foundation, case No 7-9/091404).

The Chancellor had not made any previous inspection visits to these institutions.

The choice of the inspected institutions was mostly based on the Chancellor's annual work plan and proceeded from the need to visit institutions not inspected previously. Petitions received by the Chancellor from service recipients (the number of petitions as well as the problems described in them) also affected the choice of the time and place of the inspections.

One of the main problems concerning the South-Estonian Special Care Services Centre and the care homes operated by AS Hoolekandeteenused was insufficient information provided to service recipients about their rights during the stay in the institutions. In addition, service recipients were insufficiently informed about the complaint mechanism and the right and procedure of having recourse to other supervisory authorities.”

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in paragraph 122 of its report on a visit to Estonia<sup>40</sup> has also noted that “An introductory leaflet/brochure setting out the establishment's routine and patients'/residents' rights should be issued to each patient/resident on admission, as well as to their families. Any patients/residents unable to understand this brochure should receive appropriate assistance.” Under the Social Welfare Act, upon commencement of the provision of special care service to a person, a provider of the service is required to notify, orally or in writing, the person and their legal representative (if the representative exists) of its rules of procedure and the rights of the person and restrictions during the receipt of the service, if the person is able to understand what is said or read. If the person is not able to understand what is being said or read, the legal representative of the person is notified of the rules of procedure of the service provider and the rights of the person and restrictions during the receipt of the service (§ 11<sup>31</sup>(1) clause 1 of the Social Welfare Act).

On this basis, the service provider must notify the service recipient about its rules of procedure in a manner that ensures understanding of the content of notification by the person. If a service recipient is unable to understand the text or what is being explained orally, the person's legal representative must be informed. The purpose of the duty of notification is to ensure that the provision of service to a person is as understandable and simple as possible. The service recipient must be immediately aware of the rules of procedure. If a person is not notified, they cannot be expected to comply with the rules. As service providers deal with persons with special mental needs on a daily basis and they also have specially qualified staff, service providers are competent to find possibilities how to best notify the service recipients. If a person's condition does not allow them to understand what is being said, the service provider must notify the person's guardian who is able to protect the person's rights and interests. Drawing up written information materials for service recipients serves the purpose of providing comprehensive information. Persons with special mental needs might not correctly understand everything that is said orally. Even if an oral contact with a person was established, written re-presentation of the information helps to reaffirm what was explained orally and avoid incorrect conclusions and unnecessary misunderstanding. Drawing up written information is also important in terms of the right of complaint. Information materials containing rights and duties of service recipients should be made available to each service recipient and their legal representative regardless of whether they requested the information or not.<sup>41</sup>

<sup>40</sup> Available online: [http://www.vangla.ee/orb.aw/class=file/action=preview/id=11917/CPT\\_eesti.pdf](http://www.vangla.ee/orb.aw/class=file/action=preview/id=11917/CPT_eesti.pdf).

<sup>41</sup> Similarly, see e.g. the Supreme Court Administrative Law Chamber judgment of 15 February 2005, No 3-3-1-90-04: “Duties of administrative authorities include not only the conducting of inevitable proceedings formally needed for adopting legal acts but also the duty to take care that persons not knowledgeable about law and not skilled in bureaucracy would be able to participate effectively in the proceedings. Counselling and explaining may take place both at the request of the person as well as on the initiative of the administrative authorities.”

On this basis, the Chancellor made a recommendation to the South-Estonian Special Care Services Centre and AS Hoolekandeteenused to draw up exhaustive and comprehensible materials on the rights of service recipients for distribution to them, describing the internal rules of the institution, rights and duties of service recipients and indicating the possible complaint mechanisms (both in-house and external procedures and the possibilities for their use). It is advisable to include in the information brochure a form for in-house submission of complaints and proposals. This document should be issued in writing to all the service recipients in a language they understand and, where applicable, to their legal representatives. If necessary, the institution should provide additional explanations about the content of the document.

In response to the Chancellor's recommendation, the South-Estonian Special Care Services Centre drew up the relevant information material and now distributes it to all the service recipients. AS Hoolekandeteenused plans to publish the relevant materials in 2010. Until then the materials would be made available to service recipients on notice boards and as appendices to client agreements.

The inspection visits to both Koluvere Care Home (AS Hoolekandeteenused) and Koeru Care Centre Foundation revealed several shortcomings in isolating persons from other service recipients. Due to a different focus of the problems, they are treated separately below under the respective inspection visits.

After each inspection visit the Chancellor made proposals and recommendations to the institution for ensuring fundamental rights of persons. To verify compliance with the proposals and recommendations, the Chancellor carried out follow-up visits to three of the institutions. The follow-up visit to Koeru Care Centre Foundation will be carried out in 2010.

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

## **2. Non-profit association South-Estonian Special Care Services Centre**

On 28 January 2009, the Chancellor of Justice carried out an inspection visit to non-profit association South-Estonian Special Care Services Centre (hereinafter the care home). This is a non-profit association established by the South-Estonian Hospital AS and the non-profit association Terve Võrumaa. The care home provides special care services, including 24-hour special care service (56 places, including 5 places for 24-hour special care service for persons placed in the institution upon a court ruling).

In addition to problems with the duty of notification described above, the inspection revealed that not all the staff of the care home had received training to communicate with persons with mental problems. The Chancellor drew the attention of the care home to the fact that staff who come into contact with persons under care are required to undergo the relevant training on the protection of human dignity, human rights and fundamental freedoms of persons with mental problems, as recommended by the Council of Europe Committee of Ministers<sup>42</sup>, and recommended to the head of the institution to organise the relevant training for all staff who come into contact with persons under care in the institution. The head of the institution promised to start the training in order to ensure that all activity supervisors receive the training offered for activity supervisors by the National Institute for Health Development. The care home has organised in-house training seminars with attendance of all the staff, including on the following topics: target group of persons with mental problems, management of problem behaviour, overview of different possibilities of intervention, and rights of service recipients.

The inspection visit revealed that the care home had not formed a board of trustees in accordance with the relevant provision of the Social Welfare Act (§ 17(5) of the Social Welfare Act). The Chancellor found that the law does not clearly regulate<sup>43</sup> the bases for the formation and operation of the board of trustees in a care home, or its competencies, and contacted the Minister of Social Affairs with regard to this issue. The Minister of Social Affairs agreed with the Chancellor's opinion that the regulation under the law is not sufficiently clear and understandable and promised to introduce clarifying amendments to the relevant provision of the Social Welfare Act in 2010.

## **3. Erastvere Care Home (AS Hoolekandeteenused)**

Advisers to the Chancellor of Justice carried out an inspection visit to Erastvere Care Home (hereinafter the care home) on 24 March 2009. The care home is within the area of administration of AS Hoolekandeteenused since 1

<sup>42</sup> Council of Europe Committee of Ministers Recommendation Rec(2004)10, Article 11.2. Available online: <https://wcd.coe.int/ViewDoc.jsp?id=775685&Site=COE>

<sup>43</sup> Section 13(2) of the Constitution lays down the principle of legal clarity. The principle of legal clarity means that legal norms must be sufficiently clear and understandable.

October 2007. The sole shareholder of AS Hoolekandeteenused is the Ministry of Social Affairs. The care home offers special care services, including 24-hour special care service (159 places, including 40 places for special care service for persons placed in the institution upon a court ruling).

In addition to problems with the duty of notification described above, the inspection revealed that four persons were staying in the closed department of the care home involuntarily and without a court authorisation. The closed department is used for persons placed in the care home upon a court ruling. The freedom of movement of persons in the closed department is significantly restricted – the ability to move around is limited to the rooms of the department, moving outside the rooms of the department is only possible with an accompanying attendant. The four persons had not given their consent for placement in the care home. They were staying in the closed department based on a decision of the head of the care home.

Placement of a person in a closed institution may take place either with or without the person's consent. The conditions and procedure for placement in a social welfare institution are established by the Social Welfare Act. Under § 19(5) of the Act, a court may place a person in a social welfare institution for care-giving without their consent for a period of up to one year as of the making of the ruling. Thus, a person's placement in a closed social welfare institution should be based:

- a. on the person's consent (if a guardian has been appointed to a person, a guardian's consent is not a basis for placement under § 19(3) of the Social Welfare Act),
- b. a court authorisation (i.e. court ruling).

In this case, there was no court authorisation or a person's consent for placement in a closed social welfare institution. The persons were in the closed department based on the decision of the head of the care home. However, the legislator has not given other persons besides the court the right to assess the need for the application of involuntary care. A head of a care home is not entitled to place a person involuntarily in a closed department without a court authorisation.

Under the Social Welfare Act, the right of free movement may be restricted in respect of persons who have been placed in a social welfare institution on the basis of a court ruling, and persons who receive 24-hour special care, if the restriction is necessary for the protection of the person or the rights and freedoms of others (§ 20<sup>2</sup> of the Social Welfare Act). A provider of 24-hour special care service may restrict the right of movement of a service recipient with mental problems only to the extent that is necessary for the protection of the person or the rights and freedoms of others. Thus, it is allowed to restrict the freedom of movement in respect of persons who have been placed under involuntary care upon a court authorisation. In addition to persons placed under care upon a court ruling, a service provider may also restrict the freedom of movement of persons who are receiving the 24-hour special care service voluntarily. However, in case of voluntary service recipients, the freedom of movement is restricted only in exceptional cases and with the help of methods regulated under § 20<sup>2</sup> of the Social Welfare Act. The health situation of a voluntary service recipient may also be serious and, therefore, in case of deterioration of the person's health it may be necessary to use isolation to ensure the safety of the person and others.

This shows that in restricting the freedom of movement clear distinction is made between persons who have been placed under care on the basis of a court ruling and persons who are receiving the service voluntarily. In respect of the latter category, it is not allowed to apply restrictions of movement to the same extent as in respect of persons placed under care upon a court authorisation. The Social Welfare Act does not give a head of a welfare institution the right to place voluntary service recipients for an unspecified period in a closed department where persons placed in the institution upon a court ruling are staying and where the freedom of movement is significantly restricted.

On this basis, the Chancellor concluded that involuntary placement of the four persons in the closed social welfare institution as well as the restriction of their freedom of movement was not lawful, as no legal basis for this existed. Therefore, the Chancellor proposed to the head of the care home to terminate immediately the detention of persons and restriction of their freedom of movement without a legal basis. The Chancellor also recommended that the management board of AS Hoolekandeteenused should ensure that no detention of persons and restriction of their freedom of movement without a legal basis occurs in the care homes within the company's area of administration.

The chairman of the board of the company informed the Chancellor that the incident where four persons were staying in the closed department of the care home without their consent or a court authorisation was resolved without any delay and the company has performed supervision to ensure that no such violations occur in any of the care homes within its area of administration.

In addition to the above problems, the inspection visit revealed that persons receiving 24-hour special care were accommodated three to five persons per room. Sleeping rooms have a floor area of about 20 m<sup>2</sup>, there is no sufficient space to move around in the rooms and they are clearly overcrowded. According to the explanations by the head of



the care home, after the completion of renovation of the rooms the regulation established by the Minister of Social Affairs is taken into account when placing persons to rooms. According to the Minister of Social Affairs regulation, sleeping rooms in social welfare institutions are usually intended to accommodate one or two persons. The minimum area of a sleeping room in case of accommodating one person must be 8 m<sup>2</sup> and in case of two persons at least 12 m<sup>2</sup>.

The Chancellor recommended to the head of the care home that after the completion of the renovation, persons should be accommodated in compliance with the requirements established for rooms in social welfare institutions. Chairman of the board of AS Hoolekandeteenused announced that the repairs in the department for 24-hour reinforced supervision were finished and compliance with the requirements for the rooms was ensured.

