Chancellor of Justice

2012 OVERVIEW OF THE CHANCELLOR OF JUSTICE ACTIVITIES

Chancellor of Justice as National Preventive Mechanism

Chancellor of Justice as Ombudsman for Children

Statistics of Proceedings

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PART I

CHANCELLOR OF JUSTICE AS NATIONAL PREVENTIVE MECHANISM

I INTRODUCTION

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

What constitutes the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment (hereinafter also called ill-treatment) was explained in more detail in the Chancellor of Justice 2010 Overview.[2] There it was also pointed out that the definition of torture established in § 122 of the current Penal Code of Estonia is not compatible, in the opinion of international organisations (e.g. the UN Committee against Torture and the Human Rights Committee[3]), with the definition of torture established under international conventions binding on Estonia. In 2011, the Government promised to amend the Penal Code[4] but has not yet done so.

Previously, the European Court of Human Rights has found a violation of Article 3 (i.e. prohibition of torture) of the European Convention on the Protection of Human Rights and Fundamental Freedoms by Estonia on two occasions.[5] In 2012, one more judgment to this effect was made.[6]

Under the Optional Protocol, places of detention mean all places where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (Article 4 para 1). The notion of "deprivation of liberty" means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority (Article 4 para 2). In other words, in addition to state custodial institutions, places of detention include all other institutions, regardless of their form of ownership, where the liberty of persons is restricted by order of a public authority or with its consent or acquiescence and from where persons are not permitted to leave at will. Thus, places of detention include not only prisons and police detention centres but also closed wards at psychiatric hospitals, care homes, etc.[7]

There are almost 150 establishments in Estonia qualifying as places of detention within the meaning of OPCAT. The majority of them are police detention facilities and social welfare institutions. The choice of the establishments to be inspected is made when drawing up the

1 See the Chancellor of Justice Act § 1(7). Available online: http://www.legaltext.ee/text/en/X30041K8.htm.
2 See the Chancellor of Justice 2010 Overview, p 6. Available online: http://oiguskantsler.ee/sites/default/files/overview_2010.pdf.
3 Conclusions and recommendations of the Committee against Torture. Estonia. 22 November 2007, CAT/C/EST/CO/4, p 8; Concluding observations of the Human Rights Committee. Estonia. 28 July 2010, CCPR/C/EST/CO/3, p 7. Available online: http://www.vm.ee/?q=node/10128.
4 Replies of the Government of the Republic of Estonia to the list of issues (CCPR/C/EST/Q/3) to be taken up in connection with the consideration of the third periodic report of Estonia (CCPR/C/EST/3). (3 May 2010, CCPR/C/EST/Q/3/Add.1, p 66.) Replies of the Republic of Estonia to the list of issues prior to the submission of the fifth periodic report on implementation of the International Convention Against Torture, p 1 (available online: http://www.vm.ee/sites/default/files/CAT_Replies_of_Estonia.pdf).
5 European Court of Human Rights judgment of 8 November 2005 in case No 64812/01, *Alver v. Estonia*; judgment of 2 July 2009 in case No 41653/05, *Kotšetkov v. Estonia*.
6 In the case *Julin v. Estonia* the European Court of Human Rights found that the state had violated the applicant's rights under Art 3 by confining him to a restraint bed. A violation of Art 6 para 1 was also found in connection with the applicant's right of access to the court with a complaint against his strip search. No violation was found in connection with the use of force and handcuffs or in connection with a search or investigation of claims of ill-treatment raised by the applicant (Art 3, under the so-called procedural limb); as well as in connection with the applicant's right of access to the court with complaints against the conditions of his detention (Art 6 para 1) (European Court of Human Rights judgment of 29 May 2012 in cases No 16563/08, 40841/08, 8192/10 and 18656/10).
7 On distinctions between places of detention and the so-called open establishments, see the Chancellor's 2010 Overview, p 7.

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

In 2012, 23 inspection visits to 23 places of detention were carried out.[8] In comparison, 33 inspection visits to 35 places of detention were carried out in 2011; 27 visits to 33 places of detention in 2010; 25 visits to 37 places of detention in 2009; 19 visits to 40 places of detention in 2008; and 18 visits in 2007.