#### **4. Koluvere Care Home (AS Hoolekandeteenused)**

On 25 February 2009, advisers to the Chancellor of Justice carried out an unannounced inspection visit to Koluvere Care Home (hereinafter the care home). The care home is owned by AS Hoolekandeteenused which operates within the area of administration of the Ministry of Social Affairs. The care home offers special care services, including 24-hour special care. The care home has 35 places for 24-hour special care service for persons placed in the institution upon a court ruling. The aim of the inspection visit was to verify whether isolation of persons from other service recipients in the care home was in conformity with the requirements of the legislation. Advisers to the Chancellor verified the practice of isolating persons in the care home in the period of 1 January 2008 to 25 February 2009 and found serious shortcomings.

First, in cases of isolating a person the care home did not notify the person's legal representative under § 20<sup>2</sup>(7) of the Social Welfare Act. The director of the care home affirmed that they did not follow the practice of notifying a person's legal representative in case of isolation. The Chancellor found that the care home had to change its practices concerning isolation of persons and, in the future, a person's legal representative should be notified of such cases. Notifying a legal representative is necessary to ensure that the representative is informed about the decisions restricting a person's rights and freedoms. Then a legal representative is able to assess whether a person's rights and interests were guaranteed upon isolation and, if necessary, take measures for protecting the person's rights.

Second, after the termination of isolation the care home did not record in documents that the purpose and cause of the isolation had been explained to the person who had been isolated. The Chancellor found that in the future the care home had to record in writing that such explanation had occurred, e.g. either making a relevant note in the written isolation report, in a person's file or other document (e.g. a journal for registering cases of isolation). A written record of such information is necessary to enable later verification (e.g. by a person's legal representative) of whether, when and by whom the explanation of the purpose and causes of isolation was given to the person who was isolated.

Third, the care home had not drawn up instructions for managing problem behaviour and isolation of restless and violent persons as required by § 20<sup>2</sup>(10) of the Social Welfare Act. The Chancellor found that AS Hoolekandeteenused had to draw up the relevant instructions for all the providers of 24-hour special care within its area of administration. The instructions are necessary to ensure that the behaviour of restless and violent persons is always managed in accordance with a specific procedure and there are no cases where rights of persons are restricted unreasonably and no unnecessary measures are used in certain situations.

With regard to the above circumstances, the Chancellor recommended to the director of the care home that in the future a person's legal representative should be notified about the isolation and the explanation of the purpose and cause of the isolation to the person should be documented. AS Hoolekandeteenused should also draw up instructions for managing problem behaviour and isolation of restless and violent persons for all the care homes providing 24-hour special care service within its area of administration.

Chairman of the board of AS Hoolekandeteenused informed the Chancellor that the procedure for managing problem behaviour and application of restrictions was approved on 5 October 2009. The procedure also establishes that upon a person's isolation the police and ambulance are called at the first opportunity; the support person would notify a person's legal representative if a representative has been appointed; and after the termination of isolation the purpose and cause of the isolation is explained to the persons and an incident report is drawn up containing also the record of the explanations given, time of the explanation and the name and position of the member of the staff who provided the explanation.

#### **5. Koeru Care Centre Foundation**

Advisers to the Chancellor of Justice carried out an inspection visit to Koeru Care Centre Foundation (hereinafter the care centre) on 6 October 2009. The care centre was founded on 10 December 2003 by the Republic of Estonia. The

centre offers special care services. At the time of the visit, the care centre was providing 24-hour special care service to 85 persons.

The inspection revealed that no geriatric assessment had been carried out in respect of some of the persons receiving the service in the memory training (psychogeriatrics) department. According to the representatives of the care centre the absence of the evaluation was due to insufficient availability of the service.

According to the “Development plan of the nursing care network in Estonia for 2004-2015”<sup>44</sup>, drawn up by the Ministry of Social Affairs, the needs of a client are assessed and an individual nursing care plan is drawn up by an interdisciplinary (geriatric) assessment team, i.e. a geriatrics team. The team includes a doctor (geriatrist or an internal medicine doctor with training in geriatrics), nurse, social worker and, where necessary, other specialists. As a rule, primary assessment of the needs is performed in a geriatrics department of a hospital but also on the level of out-patient nursing care or at a person’s place of residence on referral by a family doctor, treating doctor or social worker. According to the Minister of Social Affairs regulation, a summary of the assessment of the geriatric condition also includes a description of the main problems by the doctor, nurse and social worker, a summary of the geriatrics team of the main problems that need to be resolved, and the objectives and plan of further action. This guarantees the assessment of a person’s health and, subsequently, the provision of individualised services can be planned.

The Chancellor made a recommendation to the Minister of Social Affairs to analyse the availability of the service of geriatric assessment throughout Estonia based, inter alia, on the objectives and indicators contained in the development plan of the nursing care network in Estonia for 2004-2015. If the results of the analysis reveal shortcomings in ensuring sufficient and universal availability of the geriatric assessment service, the Chancellor asked to prepare, by involvement of all the relevant parties, an action plan for ensuring adequate availability of the service.

Similarly to Koluvere Care Home, Koeru Care Centre also had serious problems with organising isolation of persons.

First, the inspection revealed that on four occasions in 2009 a person had been isolated from other service recipients for more than three consecutive hours. Under § 20<sup>2</sup>(5) and (6) of the Social Welfare Act, before isolation the provider of 24-hour special care service must notify the provider of the ambulance service or the police, and a person may be isolated from other persons receiving the service until the arrival of the provider of the ambulance service or the police, but not for longer than three consecutive hours. The Chancellor found that the care centre had to change its practice concerning the duration of isolation of persons and in the future a person could be isolated from other service recipients until the arrival of the provider of the ambulance service or the police, but not for longer than three consecutive hours. Isolation must be terminated upon the arrival of the provider of the ambulance service or the police to take the person either to the police or a psychiatric hospital. Isolation must be terminated in case the criterion mentioned by the law ceases to exist (i.e. the threat has passed) and in any case after three hours from the beginning of the isolation. If after the termination of isolation a practical need arises (if the conditions for isolation laid down by the law are fulfilled) to isolate the person again, this is considered to be a new case of isolation and the decision-making, documentation and notification of the isolation must conform to the requirements established by the Social Welfare Act.

Second, the inspection visit revealed that the care centre did not draw up a written report upon isolation of persons. Drawing up a written document and recording of isolation as an application of a type of restraining measure is stipulated in the UN Principles for the Protection of Persons with Mental Illness<sup>45</sup> and in the CPT Standards<sup>46</sup>. Also under § 20<sup>2</sup>(8) of the Social Welfare Act, a provider of 24-hour special care service who uses isolation is required to prepare a written report. The Chancellor found that the care centre must change the practice of documenting the cases of isolation of persons and in the future draw up a written report in each case of isolation. A written report is necessary to enable exercising supervision as well as in cases when a person wishes to file an administrative challenge or have recourse to the court for the protection of their rights and against the care centre’s decision of isolation. This also helps to centralise information on the types of cases where isolation is used and to decide, on the basis of the information, whether, for example, additional training or additional instructions are needed for those who make decisions on isolation (in this case the head or acting head the care centre).

The Chancellor recommended to the administration of the care centre that in the future they should isolate a person from other service recipients until the arrival of the ambulance service provider or the police, but not for longer than three consecutive hours, and draw up a written report on each case of isolation. The Chancellor will carry out a follow-up inspection in 2010 to verify compliance with the recommendations made to the Minister of Social Affairs and the administration of the care centre.

44 Available online: [http://www.sm.ee/fileadmin/meedia/Dokumendid/Tervisevaldkond/Tervishoid/Eesti\\_hooldusravivorgu\\_arengukava\\_2004-2015.pdf](http://www.sm.ee/fileadmin/meedia/Dokumendid/Tervisevaldkond/Tervishoid/Eesti_hooldusravivorgu_arengukava_2004-2015.pdf)

45 Available online: <http://www.un.org/documents/ga/res/46/a46r119.htm>.

46 Available online: <http://www.cpt.coe.int/lang/est/est-standards-s.pdf>

## IX. SPECIAL SCHOOLS

After the closing of Puiatu Special School on 1 September 2009 there are still two schools for children requiring special educational measures due to behavioural problems (special schools): Tapa Special School for boys and Kaagvere Special School for girls. On 30 September 2009, the Chancellor of Justice carried out an inspection visit to Tapa Special School (Inspection visit to Tapa Special School, case No 7-9/091409).

The Chancellor in his annual action plan schedules inspection visits to special schools at intervals which enable making a comprehensive visit to each special school at least once every three years (desirably even more often). In addition, the Chancellor collects information about the situation in special schools from the complaints received by the Chancellor, as well as from the media, and, if necessary, a particular special school can be visited more frequently.

The choice of the inspected institution in case of Tapa Special School was based first and foremost on the fact that after the closing of Puiatu Special School the composition of pupils in Tapa changed significantly. Earlier, only pupils with Russian as their mother tongue attended Tapa Special School, but since 1 September 2009 Estonian-speaking boys are also placed in the school. Several boys from Puiatu Special School were also transferred to Tapa Special School. Therefore, it was important to ascertain the situation in Tapa Special School after the major changes. The choice of the school was also based on the consideration that two years had passed from the Chancellor's previous comprehensive visit to the school. The Chancellor has previously inspected Tapa Special School on several occasions, the latest visit took place in 2007 (Inspection visit to Tapa Special School, case No 7-9/071395).<sup>47</sup>

Tapa Special School is a basic school in the area of government of the Ministry of Education and Research for children requiring special educational measures due to behavioural problems. Pupils are referred to the school upon a request by the juvenile committee of the child's residence on the basis of a court ruling or judgment. Boys in the age of 10-17 and in need of special educational treatment due to behavioural problems are sent to the school. The languages of instruction at the school are Russian and Estonian.

The inspection visit of 2009 again raised two more systematic problems, which unfortunately remain topical in case of all the special schools in Estonia.

The first problem relates to the fact that studying side by side in special schools are pupils who have come to the school from custodial institutions and pupils who have serious mental problems. It was found that even the majority of pupils in Tapa Special School had mental problems. At the same time, all the heads of special schools in Estonia have admitted that currently special schools are unable to ensure necessary medical treatment or an environment conducive to rehabilitation for pupils with mental problems.

Presence of pupils with mental problems in special schools is not only a problem for Tapa Special School. For example, as a result of a survey carried out among pupils in Puiatu Special School in 2008 it was found that, without any exception, all the 26 pupils surveyed by a child psychiatrist in Puiatu Special School had behavioural or mental problems and consequently they were in need of medicinal treatment and psychotherapy which cannot be offered at a school for pupils needing special educational measures.<sup>48</sup> The Chancellor has repeatedly drawn the attention of the Minister of Education and Research and the Minister of Social Affairs to this problem.

The problem was also brought to the Chancellor's attention in the letter of 5 November 2009 by child psychiatrists from Tallinn Children's Hospital who closely cooperate with Tapa Special School. Child psychiatrists have expressed deep concern about pupils with serious mental problems attending Tapa Special School, because, the psychiatrists also believe that special school is not a suitable place for children with limited cognitive skills and unpredictable behaviour. According to the assessment of the psychiatrists, pupils with serious mental problems would need a different establishment than a special school. Unfortunately, in Estonia there are currently no suitable treatment of educational establishments for children with mental problems which would be able to offer an environment which these children require due to their special needs.

In addition, social welfare and child protection workers from Ida-Viru and Lääne-Viru Counties during a debate on the rights of children held in Jõhvi also drew the Chancellor's attention to the problem of absence of treatment and educational establishments for children with mental problems. According to social workers, the absence of necessary treatment and educational establishments has led to a situation where several local authorities in Ida-Viru and Lääne-Viru Counties are unable to ensure compliance with compulsory school attendance by children with mental problems living in their territories.

<sup>47</sup> See the Chancellor of Justice Annual Report 2007, pp. 63-66.

<sup>48</sup> See the summary of the Chancellor's inspection visit of 12 May 2008 to Puiatu Special School, section 3.3. Available online: [http://www.oiugskantsler.ee/public/resources/editor/File/04\\_Kontrollik\\_Puiatu\\_Erikooli\\_mai\\_2008.pdf](http://www.oiugskantsler.ee/public/resources/editor/File/04_Kontrollik_Puiatu_Erikooli_mai_2008.pdf).

On this basis, the Chancellor recommended that the Minister of Education and Research in cooperation with the Minister of Social Affairs should find out how many pupils with mental retardation or mental problems are currently attending schools for pupils needing special educational measures while in addition to special educational measures they are also in need of rehabilitative services and medical treatment. The Chancellor also recommended that the ministers in cooperation with child psychiatrists in Estonia should ascertain the main mental problems from which pupils in special schools suffer and the kinds of services and types of establishments these children would need. The Chancellor recommended that subsequently the necessary conditions for pupils with mental problems should be created for both treatment and rehabilitation and for acquiring education and social skills in line with their abilities.

The Minister of Education and Research promised that in cooperation with the Ministry of Social Affairs they would find out how many pupils with mental retardation or mental problems are currently attending schools for pupils needing special educational measures while in addition to special educational measures they are also in need of rehabilitative services and medical treatment. In 2010, drawing up of the concept for state schools and the development plan for state schools will be completed by the Ministry of Education and Research. In connection with this, in cooperation with social partners and psychiatrists, special educational needs of pupils with emotional and behavioural problems will also be analysed, and the school network will be organised in a way as to ensure studying and living conditions in line with the abilities and needs of all pupils. In 2010-2012, the facilities of Tapa Special School will be renovated. The focus in reorganising the school will be on creating a differentiated and safe studying and living environment for pupils in line with their educational, social and health needs. By the end of 2010, a working group formed by the Ministry of Education and Research will draw up a plan of solutions concerning shortcomings in operation of special schools, the necessary guidance materials, and proposals for amendment of legislation.

The Minister of Social Affairs also confirmed his readiness to cooperate with the Minister of Education and Research to improve the possibilities for access to a service corresponding to the needs of children with disabilities and young people with mental problems. The Minister also promised, in cooperation with the Ministry of Education and Research, to ascertain the number of children with disabilities and mental problems attending schools for pupils needing special educational measures, and the needs they have due to their health. In addition, a representative from the Ministry of Social Affairs will participate in the working group formed by the Ministry of Education and Research to analyse special educational needs of pupils with emotional and behavioural problems, as a result of which the network of state schools will be organised in a way as to ensure studying and living conditions in line with the abilities and needs of all pupils.

The second problem which significantly hampers efficient re-socialisation of children with special educational needs is concerned with the absence of an effective system of follow-up care after the pupils leave the special school. Representatives of many local authorities do not deal sufficiently with children returning to their home from a special school or with families of such children. During a child's stay in a special school, contacts with parents and guardians of the children take place on the initiative of the school, but after the child has left the school the contact is interrupted. At the same time, families of almost all the children sent to special schools are in need of social counselling by the local authorities, as well as assistance during the child's stay in a special school and after the child's return back home from the school. Children leaving a special school and returning to a mainstream school and trying to reintegrate to social life would also be in need of assistance and counselling, as well as supervision, by child protection workers of local authorities.

In the recent years, the problem of absence of follow-up care has even worsened as the number of child protection workers in local authorities has sharply decreased. According to the Estonian Union for Child Welfare, only 84 local authorities out of the total 227 had a child protection worker in 2008.<sup>49</sup> In 2007, the number of child protection workers in local authorities had still been 155.<sup>50</sup>

On this basis, the Chancellor recommended that the Minister of Education and Research in cooperation with the Minister of Social Affairs and representatives of local authorities should draw up a system of follow-up care for children leaving the special school. The Chancellor also recommended considering the possibility of defining in legislation the duty of local authorities to assist children in their return to the family and the mainstream school after leaving the special school.

The Minister of Social Affairs confirmed that, should the analysis of the actual practice show that the principle of case management is not applied to juvenile offenders and pupils leaving the special school, he is prepared to analyse the causes of the problem in cooperation with the Ministry of Education and Research and, if necessary, initiate relevant amendments to legislation within the area of administration of the Ministry of Social Affairs in order to ensure the necessary support and services to children leaving the special school.

49 See the news release of 29 October 2009 by the Union for Child Welfare, available online: <http://www.lastekaitseliit.ee/?id=14896>.

50 See the data of the Ministry of Social Affairs, available online: <http://www.sm.ee/tegevus/lapsed-ja-pere/lastekaitse-korraldus.html>.

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

The inspection revealed that placement of pupils in an isolation room in Tapa Special School was not always in line with the requirements under the Juvenile Sanctions Act: in some cases the isolation room was used as a punishment, and there were also problems with the director's directives on placement in isolation room as well as with the entries of the isolation room registration journal.

On this basis, the Chancellor proposed to the director of Tapa Special School that pupils should be placed in the isolation room only in cases where an immediate danger for self-injury or violence against others exists and verbal appealing has proved to be insufficient, as required by § 6<sup>2</sup>(2) of the Juvenile Sanctions Act. The Chancellor also proposed to the director that a pupil should be notified about a directive concerning placement in isolation, against signature and on the date when the directive was drawn up, as also required by § 6<sup>2</sup>(1) of the Juvenile Sanctions Act. In addition, the Chancellor proposed to the director to ensure that all reports on placement in the isolation room contain a note on the name of the staff under whose supervision the pupil is staying in the isolation room, as required by § 6<sup>2</sup>(3) clause 5 of the Juvenile Sanctions Act.

The director of the school admitted shortcomings in the use of the isolation room in Tapa Special School and promised in the future to comply precisely with the procedure established by law for placement in an isolation room.

The inspection also revealed that Tapa Special School had problems with unauthorised departure of the pupils from the school territory. In the study year 2008/2009, unauthorised departures occurred on 52 occasions. At the time of the inspection, no cases of unauthorised departures had yet occurred in the study year 2009/2010 but, according to the information in the media<sup>51</sup>, a riot occurred in Tapa Special School on 7 October 2009 during which 12 pupils left the school territory without authorisation.

The administration of the school explained that the number of cases of unauthorised departure from the school territory has decreased as compared to the previous years and that mostly the pupils themselves return or are brought back to the school on the same day or within a few days after the departure. However, there have also been cases where a pupil is brought back by the police only after several months. The school administration explained the high number of unauthorised departures with the fact that currently the school had no resources to make the school building and the school grounds escape-proof. According to the director of the school, the Ministry of Education and Research has approved a plan of investments, under which the necessary resources would be allocated to Tapa Special School for carrying out the rebuilding works in 2011.

At the same time, Tapa Special School is a closed establishment where pupils are not allowed to leave at will. The school must also be able to carry out supervision of pupils until the architectural solution is completed. Thus, the necessary measures should be found and introduced to reduce unauthorised departures by pupils as soon as possible. The measures should naturally be proportionate to the objective that is sought.

On this basis, the Chancellor recommended to the director of Tapa Special School to find and introduce additional measures to prevent unauthorised departure of pupils from the school territory.

The director of the school explained that in order to reduce the number of unauthorised departures the school plans to provide training to the staff, promote networking, reorganise the working time of supervisory staff and install one additional security camera in school. According to the director, three new supervisory staff have been hired by the school.

51 See the article "Tapa erikooli poisid korraldasid mässu" [Boys at Tapa Special School organised a riot] in the *Virumaa Teataja* on 8 October 2009. Available online: <http://www.virumaateataja.ee/?id=172873>.

## X. PROVIDERS OF REHABILITATION SERVICES TO CHILDREN WITH ADDICTION PROBLEMS

Although currently Estonia has no legal regulation establishing the content of rehabilitation services for children with addiction problems or the requirements for the providers of such services, some local authorities have still created establishments providing a rehabilitation service to children with addiction problems. According to the information available to the Chancellor of Justice, they have been created in Tallinn and Jõhvi. On 5 March 2009, the Chancellor carried out an unannounced inspection visit to Tallinn Children's Shelter (*Tallinna Laste Turvakeskus*) which provides rehabilitation services to children with addiction problems (Inspection visit to Tallinn Children's Shelter, case No 7-8/090336).

The choice of Tallinn Children's Shelter as the inspected establishment was first and foremost based on the fact that the Chancellor had received information from different sources about possible violations of fundamental rights and freedoms of children in this establishment. The choice was also based on the consideration that more than two years had passed from the Chancellor's last comprehensive inspection visit to Tallinn Children's Shelter. The Chancellor's previous visit to Tallinn Children's Shelter took place in November 2006 (Inspection visit to Tallinn Children's Shelter, case No 7-8/061058).

The Nõmme tee department of Tallinn Children's Shelter is an institution with special regime within the area of administration of Tallinn Social Welfare and Health Care Board, providing a rehabilitation service to children with addiction problems. Children at the Nõmme tee department have been sent to the institution to receive the rehabilitation service upon a decision of a juvenile committee under § 3(1) clause 8 of the Juvenile Sanctions Act, which provides for participation in a rehabilitation programme as a juvenile sanction.

The inspection visit to Tallinn Children's Shelter in 2009 revealed once again that the main problem hampering the provision of rehabilitation services to children with addiction problems is the absence of legal regulation.

The legislator has not established, either in the Juvenile Sanctions Act, the Social Welfare Act or any other Acts, the definition of the rehabilitation service applied in respect of minors with addiction problems under § 3(1) clause 8 of the Juvenile Sanctions Act. There are no Acts regulating the types of assistance that children referred to a provider of a rehabilitation service are entitled to receive (health care services, rehabilitation services, education). There are no compulsory requirements for institutions applying the sanction prescribed under § 3(1) clause 8 of the Juvenile Sanctions Act (i.e. requirements for the rooms and staff of the rehabilitation service provider, the number of children participating in a programme or service, etc). Currently there are also no provisions regulating whether and to what extent the institutions applying the sanction are allowed to restrict fundamental rights of children if this proves to be essential to guarantee the success of the rehabilitation process. The provision of the rehabilitation service established under § 3(1) clause 8 of the Juvenile Sanctions Act is also significantly hampered by the absence of a financing model for the service.

As the state has not established any guidelines or requirements for the providers of the rehabilitation service, it is not possible to verify the quality of the rehabilitation service provided to children with addiction problems. Due to the absence of service guidelines and a supervisory mechanism no state supervision over the existing service providers has been carried out. Also, no comprehensive external assessment of the existing institutions has taken place. Thus, it is not possible to be convinced about the quality and efficiency of the service offered by the existing service providers.

The Chancellor sent the summary of his inspection visit to the head of Tallinn Social Welfare and Health Care Board, the Minister of Education and Research, the Minister of Social Affairs, and the head of Tallinn Children's Shelter. The Chancellor proposed to the Minister of Social Affairs and the Minister of Education and Research that, in cooperation with Tallinn Social Welfare and Health Care Board, they should draw up a concept for a rehabilitation institution for young people with addiction problems, as well as the relevant regulation. In addition, on 15 September 2009 the Chancellor made a report to the Riigikogu, drawing the attention of members of the parliament to this problem, and asked the parliament to draw up a concept for a rehabilitation institution for young people with addiction problems, as well as the relevant regulation, as soon as possible.