By types of establishments, the inspection visits in 2012 can be categorised as follows:

1) police detention facilities – 5 visits (5 of them unannounced), 5 places of detention inspected;
2) Defence Forces – 4 visits, 4 units of the Defence Forces inspected[9];
3) providers of involuntary emergency psychiatric care – 6 visits (6 of them unannounced), 6 places of detention inspected;
4) providers of 24-hour special care services – 6 visits (6 of them unannounced), 6 places of detention inspected;
5) providers of nursing care services – 6 visits (6 of them unannounced), 6 places of detention inspected.

No visits to the expulsion centre, prisons or special schools took place during the reporting year.

Experts were used on two occasions in 2012. The experts were a general practitioner and a Rescue Service specialist.

The methodology and criteria of the inspection visits on the basis of which the places of detention are assessed were described in more detail in the Chancellor's 2010 Overview.[10] As a result of each inspection visit, a summary is compiled, containing recommendations and proposals to the inspected establishment and other relevant authorities. Summaries of inspection visits are published on the Chancellor of Justice website.[11] Data protection requirements are observed when publishing the summaries (i.e. no personal data is disclosed, etc). A short abstract of a summary of an inspection visit is also translated into English.[12]

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

In 2012, the following articles and other writings on problems in places of detention, ill-

8 Rapla County Hospital Foundation and the North Estonian Regional Hospital Foundation provide involuntary emergency psychiatric care as well as nursing care services; Viljandi Hospital Foundation provides both involuntary emergency psychiatric care as well as 24-hour special care services; Koeru Care Centre Foundation provides 24-hour special care service as well as nursing care service. Therefore, the number of inspection visits according to types of establishments is higher.

9 The inspected units in the Defence Forces included the Naval Base, Viru Infantry Battalion, the Headquarters and Signal Battalion, and Kuperjanov Infantry Battalion.

10 See the Chancellor's 2010 Overview, pp 8–9.

11 Summaries of inspection visits are available online: http://oiguskantsler.ee/en/inspection-visits/2012.

12 Available online: http://oiguskantsler.ee/en/inspection-visits.

treatment and/or the respective competence of the Chancellor of Justice were published by the Chancellor and one of his advisers:

1) I. Teder. Public address to the Minister of Social Affairs for the prohibition of corporal punishment of children. 19 November 2012[13];
2) A. Aru. *Ikka veel ihunuhtlus?* [Still corporal punishment?] – *Märka Last*, autumn 2012, pp 6–10.

In addition, officials from the Office of the Chancellor organised training events and information days for staff in places of detention. In 2012, one major training project on the prevention of ill-treatment was carried out: R. Sults trained conscripts in 24 units of the Defence Forces on the fundamental rights.

Training of the staff of the Chancellor's Office on the prevention of ill-treatment is equally important. Therefore, a training course on intellectual disability (i.e. what is intellectual disability, how to establish contact with persons with intellectual disability, how to assess the truthfulness of their statements, etc) was carried out in 2012.

In his activities as the national preventive mechanism, the Chancellor of Justice considers international cooperation with other preventive bodies and relevant international organisations to be very important. Advisers to the Chancellor attended the following events:

– 19–22 March K. Albi attended the seminar „Monitoring for the risks of ill-treatment or torture during the immigration removal process: key issues facing the NPMs" in Geneva;
– 18–20 June I.-I. Määrits and J. Konsa attended the working meeting of ombudsmen of Baltic countries in Riga where, inter alia, OPCAT matters were discussed;
– 22–27 September I. Teder and R. Sults attended the fourth annual International Conference of Ombudsman Institutions for the Armed Forces, in Ottawa.

In addition, meetings with the following international visitors took place in the Office of the Chancellor of Justice:

– 26 March, United Nations High Commissioner for Refugees (UNHCR) regional representative for the Baltic and Nordic countries Pia Prytz Phiri;
– 30 May, delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

In 2012, the Chancellor analysed the constitutionality of several legal acts with regard to the issues directly or indirectly related to the prevention of ill-treatment (e.g. admissibility of immediate enforcement of disciplinary punishments imposed on prisoners, constitutionality of compensation for the use of a personal electric appliance by a prisoner, issues relating to a personal account, admissibility of mandatory pre-trial procedure). The Chancellor found no direct unconstitutionality with regard to these norms.

Several proceedings carried out by the Chancellor within his ombudsman competence also relate to the prevention of ill-treatment, for example problems in the provision of health services to asylum seekers (including translation and interpreting, access to a doctor), recording of the use of direct coercion and the health condition of a detainee by the police, taking a person to a sobering-up facility and the use of special equipment in respect of them within the process, use of means of restraint in respect of a prisoner during their stay in a hospital outside a prison, presence of a prisoner during the search of their cell, problems relating to replying to inquiries in a prison. On the basis of the above ombudsman proceedings, the Chancellor has also made some general recommendations, proposals and conclusions on the need to change administrative practices.