On 10 December 2009, a joint meeting of the Riigikogu legal affairs committee and the social affairs committee was held to discuss the Chancellor's report. Both committees reached the conclusion that the problems indicated by the Chancellor in his report No 1, "The availability of the rehabilitation service to children with addiction problems", to the Riigikogu on 15 September 2009, were justified and needed to be resolved. The committees decided to ask the Crime Prevention Council to specify the framework of responsibility of the Ministry of Social Affairs and the Ministry of Education and Research in the rehabilitation of children with addiction problems and asked the Ministry of Social Affairs to analyse in the first quarter of 2010 what would be the justified cases of interference with fundamental rights of children with addiction problems during their rehabilitation, to prepare in the first half of 2010 a

draft Act regulating the substance and financing model of the rehabilitation service and submit it to the Riigikogu before the end of the parliament's spring session.

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

The inspection revealed that children were not allowed to leave at will from the Nõmme tee department of Tallinn Children's Shelter. To restrict the freedom of movement of children, the building of the shelter is surrounded by a fence and the front doors are locked. If necessary, staff of the shelter prevent children from leaving. At the same time, the legislator has not given Tallinn Children's Shelter or the juvenile committee the right to deprive persons of liberty. Thus, currently Tallinn Children's Shelter has no legal basis for restricting the children's right to liberty of person.

The inspection also revealed that Tallinn Children's Shelter has an isolation room which was used both as a calming-down room and as a sanction. Interviews with children at the shelter revealed that the children placed in the isolation room were forced to take off their clothes, leaving them only in underwear. Staff of the shelter also admitted that children were told to undress, and justified it by the need to ensure the safety of children placed in the isolation room and to prevent the risk of self-injury.

The Chancellor found that Tallinn Children's Shelter had no legal basis for using the isolation room. The Chancellor also found that the practice of telling the children placed in the isolation room to take off their clothes except underwear is degrading and disproportionate and thus impermissible in a state governed by rule of law.

As these violations constitute a very serious infringement of fundamental rights of children, the Chancellor made a proposal to the head of Tallinn Children's Shelter to stop immediately the restriction of the freedom of children without a legal basis and degrading treatment of children in placement in the isolation room.

The head of the shelter promised to stop using the isolation room and also explained that agreements for the provision of the service would be concluded with children and their guardians, laying down the restrictions applicable in the shelter. Children and their guardians may terminate receiving of the service at any time.

## **PART II**

### **STATISTICS OF PROCEEDINGS**



## 1. General outline of statistics of proceedings

### 1.1. Petition-based statistics

In 2009, the Chancellor of Justice received 2729 petitions, on the basis which 2033 cases were opened. As compared to 2008, the number of petitions rose by 6.3%.

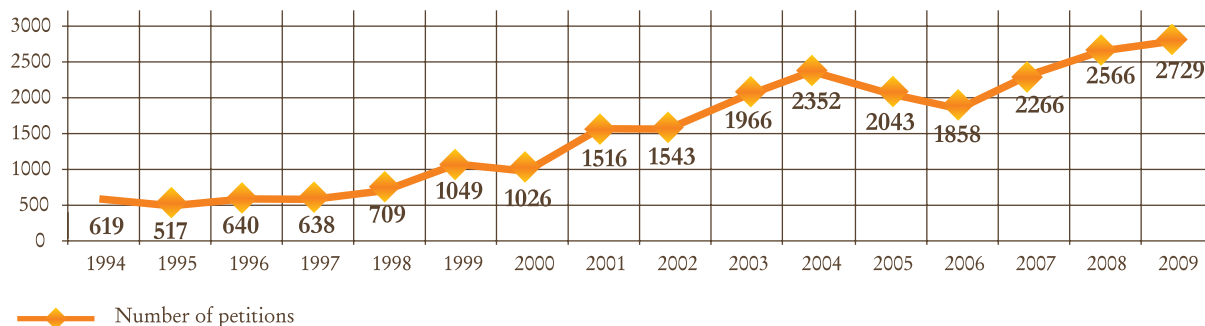


Figure 1. Number of petitions 1994–2009

### 1.2. Statistics based on cases opened

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

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

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

Resolving petitions received by the Chancellor takes place according to the principle of freedom of form and expediency of proceedings, and by taking necessary investigative measures to ensure effective and independent investigation. Outcomes of cases are divided as follows depending on the type of proceedings.

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

A conflict was found if:

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

No conflict was found if:

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

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

A violation was found if:

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

No violation was found if:

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

Special proceedings are classified depending on outcome as follows:

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

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

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

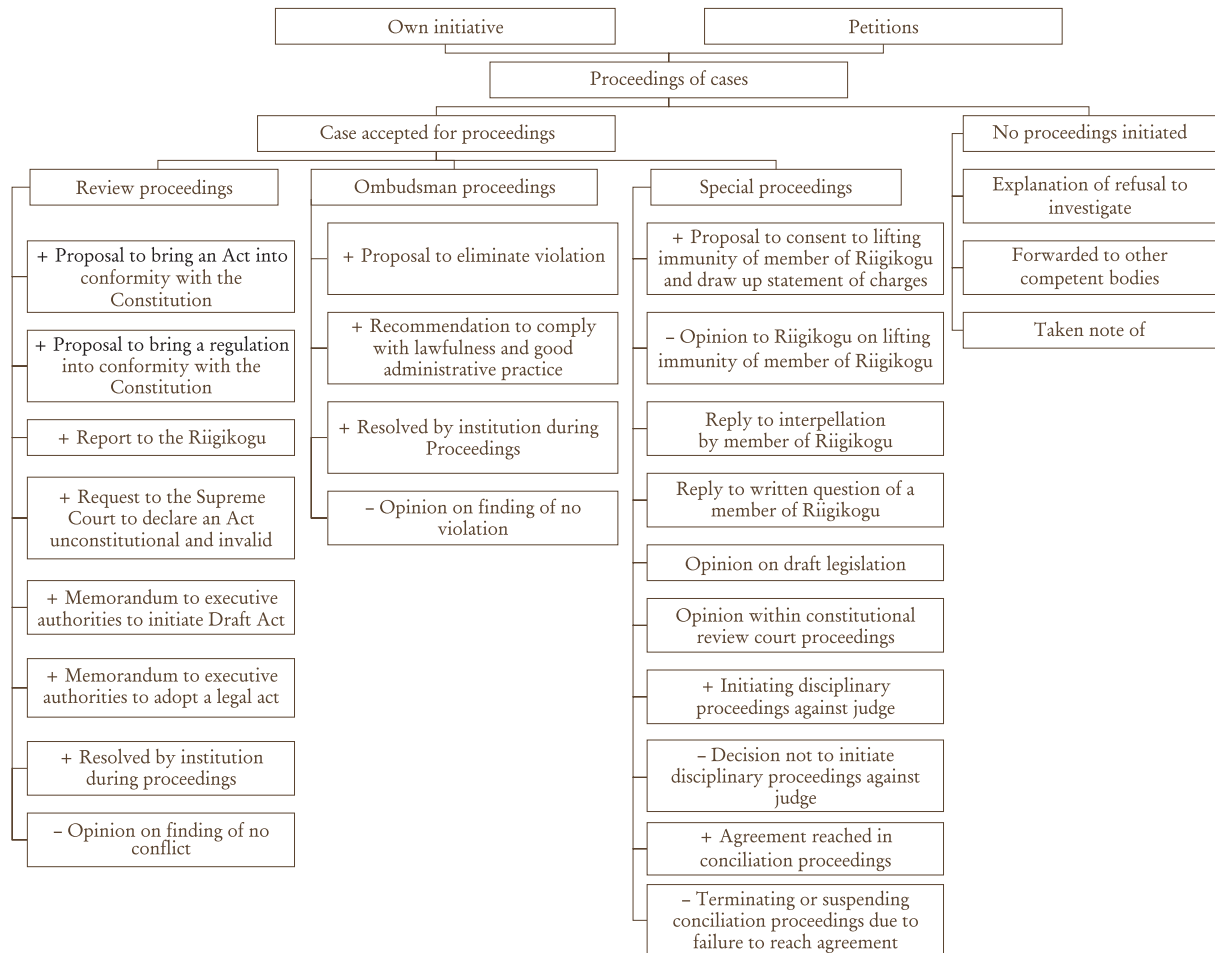


Figure 2. Classification of proceedings of cases and outcome of proceedings

During the reporting year, there were 2033 cases opened, which is 4.6% more than in 2008. As at 1 February 2010, 1882 proceedings had been completed, in 47 cases follow-up proceedings were pending and 104 cases were still being investigated. In 449 cases, substantive proceedings were conducted, and in 1584 cases no proceedings were initiated for various reasons. 82 cases were opened based on the Chancellor's own initiative, and 49 inspection visits were conducted.

Similarly to the previous years, the number of cases opened has somewhat decreased on account of substantive proceedings while the number of cases where no proceedings were initiated has increased. The proportion of own-initiative proceedings has risen and this has also led to an increase in the number of inspection visits.

*Table 1. Distribution of cases by content*

	2005	2006	2007	2008	2009
Cases accepted for proceedings	725 43.5%	551 34.6%	474 27.2%	480 24.7%	449 22.1%
incl. review proceedings	247 14.8%	207 13%	150 8.6%	151 7.8%	124 6.1%
incl. ombudsman proceedings	372 22.3%	258 16.2%	252 14.5%	258 13.3%	231 11.4%
incl. special proceedings	106 6.4%	86 5.4%	72 4.1%	71 3.7%	94 4.6%
Non-substantive proceedings of cases	941 56.5%	1043 65.4 %	1266 72.8%	1464 75.3%	1584 77.9%
Total cases	1666	1594	1740	1944	2033
incl. own-initiative proceedings	57 3.4%	35 2.2 %	70 4%	66 3.5%	82 4%
incl. inspection visits	12	8	28	33	49

## 2. Outcomes of cases opened

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

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

To review the constitutionality and legality of legislation of general application, 124 cases were opened, i.e. 6.1% of the total number of cases and 27.6% of the total number of substantive proceedings of cases. Of these, 117 were opened on the basis of petitions and 7 on own initiative.

Within constitutional review proceedings the following were scrutinised:

- conformity of Acts with the Constitution (65 proceedings, of these 58 based on petitions by individuals and 7 on own initiative);
- conformity of Government regulations with the Constitution and Acts (5 proceedings based on petitions by individuals);
- conformity of regulations of Ministers with the Constitution and Acts (17 proceedings based on petitions by individuals);
- conformity of regulations of local councils and rural municipality and city administrations with the Constitution and Acts (36 proceedings, of which 1 based on application by County Governor and 27 based on petitions by individuals);
- legality of other legislation of general application (1 proceeding based on a petition by an individual).

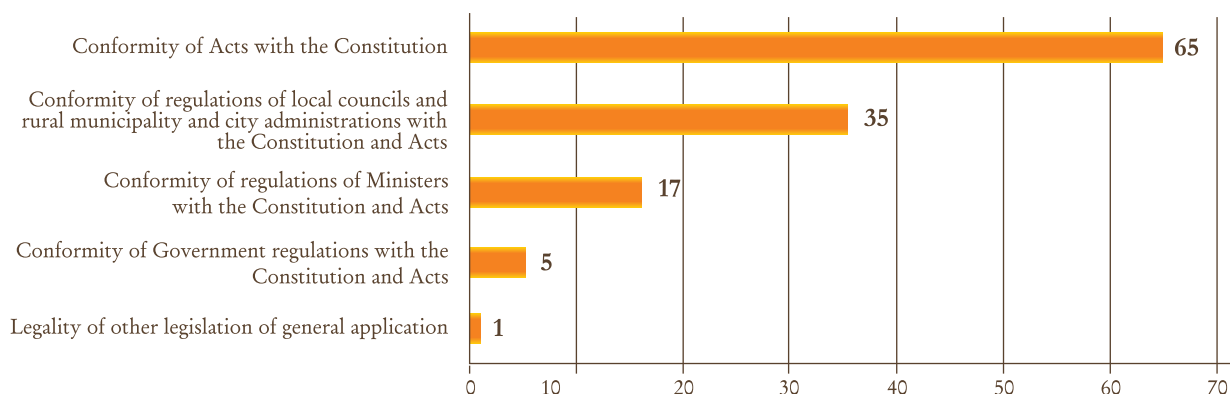


Figure 3. Distribution of constitutional review proceedings

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

- proposal to bring an Act into conformity with the Constitution (1);
- proposal to bring a regulation into conformity with the Constitution or an Act (3);
- 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 (3);
- memorandum to executive authorities for adopting a legal act (4);
- case resolved by the institution during proceedings (17);
- opinion stating a finding of no conflict (45).

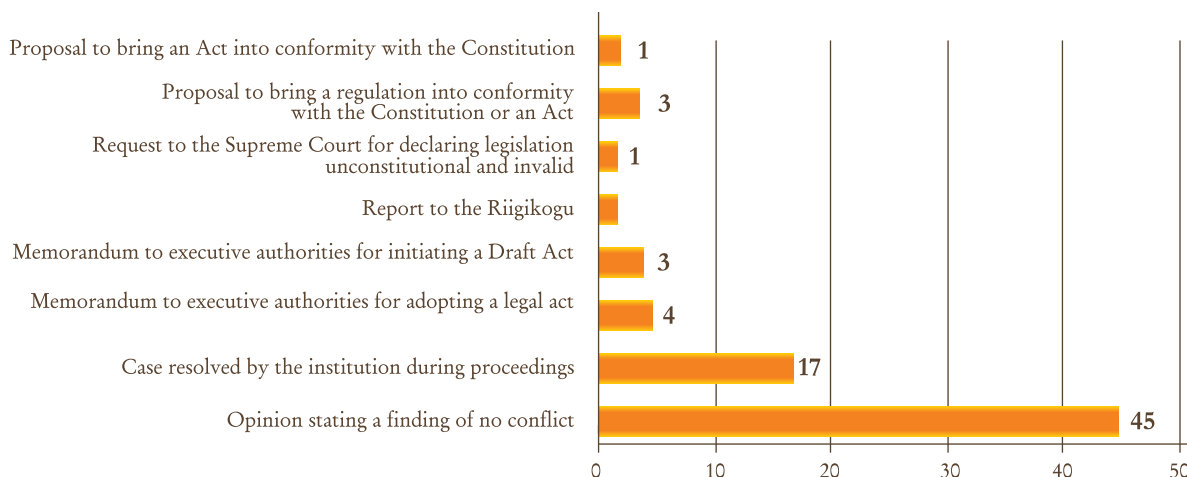


Figure 4. Outcomes of cases opened for review of conformity with the Constitution and Acts

In case of proceedings for review of conformity with the Constitution and Acts, conflict with the Constitution or an Act was found in 24% of the cases. In 2008, the indicator was 19%. There was also an increase in the number of proceedings where the conflict was resolved by the respondent institution in the course of the proceedings.

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

231 proceedings were initiated for verification of legality of measures of the state, local authorities, other public-law legal persons or of a private person, body or institution performing a public function, i.e. 11.4% of the cases opened and 51.4% of the total number of substantive proceedings. Of these, 156 were based on petitions by individuals and 75 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 (133 proceedings, of these 101 based on petitions by individuals and 32 on own initiative);
- activities of a local government body or agency (55 proceedings, of these 43 based on petitions and 12 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 (43 proceedings, of these 12 based on petitions and 31 on own initiative).

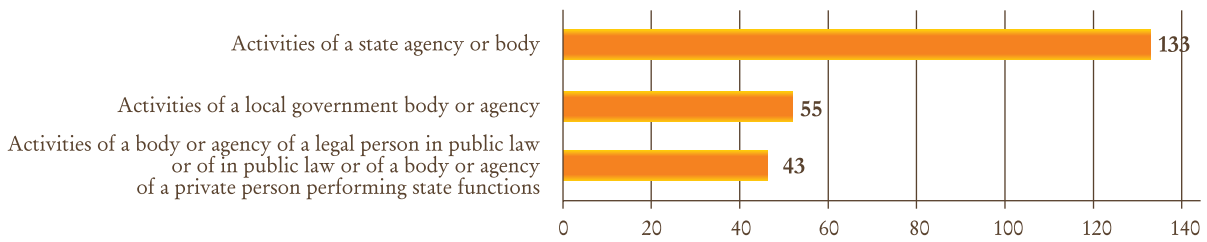


Figure 5. Distribution of cases opened for scrutiny of activities of persons, agencies, and bodies

In supervision of activities of agencies and institutions performing public functions the Chancellor reached the following outcomes:

- proposal to eliminate a violation (14);
- recommendation to comply with lawfulness and good administrative practice (70);
- resolved by the institution during the proceedings (13);
- opinion stating a finding of no violation (60).

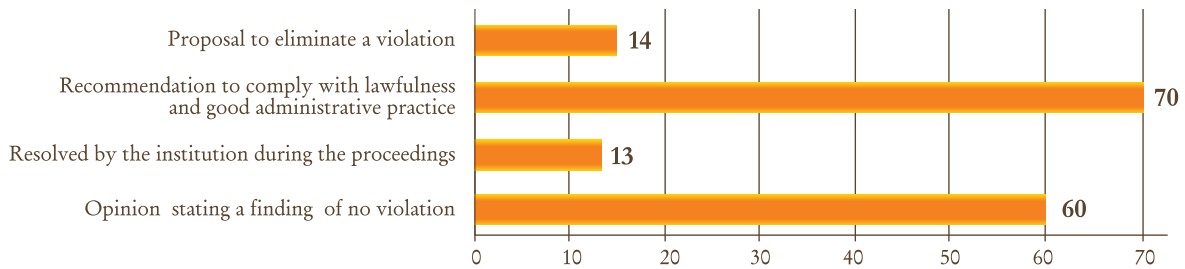


Figure 6. Outcomes of cases opened for scrutiny of activities of persons, agencies, and bodies

In proceedings initiated for scrutiny of activities of persons, agencies and bodies, a violation was found in 42% of the cases. In 2008, the indicator was 38%. The number of recommendations made in 2009 increased by 24% as compared to the previous year.

### 2.3. Special proceedings

There were 94 special proceedings during the reporting year, i.e. 4.6% of the total number of cases opened and 20.9% of the total number of substantive proceedings, which is the same as in the previous year.

Special proceedings are divided as follows:

- opinions on draft legal acts and documents (23 proceedings);
- providing an opinion on a legal act within constitutional review proceedings (20 proceedings);
- disciplinary proceedings in respect of judges (19 proceedings);
- replying to written questions by members of the Riigikogu (9 proceedings);
- replying to interpellations by members of the Riigikogu (4 proceedings);
- proceedings for lifting of immunity (2 proceedings);
- conciliation proceedings to resolve discrimination disputes between private individuals (2 proceedings);
- other activities arising from law (15 proceedings).

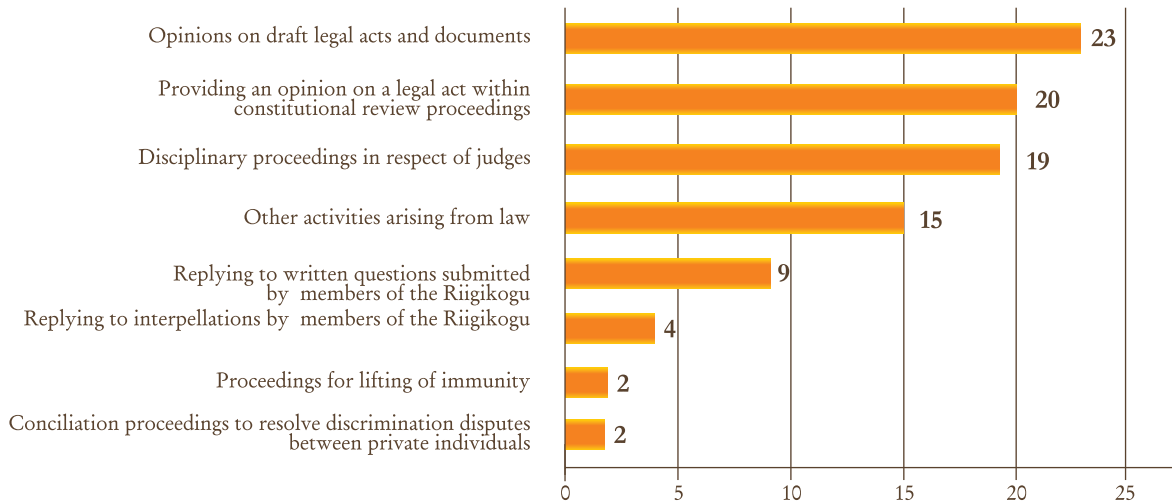


Figure 7. Distribution of special proceedings

Similarly to the previous year, the largest number of special proceedings, i.e. 24.5%, are related to providing an opinion on draft legislation.

During the reporting year, two conciliation proceedings for resolving discrimination disputes between private individuals were initiated, both of which were interrupted due to unwillingness of the parties to participate in conciliation proceedings.

In 2009, there was a 10% increase in the number of cases for initiating disciplinary proceedings against judges. Similarly to the previous year, the Chancellor did not have to take any disciplinary charges to the Supreme Court in 2009. However, in one case the Chancellor considered it necessary to forward to the court a proposal for eliminating a violation and in one case a recommendation for compliance with the principles of lawfulness and good administration.

**2.4. Cases not accepted for 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 2009, the Chancellor declined to open substantive proceedings in 1584 cases, which makes up 77.9% of the total number of cases.

Proceedings were not opened for the following reasons:

- the individual could file an administrative challenge or use other legal remedies (584 cases);
- lack of competence by the Chancellor (555 cases);
- judicial proceedings or compulsory pre-trial proceedings were pending in the matter (295 cases);
- petition did not comply with requirements under the Chancellor of Justice Act (147 cases)
- a petition was manifestly unfounded (81 cases);
- the petition had been filed one year after the petitioner discovered the violation (6 cases);
- administrative challenge proceedings or other voluntary pre-trial proceedings were pending (6 cases).

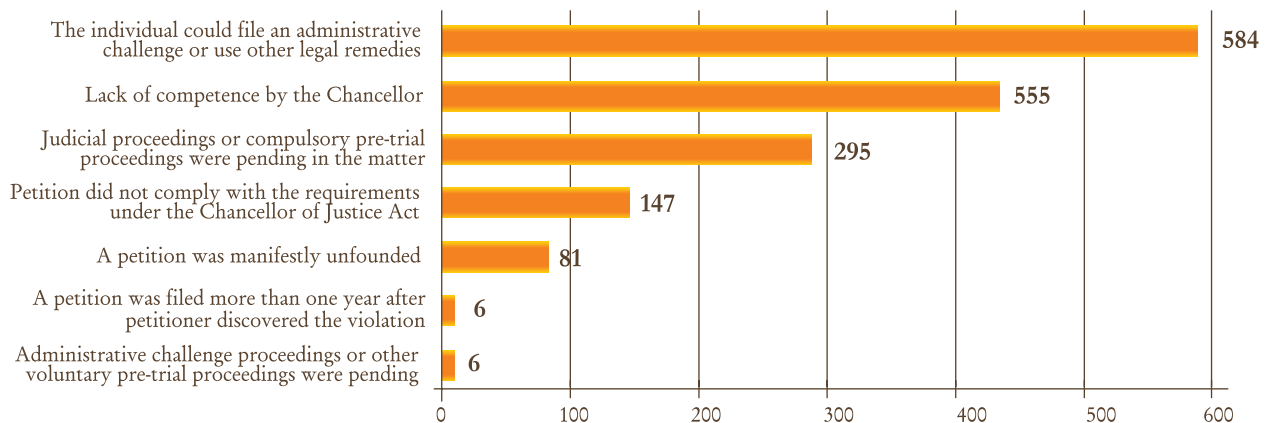


Figure 8. Reasons for declining to initiate proceedings of petitions

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

- an explanatory reply was given (1408 cases);
- a petition was forwarded to competent bodies (117 cases);
- a petition was taken note of (72 cases).