13 Available online: http://oiguskantsler.ee/en/chancellor-of-justices-public-address-to-the-minister-of-social-affairs-on-prohibition-of-corporal.

The Chancellor of Justice and the Ministries of Justice and Internal Affairs continued to exchange information about cases of death in prisons and police detention centres. Thereby, having on his own initiative analysed the materials relating to deaths of persons detained in police facilities in 2011, as well as based on the previous practice, the Chancellor recommended to the Ministry of Internal Affairs to develop their opinion on security of police detention cells and, in cooperation with the Police and Border Guard Board (PBGB), take steps to increase safety of persons during detention. The scrutiny was based on the assessment of materials of disciplinary proceedings carried out by the Police and Border Guard Board. The Chancellor reached the opinion that the Police and Border Guard Board should improve and revise the current surveillance measures in respect of detainees in order to ensure their better safety. Both the Minister of Internal Affairs as well as the Director General of the Police and Border Guard Board in cooperation with each other discussed the safety of the cells and promised to keep the Chancellor informed of any further steps (Security in the cells of the PBGB, case No 7-7/120340).

Advisers to the Chancellor also participated as observers in a search raid organised by the armed unit of prisons.

The following subdivision contains an overview of the inspection visits made by the Chancellor to different places of detention in 2012, highlighting shortcomings that were detected.

II PREVENTION OF ILL-TREATMENT IN PLACES OF DETENTION

1. Police detention facilities

In 2012, the Chancellor inspected five police buildings, all of them in the West Prefecture of the Police and Border Guard Board (PBGB). The inspected facilities included the following:

- Inspection visit to Kuressaare detention chamber of the public order bureau of the West Prefecture of the PBGB (case No 7-7/120823);
- Inspection visit to Pärnu detention chamber of the public order bureau of the West Prefecture of the PBGB (case No 7-7/121199);
- Inspection visit to Kärdla detention chamber of the public order bureau of the West Prefecture of the PBGB (case No 7-7/121347);
- Inspection visit to Paide detention chamber of the public order bureau of the West Prefecture of the PBGB (case No 7-7/130046);
- Inspection visit to Rapla detention chamber of the public order bureau of the West Prefecture of the PBGB (case No 7-7/130046).

Poor living conditions found during the previous inspection visits were the main reason why the Chancellor focused only on the police facilities in the West Prefecture during this reporting period.[14] All the inspection visits were carried out without any advance notice. A general practitioner was involved as an expert in the inspection of Pärnu detention chamber and a Rescue Service official in the inspection of Pärnu and Kuressaare detention chambers. The involvement of an expert or a specialist in the inspection visit was decided by the Chancellor on the basis of the results of previous visits and the conditions prevalent in the inspected facility.

In the West Prefecture the most important development with regard to the overall conditions in police detention centres in 2012 took place – at the end of the year, a completely new Kuressaare police department and bloc of cells was opened. The previous Kuressaare police department and detention chamber which the Chancellor last inspected on 3 May 2012 had unquestionably some of the poorest living conditions in Estonia, and the Chancellor had constantly pointed out these shortcomings over the years.

Two main recurring problems can be highlighted in connection with inspection visits to police facilities in 2012: first, inadequate living conditions and, second, shortage of staff. These shortcomings have a negative effect on ensuring the rights of detainees.[15] In addition, on some occasions problems were found in providing access to health care for detainees, recording notification of next of kin of the detainees, etc. Only in Kärdla detention chamber the Chancellor did not find any problems. A positive generalisation which can be reached on the basis of inspection visits in 2012 is that in almost all the inspected chambers drawing up proper documents in relation to detainees has significantly improved, which used to be a problem highlighted by the Chancellor in 2010 and 2011.

1.1. Living conditions

Among all the inspected police facilities, inadequate living conditions most affected Pärnu and Kuressaare chambers (the latter is no longer in use). For example, the inspection revealed that neither of the facilities had an exercise yard for detainees, and in Kuressaare the cells had no windows or a toilet. Shortcomings in fire safety were also found by the Rescue Service specialist.

14 The Chancellor started the inspection focusing on the West Prefecture of the PBGB at the end of 2011 when on 3 November 2011 an inspection visit to Haapsalu detention chamber of the public order bureau of the West Prefecture took place.

15 The same main problems were found by the Chancellor during his inspection visits in 2011.

In addition to Pärnu and Kuressaare detention chambers, there is room for improvement in living conditions also in Paide and Rapla detention chambers although the overall picture in terms of guarantee of fundamental rights of detainees in the latter establishments is definitely better. It should also be taken into account that in Paide and Rapla chambers detainees are kept only for relatively short periods.

Modernising the living conditions in detention facilities requires significant resources from the state and, therefore, the overall economic situation should also be taken into account. In conclusion of his inspection visits, the Chancellor recommended to keep persons in cells with inadequate living conditions only for as short a time as possible.

As noted, Kuressaare police building was closed down and a new modern police department with detention cells was opened there at the end of 2012. This should have eliminated at least some of the shortcomings in living conditions (e.g. absence of an exercise yard or absence of a window or toilet in cells).

In Pärnu detention chamber, repairs to cells and common rooms have been made as and when funds were available (detainees' shower room, kitchen and ventilation system have been fully renovated).

1.2. Shortage of staff

Another problem concerning several inspected police facilities was shortage of staff due to which it is not possible to ensure the detainees all (or the full extent of) the rights provided for by the legislation. For example, the Chancellor found that at weekends detainees in Rapla and Paide detention chambers could not stay in the open air for the required period of time.

To improve the situation, the Chancellor proposed to the PBGB to find possibilities in police facilities to ensure the rights of detainees either by hiring additional staff or by changing the work arrangements.

Director General of the PBGB in his reply to the Chancellor explained that, for example, in Pärnu detention chamber there are currently three staff vacancies, and already three competitions have been organised to find a police officer for the detention centre, but all of them without result. The number of staff positions in Rapla and Paide detention chambers of the West Prefecture, and more widely also in other detention chambers, depends first and foremost on the personnel budget. During the previous periods, proper operation of the detention chambers has also been significantly hindered by problems (i.e. failed competitions) of finding new staff to replace officers who have left work. Work in a police detention centre is not attractive due to its nature: closed room, possible infections, attacks, low wages, etc.

The Director General explained that 1.4 million euros of the additional wage fund intended for the implementation of the new wage system in 2013 would be used for revising the wages of public servants. In total, this would affect approximately 700 persons, i.e. about half of the staff of the Police and Border Guard Board, including some staff categories (those who are public servants) at police detention centres. Therefore, the Director General hopes that the next competitions to fill the staff vacancies would be successful.

Among the immediate measures the Director General mentioned that in order to alleviate risks the field officer on duty is required to check regularly the situation in cells (if necessary, involving a police patrol), and the nearest patrol would respond to any incidents in cells.

2. Providers of involuntary emergency psychiatric care

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

- Inspection visit to Rapla County Hospital Foundation (case No 7-9/130273);
- Inspection visit to the North Estonian Regional Hospital Foundation[16] (case No 7-9/130325);
- Inspection visit to Tallinn Children's Hospital Foundation (case No 7-9/130324);
- Inspection visit to Wismari Hospital Ltd (case No 7-9/130246);
- Inspection visit to Pärnu Hospital Foundation (case No 7-9/130275);
- Inspection visit to Viljandi Hospital Foundation[17] (case No 7-9/130296).

The choice of the inspected establishments was based first and foremost on the results of the Chancellor's visits in the previous years and the need to ensure consistent and regular supervision of involuntary emergency psychiatric care activities which may seriously interfere with fundamental rights of individuals.

All the inspection visits were carried out without advance notice and without involving any experts.

In the above establishments the Chancellor verified primarily the application of means of restraint. The Chancellor found problems mostly in the use of seclusion rooms and insufficient registration of the use of means of restraint. The following subdivision contains a more detailed overview of the shortcomings and the Chancellor's proposals for eliminating them.

2.1. Seclusion of individuals

The main problem with the seclusion of individuals in three of the inspected establishments was related to the conditions of seclusion which did not always necessarily ensure the safety of the persons. For example, in one of the establishments[18] a regular ward was used for secluding persons, while the door of the ward was simply locked in case of need of seclusion. However, the room which was designed for daily occupation was not furnished in a way as to ensure the safety of persons secluded in the ward. In two of the establishments[19] there were problems with safety of the special seclusion rooms used for seclusion (and application of other means of restraint), as there were items in the rooms with which persons could easily injure themselves (e.g. unfixed bed, a screw extending from the wall, fractured door glass).