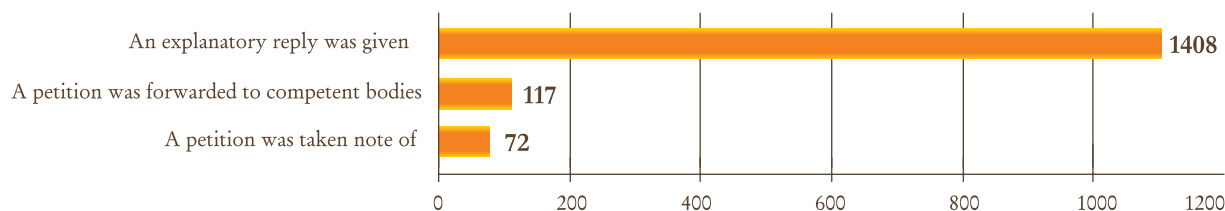


Figure 9. Distribution of replies in case of declining to accept a petition for proceedings

Similarly to the previous years, the main reasons for declining to initiate proceedings were lack of competence by the Chancellor and possibility to use other legal remedies. In comparison to 2008, the number of clearly unfounded petitions had risen by one third. The number of petitions forwarded to competent authorities decreased by half as compared to 2008.

### 3. Distribution of cases by area of responsibility

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

- the state (1473 cases);
- local authorities (298 cases);
- a legal person in private law (172 cases);
- a natural person (51 cases).
- a legal person in public law, except local authorities (19 cases).

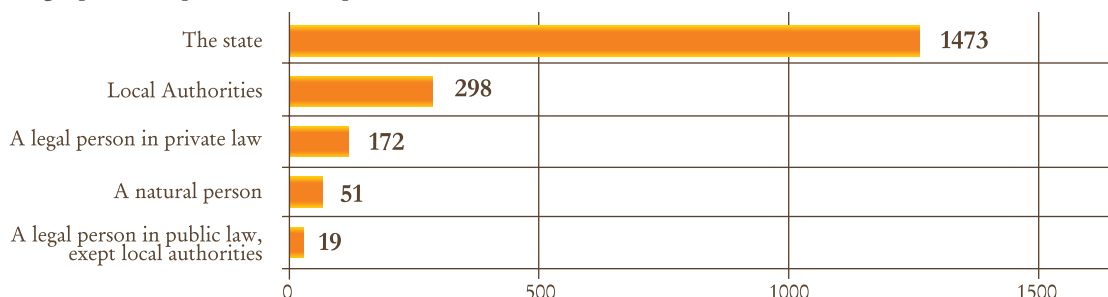


Figure 10. Distribution of cases by respondents

Distribution of cases opened in 2009 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>52</sup>.

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	100	26	1	0	74
Supreme Court or other courts, except registry departments	232	25	0	3	207
National Audit Office	1	1	0	0	0
President of the Republic or Office of the President	0	0	0	0	0

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

Government of the Republic or Prime Minister	14	4	0	0	10
Chancellor of Justice or Chancellor's Office	10	3	0	0	7
Area of government of the Ministry of Education and Research	20	8	0	5	12
Ministry of Education and Research	15	5	0	2	10
Agency subordinate to the Ministry of Education and Research	4	3	0	3	1
Language Inspectorate	1	0	0	0	1
Area of government of the Ministry of Justice	661	103	5	10	558
Ministry of Justice	149	57	4	4	92
Agency subordinate to the Ministry of Justice	14	1	0	0	13
Data Protection Inspectorate	2	0	0	0	2
Prosecutor's Office	42	2	0	0	40
Harku Prison	1	0	0	0	1
Murru Prison	50	6	0	1	44
Tallinn Prison	102	5	0	1	97
Tartu Prison	126	13	0	2	113
Viru Prison	123	13	0	1	110
Bailiffs	47	6	1	1	41
Notaries	5	0	0	0	5
Area of government of the Ministry of Defence	21	12	0	7	9
Ministry of Defence	4	1	0	0	3
Agency subordinate to the Ministry of Defence	16	11	0	7	5
Defence Resources Agency	1	0	0	0	1
Area of government of the Ministry of the Environment	38	14	0	4	24
Ministry of the Environment	28	11	0	1	17
Agency subordinate to the Ministry of the Environment	3	0	0	0	3
Environmental Inspectorate	3	2	0	2	1
Land Board	4	1	0	1	3
Area of government of the Ministry of Culture	5	3	0	1	2
Ministry of Culture	4	3	0	1	1
Agency subordinate to the Ministry of Culture	1	0	0	0	1
Area of government of the Ministry of Economic Affairs and Communications	41	12	2	2	29
Ministry of Economic Affairs and Communications	28	10	2	2	18
Agency subordinate to the Ministry of Economic Affairs and Communications	0	0	0	0	0
Competition Board	3	0	0	0	3
Aviation Board	1	0	0	0	1
Road Administration	3	1	0	0	2
Consumer Protection Board	4	1	0	0	3
Technical Inspectorate	2	0	0	0	2
Area of government of the Ministry of Agriculture	12	2	0	0	10
Ministry of Agriculture	9	2	0	0	7
Agency subordinate to the Ministry of Agriculture	0	0	0	0	0
Agricultural Registers and Information Board	3	0	0	0	3



Area of government of the Ministry of Finance	50	10	2	0	40
Ministry of Finance	34	8	2	0	26
Agency subordinate to the Ministry of Finance	1	0	0	0	1
Tax and Customs Board	15	2	0	0	13
Area of government of the Ministry of Internal Affairs	143	41	2	9	102
Ministry of Internal Affairs	28	11	1	0	17
Agency subordinate to the Ministry of Internal Affairs	3	0	0	0	3
Citizenship and Migration Board	21	4	0	1	17
Border Guard Administration	3	1	0	1	2
Police Board	82	23	1	7	59
Rescue Board	1	0	0	0	1
Security Police Board	5	2	0	0	3
Minister for Regional Affairs, county administration, or subordinate agencies	17	4	0	1	13
Area of government of the Ministry of Social Affairs	94	29	7	6	65
Ministry of Social Affairs	53	16	5	1	37
Agency subordinate to the Ministry of Social Affairs	8	6	0	4	2
Social Insurance Board	19	5	2	0	14
State Agency of Medicines	1	0	0	0	1
Health Protection Inspectorate	3	1	0	0	2
Health Care Board	5	1	0	1	4
Labour Inspectorate	3	0	0	0	3
Labour Market Inspectorate	2	0	0	0	2
Ministry of Foreign Affairs	11	2	0	0	9
State Chancellery	3	2	0	0	1
Agency subordinate to the State Chancellery	0	0	0	0	0
National Electoral Committee	3	0	0	0	3

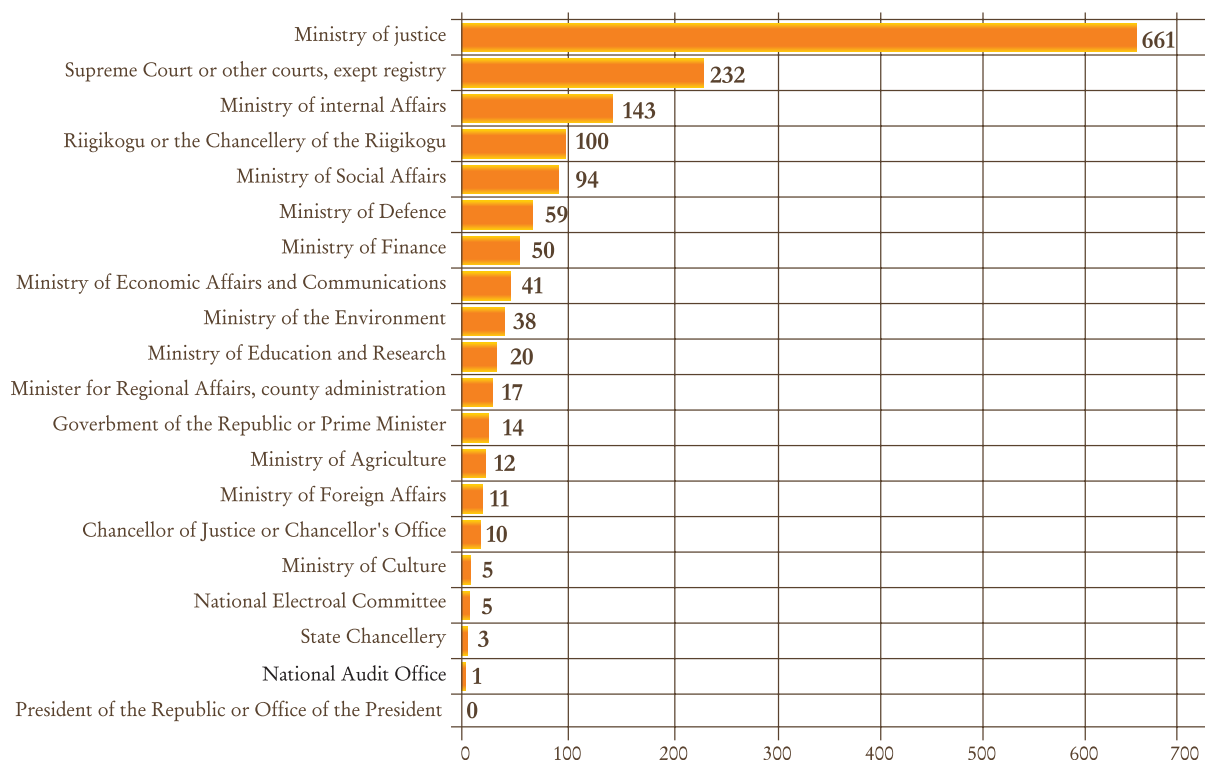


Figure 11. Distribution of cases by respondents on state level

Similarly to the previous years, the largest number of cases fell within the area of government of the Ministry of Justice, and in comparison to 2008 their number had risen by 18%. The majority of cases within the area of government of the Ministry of Justice were related to criminal enforcement law and imprisonment law (see Table 5) and were initiated on the basis of petitions by prisoners. In 84% of the cases within the area of government of the Ministry of Justice, no substantive proceedings were initiated, in 2008 this indicator was 83%.

In comparison to 2008, there was a double increase in the number of cases within the area of government of the Ministry of Defence. There was also a significant increase (27% as compared to 2008) in the number of cases concerning the work of courts.