The Chancellor proposed to isolate persons only in a safe room specifically fitted for seclusion, so that persons cannot injure themselves.

2.2. Registration of the applied means of restraint

Another most frequent problem was still[20] related to maintaining a register providing a quick

16 The Chancellor inspected units No 5 and 7 in the psychiatric clinic of the North Estonian Regional Hospital Foundation.

17 The Chancellor inspected the acute psychiatry, tuberculosis treatment, coercive treatment, psychiatric long-term treatment and child psychiatry units of the psychiatric clinic of Viljandi Hospital Foundation.

18 See also the summary of inspection visit to Viljandi Hospital Foundation: http://oiguskantsler.ee/sites/default/files/IMCE/inspection_of_viljandi_hospital_2012.pdf.

19 See also the summary of inspection visit to Rapla County Hospital Foundation: http://oiguskantsler.ee/sites/default/files/IMCE/inspection_of_rapla_county_hospital_2012.pdf; and the summary of inspection visit to Wismari Hospital Ltd: http://oiguskantsler.ee/sites/default/files/IMCE/inspection_of_wismari_hospital_2012.pdf.

20 See the Chancellor's 2011 Overview, Part II, subdivision 4.2. Available online: http://oiguskantsler.ee/sites/default/files/annual_report_2011_.pdf.

overview of the applied means of restraint. Two of the inspected establishments[21] did not keep a register of the applied means of restraint, and one establishment[22] had established the register but it was not filled out.

Application of the means of restraint constitutes an extremely serious interference with the fundamental rights and freedoms. Therefore, it is necessary that both the establishment itself as well as outside supervising bodies should be able to carry out effective supervision of such activities. In order to make this possible and ensure a fast and general overview of the use of means of restraint, the legislator has provided for a duty to document the use of means of restraint (the requirement entered into effect as of 1 September 2012), inter alia, in a relevant register kept by the provider of the health service.

As three of the inspected establishments did not comply with this duty, the Chancellor proposed to them to establish a register of the means of restraint and to maintain it properly.

3. Providers of 24-hour special care services

In 2012, the Chancellor inspected six providers of 24-hour special care services:

- Inspection visit to Koluvere Home of AS Hoolekandeteenused (case No 7-9/130280);
- Inspection visit to Valkla Home of AS Hoolekandeteenused (case No 7-9/130290);
- Inspection visit to Tori Home of AS Hoolekandeteenused (case No 7-9/130281);
- Inspection visit to Koeru Care Centre Foundation (case No 7-9/130308);
- Inspection visit to Võisiku Home of AS Hoolekandeteenused[23] (case No 7-9/130289);
- Inspection visit to Viljandi Hospital Foundation (case No 7-9/130296).

In the choice of the establishments to be inspected, more attention was paid to the establishments providing 24-hour special care to persons on the basis of a court ruling (Koluvere, Valkla and Võisiku Homes owned by AS Hoolekandeteenused).

All inspection visits were carried out without an advance notice. No experts were involved in the visits.

The main problems found during the inspection concerned possible interference with the right to liberty of persons receiving 24-hour care service, as well as seclusion of persons and the condition of seclusion rooms.

3.1. Threat to the restriction of the right to liberty of individuals

In one of the inspected establishments[24] there were hooks outside the door of some of the persons receiving voluntary 24-hour special care, while the hooks could not be opened by persons inside the room. In the Chancellor's opinion this posed a danger that the liberty of persons inside the rooms could be restricted. The legislator has allowed restricting, in certain conditions, the liberty of the persons receiving 24-hour special care service but this may only be done in a room designated for this purpose, i.e. a seclusion room.

21 See the summary of inspection visit to Wismari Hospital Ltd: http://oiguskantsler.ee/sites/default/files/IMCE/inspection_of_wismari_hospital_2012.pdf and the summary of inspection visit to Viljandi Hospital Foundation: http://oiguskantsler.ee/sites/default/files/IMCE/inspection_of_viljandi_hospital_2012.pdf.

22 See the summary of inspection visit to Rapla County Hospital Foundation: http://oiguskantsler.ee/sites/default/files/IMCE/inspection_of_rapla_county_hospital_2012.pdf.

23 In Võisiku Home of AS Hoolekandeteenused the Chancellor inspected rooms of the unit for persons receiving 24-hour special care service on the basis of a court ruling, as well as rooms of units 3, 5 and 7 and the seclusion room of the medical bloc.