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

Respondent on local government level	Cases opened	Proceedings initiated	Finding of conflict with the Constitution or an Act	Finding of violation of lawfulness or good administrative practice	No proceedings conducted
Harju County local authorities, except Tallinn city	59	26	2	16	33
Hiiu County local authorities	2	0	0	0	2
Ida-Viru County local authorities	23	11	3	4	12
Jõgeva County local authorities	5	2	0	2	3
Järva County local authorities	5	1	0	0	4
Lääne County local authorities	6	1	1	0	5
Lääne-Viru County local authorities	10	3	0	1	7
Põlva County local authorities	5	2	0	1	3
Pärnu County local authorities	17	3	0	1	14
Rapla County local authorities	5	1	0	1	4
Saare County local authorities	7	0	0	0	7
Tartu County local authorities, except Tartu city	14	5	0	1	9
Valga County local authorities	6	1	0	0	5
Viljandi County local authorities	7	3	0	2	4
Võru County local authorities	10	3	0	2	7
Tallinn City	88	25	2	7	63
Tartu City	22	7	0	2	15
Local government level in general	7	0	0	0	7

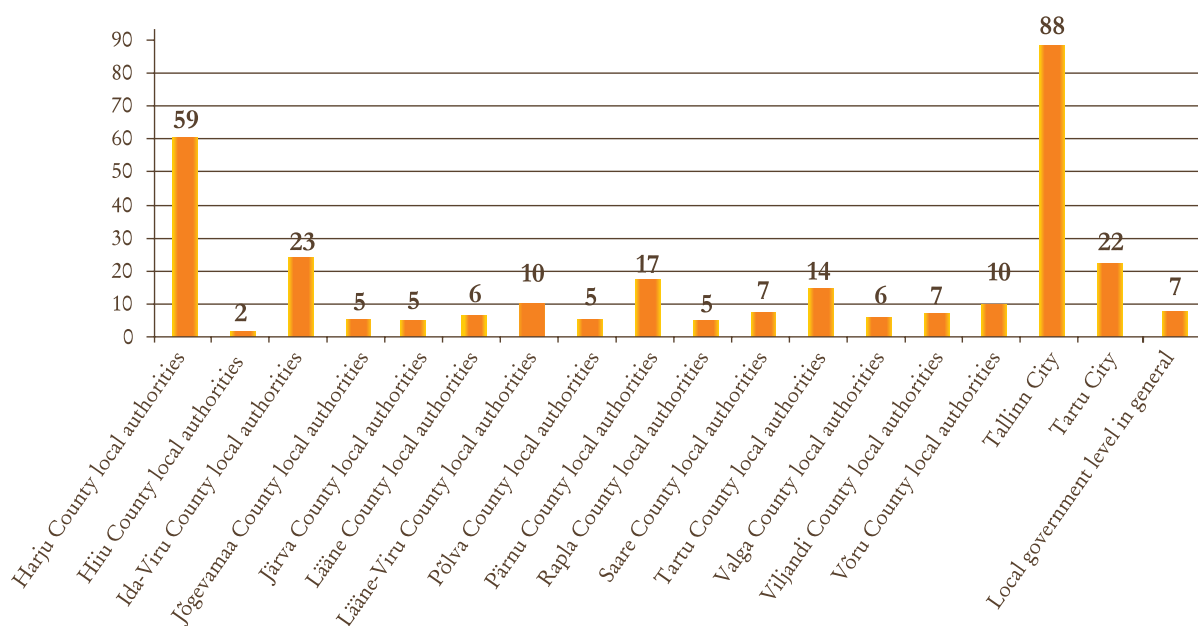


Figure 12. Distribution of cases by respondents on local government level

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>53</sup>.

Upon scrutinising conformity of local government legislation with the Constitution and Acts, the Chancellor found a conflict in ten cases. In three cases the Chancellor made a proposal to the respective local authority to bring the legal act into conformity with the Constitution and Acts, in five cases the Chancellor sent a memorandum to the local authority, and in two cases the local authority resolved the conflict during the proceedings.

Upon scrutinising lawfulness of local government activities, the Chancellor found a violation in 37 cases. In eight of the cases the Chancellor made a proposal to the local authority for eliminating the violation. In 27 cases, the Chancellor made a recommendation to a local authority for compliance with the principle of good administration and in two cases the local authority resolved the problem during the proceedings.

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

Review proceedings		
Proposal to bring a legal act into conformity with the Constitution and Acts		
1	Tallinn City Council	Conflict of Tallinn City Council regulation No 3 of 19 February 2009 “Amendment of the statutes of Tallinn” with the Constitution
2	Narva City Administration	Conflict of Narva City Administration regulation No 843 of 15 July 2009 “The procedure for pre-registration of vehicles proceeding to the border crossing point on the territory on Narva city” with the Constitution
3	Narva City Administration	Conflict of Narva City Administration regulation No 258 of 4 March 2009 “The procedure for the provision of services in regulating the flow of transport proceeding to the border crossing point through the territory of Narva city” with the Constitution
Memorandum to executive authority for adopting a legal act		
1	Jõgeva Rural Municipality Council	Conflict of Jõgeva Rural Municipality Council regulation of 27 November 2008 “The procedure and conditions for placement in the general care home in Jõgeva municipality” with the Constitution

53 Table 4 “Outcome of review proceedings and of ombudsman proceedings on local government level” was drawn up on the basis of cases completed by 30 March 2010. All the remaining procedural statistics are based on the number of cases completed by 1 February 2010.

2	Narva-Jõesuu Town Council	Conflict of Narva-Jõesuu Town Council regulation No 11 "Rates charged for the provision of services in Narva-Jõesuu town" with the Local Government Organisation Act, the Local Taxes Act, the Administrative Procedure Act and the Constitution
3	Narva City Council	Conflict of Narva City Council regulation No 9 of 14 February 2008 "Waste management regulations in Narva" (§ 59) with the Constitution
4	Rae Rural Municipality Council	Conflict of Rae Rural Municipality Council regulation No 108 "Rae rural municipality building regulation" (§ 6(8) and § 13(1) and (2)) with the Planning Act and the Constitution
5	Tallinn City Council	Conflict of Tallinn City Council regulation No 36 of 30 October 2008 "Tallinn waste management regulations" (§ 11(10) with the Constitution

Resolved by the institution during the proceedings

1	Loksa Town Council	Conflict of Loksa Town Council regulation No 1 of 27 February 1996 "The bases for the possession, use and disposal of the assets of Loksa town" (clause 10.1, subclause 5) with the Constitution
2	Martna Rural Municipality Council	Conflict of Martna Rural Municipality Council regulation No 17 of 17 December 2008 "Rules for keeping dogs and cats in Martna municipality" (clause 2.6) with the Constitution

Ombudsman proceedings

Proposal to eliminate a violation

1	Jõelähtme Rural Municipality Administration	Activities of Jõelähtme Rural Municipality Council in processing a detailed plan
2	Keila Town Administration	Activities of Keila Town Administration in processing the building of the public water supply and sewerage system and issuing a building permit
3	Põlva Town Administration	Activities of Põlva Town Administration in establishing the design criteria and issuing a building permit
4	Rae Rural Municipality Administration	Activities of Rae Rural Municipality Administration in establishing the price limits for heat
5	Tallinn City Administration	Activities of Tallinn City Administration and Day Centre Käo in replying to an enquiry by a petitioner
6	Viimsi Rural Municipality Administration	Activities of Viimsi Rural Municipality Administration in failing to reply to a request of the petitioners for initiating a detailed plan
7	Viimsi Rural Municipality Administration	Activities of Viimsi Rural Municipality Administration in processing a request for a social benefit
8	Võhma Town Administration	Activities of Võhma Town Administration in issuing a building permit

Recommendation to comply with lawfulness and the principle of good administration

1	Audru Rural Municipality Administration	Activities of Audru Rural Municipality Administration in replying to an enquiry by an individual
2	Harku Rural Municipality Administration	Activities of Harku Rural Municipality Administration in replying to enquiries by individuals
3	Jõelähtme Rural Municipality Administration	Activities of Jõelähtme Rural Municipality Administration in replying to applications by individuals
4	Jõgeva Town Administration	Activities of Jõgeva Town Administration in establishing internal rules for the homeless night shelter
5	Jõhvi Rural Municipality Administration and Jõhvi Rural Municipality Council	Activities of Jõhvi Rural Municipality Administration and Jõhvi Rural Municipality Council in the provision of social services in a homeless shelter
6	Keila Town Administration	Activities of Keila Town Administration in connection with ensuring night accommodation for the homeless
7	Kiili Rural Municipality Administration	Activities of Kiili Rural Municipality Administration in replying to enquiries by individuals

8	Kiili Rural Municipality Administration	Activities of Kiili Rural Municipality Administration in processing a request for a child care benefit
9	Kohila Rural Municipality Administration	Activities of Kohila Rural Municipality Administration in organising the transport of municipal waste
10	Kuusalu Rural Municipality Administration	Activities of Kuusalu Rural Municipality Administration in replying to enquiries by individuals
11	Kärla Rural Municipality Administration	Activities of Kärla Rural Municipality Administration in issuing permits for organising public events
12	Narva City Administration	Activities of Narva City Administration in providing social services in the homeless night shelter
13	Narva-Jõesuu Town Administration	Activities of Narva-Jõesuu Town Administration in processing a request for exemption from joining the system of organised transport of municipal waste
14	Palamuse Rural Municipality Administration	Activities of Palamuse Rural Municipality Administration in processing a request for exemption from joining the system of organised transport of municipal waste
15	Peipsiääre Rural Municipality Administration	Activities of Peipsiääre Rural Municipality Administration in replying to an enquiry by an individual
16	Puka Rural Municipality Administration	Activities of Puka Rural Municipality Administration in processing a request for a social benefit
17	Pärnu City Administration	Activities of Pärnu City Administration in organising maintenance and cleaning of public space
18	Rae Rural Municipality Administration	Activities of Rae Rural Municipality Administration in replying to enquiries by individuals
19	Rakvere Town Administration	Activities of Rakvere Town Administration in providing social services in a homeless night shelter
20	Saku Rural Municipality Council	Activities of Saku Rural Municipality Council in drawing up the budget for a child care institution
21	Saue Rural Municipality Administration	Activities of Saue Rural Municipality Administration in processing a request for compensation of health damage caused during the performance of job duties
22	Tallinn City Administration	Activities of Tallinn City Administration in delivery of a decision concerning imposition of a fine for delay
23	Tallinn City Administration	Activities of Tallinn City Administration in replying to an application by an individual
24	Tartu City Administration	Activities of Tartu City Administration in creating additional kindergarten places
25	Urvaste Rural Municipality Administration	Activities of Urvaste Rural Municipality Administration in replying to enquiries by individuals
26	Viimsi Rural Municipality Administration	Activities of Viimsi Rural Municipality Administration in replying to applications by individuals
27	Võru Town Administration and Võru Town Council	Activities of Võru Town Administration and Võru Town Council in providing social services in a special night shelter for adults
Resolved by the institution during the proceedings		
1	Jõelähtme Rural Municipality Administration	Activities of Jõelähtme Rural Municipality Administration in passing the decision on public roads
2	Tapa Rural Municipality Administration	Activities of Tapa Rural Municipality Administration in applying for social housing

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

Similarly to previous years, in 2009 the largest number of cases was opened in connection with criminal enforcement procedure and imprisonment law. In comparison to other areas of law, there were still significantly more cases in relation to issues of criminal and misdemeanour court procedure and social welfare law.

In comparison to 2008, the number of cases has risen in the areas of enforcement procedure and law of obligations, in both areas the increase was 43%. Such a sudden increase can be explained first and foremost by the economic

downturn and the resulting changes in the economic situation of the state as well as individuals. The number of cases also rose with regard to issues of civil court procedure and legal aid.

The number of cases concerning police and law enforcement law increased by half in 2009 in comparison to 2008. The number of cases concerning environmental law also increased.

The biggest decline was in the number of proceedings initiated for resolving issues concerning public service, dropping by 48% as compared to 2008. Similarly to 2008, the number of proceedings concerning the ownership reform continued to decline. In 2009 the number of cases concerning the ownership reform was almost half smaller than in 2008. There was also a decline in the number of cases concerning issues of health law.

*Table 5. Cases opened by areas of law*

<b>Area of law</b>	<b>Number of cases</b>
Criminal enforcement procedure and imprisonment law	495
Criminal and misdemeanour court procedure	103
Social welfare law	103
Civil procedure	74
Enforcement procedure	64
Financial law (incl. tax and customs law, state budget, state property)	63
Other public law	62
Law of obligations	61
Education and research law	59
Local government organisation law	54
Health law	54
Administrative law (administrative management, administrative procedure, administrative enforcement, public property law, etc)	53
Environmental law	52
Pre-trial criminal procedure	52
Social welfare law	43
Ownership reform law	42
Protection of personal data, databases and public information, state secrets law	39
Building and planning law	38
Labour law (including collective labour law)	37
Citizenship, migration, and language law	34
Police and law enforcement law	34
Energy, public water supply and sewerage law	31
Non-profit associations and foundations law	31
Family law	30
Government organisation law	29
Legal aid and notarial law	28
Property law, including intellectual property law	25
Public service	24
Electoral and referendum law, political parties law	24
Misdemeanour procedure	24
Economic and trade management and competition law	17
Traffic regulation law	15
Other private law	15
National defence law	15
Transport and road law	15
Administrative court procedure law	14
Telecommunications, broadcasting, and postal services law	14

Company, bankruptcy, and credit institutions law	10
Agricultural law (including food and veterinary law)	9
Substantive penal law	8
Succession law	8
Consumer protection law	7
International law	5
Animal protection, hunting, and fishing law	4
Constitutional review court procedure law	2

### 5. Distribution of cases by regions

Similarly to the previous years, the largest number of petitions and cases opened on the basis of them was from Tallinn (623 cases), Tartu (322 cases), Harju County (236 cases) and Ida-Viru County (226 cases). Thus, regionally, the largest number of petitions is still from the larger cities. The number of proceedings initiated on the basis of petitions from Tallinn remained more or less the same, while the number of petitions from Tartu increased by 61 in 2009. As before, the smallest number of proceedings was in relation to Hiiu County (5 cases). The number of petitions received by e-mail continued to rise (197 cases). 13 cases were based on petitions received from abroad, which is almost half fewer than in 2008. However, with regard to most regions, the number of cases opened was almost in the same proportion as in 2008.

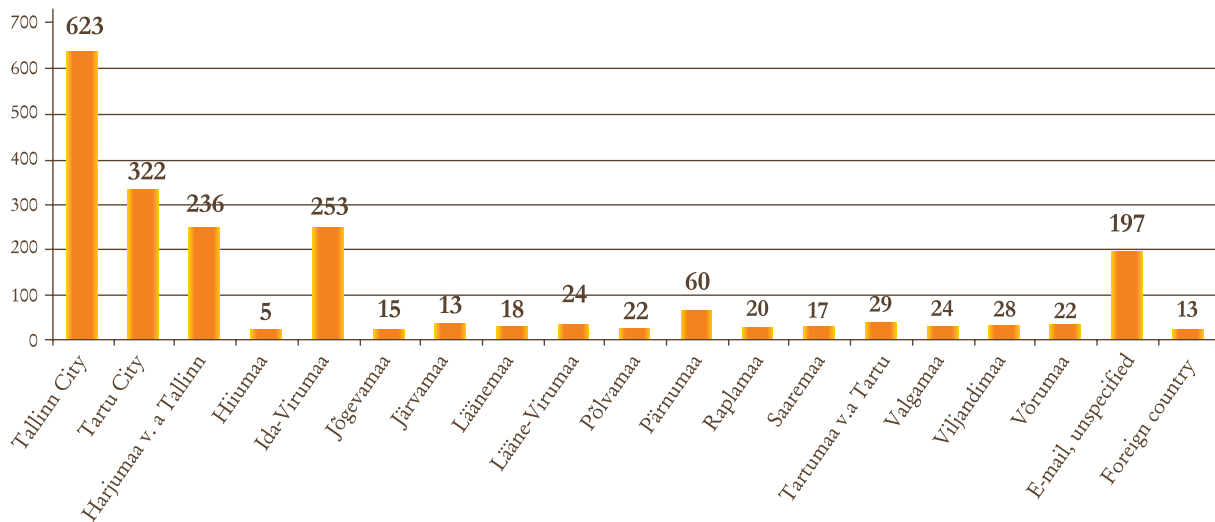


Figure 13. Distribution of cases by location of petitioner

### 6. Language of proceedings

Most petitions are still in Estonian. 1571 cases, i.e. 77.3% of the total number of cases, were opened based on petitions in Estonian. 356 cases, i.e. 17.5% of the total number of cases, were opened based on petitions in Russian, which is slightly less than in 2008. The number of petitions in other languages remained the same as in 2008.

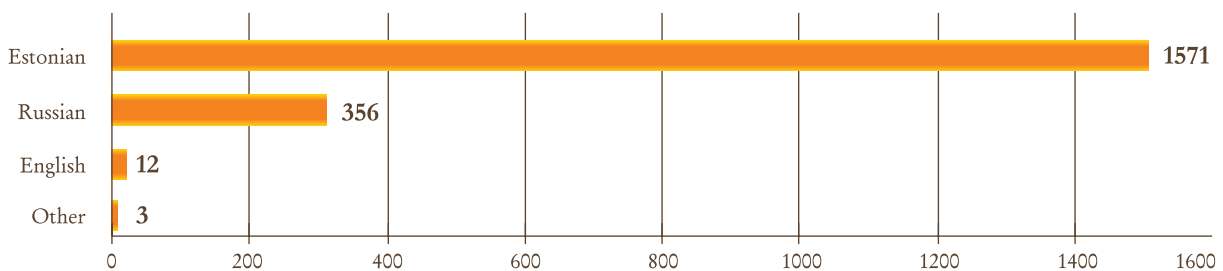


Figure 14. Distribution of cases by language of petition

## 7. Inspection visits

The Chancellor of Justice is authorised to conduct inspection visits to prisons, military units, police detention centres, expulsion centres, reception or registration centres for asylum seekers, psychiatric hospitals, special care homes, schools for pupils with special educational needs, general care homes, children’s homes and youth homes, as well as all other agencies and institutions subject to the Chancellor’s supervision.

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

As of 18 February 2007, the Chancellor of Justice also functions as the national preventive mechanism established under Art 3 of the Optional Protocol to the UN Convention for the Elimination of Torture and other Cruel or Degrading Treatment or Punishment (OPCAT), so that targets of inspection visits include, in addition to national custodial institutions, all other institutions where freedom of individuals may be restricted.

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

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

During the reporting year, the Chancellor made 49 inspection visits, of which 25 were to closed institutions, 17 to open institutions, and 7 to administrative authorities. There were 4 extraordinary inspection visits, all of them to scrutinise closed institutions.

In comparison to the previous year, the number of inspection visits increased by one third, i.e. 33%, in 2009.

Table 6. Inspection visits conducted by the Chancellor of Justice

	2007	2008	2009
inspection visits to closed institutions (OPCAT)	18	19	25
inspection visits to open institutions	5	10	17
inspection visits to administrative authorities	5	4	7
total inspection visits	28	33	49
of which, extraordinary inspection visits	6	8	4

## 8. Reception of individuals

The number of individuals coming to the Chancellor’s reception has constantly declined in the recent years. In 2009, 188 individuals came to a reception in the Office of the Chancellor of Justice, which is approximately a hundred people fewer than in 2008.

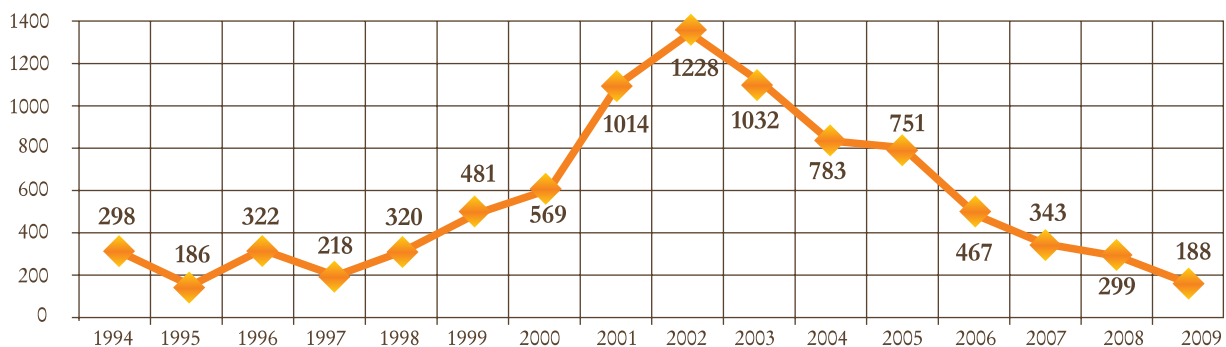


Figure 15. Number of persons coming to reception with the Chancellor in 1994–2009



As year by year the number of people registering for a reception with the Chancellor of Justice has declined, there is no need for organising receptions in regions, and the problems of individuals are increasingly frequently resolved by telephone or electronic communication. In 2009, the largest number of people coming to a reception were from Tallinn (156 persons), Harju County (8 persons) and Pärnu County (6 persons).

Questions raised during the receptions most frequently concerned the law of obligations (20 persons). Other most frequently raised issues concerned the ownership reform law and civil court procedure (15 persons in both cases), social welfare law and other issues relating to public law (12 persons in both cases). Similarly to the previous years, there was considerable interest in issues relating to pre-trial criminal procedure (10 persons). Mostly, people coming to receptions needed clarification concerning legislation, and legal advice.

## 9. Conclusion

The number of petitions received by the Chancellor of Justice is still growing. During the reporting year, the Chancellor received 2729 petitions, which is 6.3% more than in the previous year.

In 2009, the Chancellor opened 2033 cases. The number of cases opened still mostly increased on account of non-substantive proceedings. The proportion of substantive proceedings with regard to review proceedings and ombudsman proceedings declined a little, while the number of special proceedings increased. There was also an increase in the number of cases opened on the Chancellor's own initiative. In 2009, 82 own-initiative proceedings were opened, which is 20% more than in 2008.

During review proceedings, in 30 cases (24%) the Chancellor found a conflict with the Constitution or an Act, of which in 17 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 97 cases (42%), of which 17 were resolved by the institution in the course of the proceedings. In comparison to 2008, the number of proceedings where a conflict or a violation was found increased both with regard to review proceedings and ombudsman proceedings. In case of review proceedings, the number of cases resolved by the respondent institution during the proceedings increased significantly as compared to the previous year, while in case of ombudsman proceedings their number 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 (84%), no substantive proceedings were initiated. Criminal enforcement procedure and imprisonment law were also the areas of law in connection with which the largest number of cases were opened in 2009, amounting to 24% of the total number of cases.

By regional distribution, the largest number of cases were again based on petitions received from Tallinn and Tartu. Among counties, Ida-Viru County holds the first place with a sudden increase of the number of petitions in 2008 in connection with the opening of Viru Prison. 46% of the petitions received from Ida-Viru County in 2009 still mostly concerned issues relating to Viru Prison.

There was again a slight increase in the proportion of cases opened based on petitions in Estonian, making up 77% of the total number of cases. The number of proceedings initiated based on petitions in Russian dropped as compared to 2008, making up 18% of the total number of cases.

In comparison to 2008, the number of inspection visits increased considerably, both with regard to closed institutions, open institutions and administrative authorities. In 2009, there were 16 inspection visits more than the year before.

In 2009, 188 individuals came to a reception in the Office of the Chancellor of Justice. Questions raised during the receptions most frequently concerned the law of obligations, ownership reform law and civil court procedure.