24 See the summary of inspection visit to Võisiku Home of AS Hoolekandeteenused: http://oiguskantsler.ee/sites/default/files/IMCE/inspection_of_voisiku_home_of_hoolekandeteenused_ltd_2012.pdf.

In order to prevent a possibility that persons could be locked inside a room against their will, and thus eliminate the threat of restriction of the fundamental right to liberty in rooms intended for daily living, the Chancellor proposed to immediately remove the hooks from outside the doors of the rooms.

3.2. Seclusion of persons and the seclusion room

Problems with seclusion of persons and seclusion rooms were found in four of the inspected establishments. In the Chancellor's opinion the main problems were the use of seclusion rooms for other purposes besides seclusion, regular locking of a person inside the room overnight, overall inadequate condition of a seclusion room, and the use of a bucket to attend to one's bodily needs.

Two of the establishments[25] used the seclusion room for other purposes (besides seclusion): in one case for sobering up of persons under alcohol intoxication, and in another case for listening to music and spending time alone. The Chancellor found that the seclusion room should be used only for seclusion of individuals because providers of 24-hour special care services are not allowed to apply any other means of restraint besides seclusion. If a seclusion room is used for other purposes, and at the same time a need for seclusion of a person arises, there is a risk that the person would be isolated in a room not designed for this where they could injure themselves or endanger their health.

In one of the establishments[26] 24-hour special care was provided to a person who was regularly locked in their room overnight. The Chancellor found that such locking up of a person in their room amounts to seclusion. As seclusion of persons constitutes a serious interference with fundamental rights, all the requirements established for seclusion by the legislator should be fully complied with on each occasion (both as regards the grounds and procedure for seclusion).

In one of the establishments[27] the Chancellor found the overall condition of the seclusion room to be problematic (bars on the windows, broken window glass replaced by plywood, walls covered with particle boards, and burning marks on the walls). The Chancellor found that the overall condition of a seclusion room should be such as to offer a pacifying environment for the secluded person and thus to contribute to the withdrawal of the causes of seclusion, and the room should also ensure treatment of a person with dignity.

In two of the inspected establishments[28] an issue of the use of a bucket for attending to one's bodily needs in the seclusion room arose. The Chancellor found that persons placed in a seclusion room should always be ensured the possibility to use a toilet.

4. Providers of nursing care services

During the reporting year the Chancellor inspected six establishments providing nursing care services:

25 See the summary of inspection visit to Viljandi Hospital Foundation: http://oiguskantsler.ee/sites/default/files/IMCE/inspection_of_viljandi_hospital_2012.pdf and the summary of inspection visit to Tori Home of AS Hoolekandeteenused: http://oiguskantsler.ee/sites/default/files/IMCE/inspection_of_tori_home_of_hoolekandeteenused_ltd_2012.pdf.

26 See the summary of inspection visit to Viljandi Hospital Foundation: http://oiguskantsler.ee/sites/default/files/IMCE/inspection_of_viljandi_hospital_2012.pdf.

27 See the summary of inspection visit to Valkla Home of AS Hoolekandeteenused: http://oiguskantsler.ee/sites/default/files/IMCE/inspection_of_valkla_home_of_hoolekandeteenused_ltd_2012.pdf.

28 See the summary of inspection visit to Koluvere Home of AS Hoolekandeteenused: http://oiguskantsler.ee/sites/default/files/IMCE/inspection_of_koluvere_home_of_hoolekandeteenused_ltd_2012.pdf and the summary of inspection visit to Tori Home: http://oiguskantsler.ee/sites/default/files/IMCE/inspection_of_tori_home_of_hoolekandeteenused_ltd_2012.pdf.

- Inspection visit to Rapla County Hospital Foundation (case No 7-9/130273);
- Inspection visit to the North Estonian Regional Hospital Foundation (case No 7-9/130325);
- Inspection visit to Tapa Hospital Ltd (case No 7-9/130295);
- Inspection visit to Pärnu-Jaagupi Care Home Foundation (case No 7-9/130283);
- Inspection visit to Koeru Care Centre Foundation (case No 7-9/130308);
- Inspection visit to Jõgeva Hospital Foundation (case No 7-9/130302).

In the choice of the establishments to be inspected, the summary of the inspection of nursing care hospitals by the Health Board in 2011 and the location of the providers of nursing care services was taken into account. The aim was to inspect services providers in different regions of Estonia.

All the inspection visits were carried out without an advance notice and without involving any experts.

The Chancellor inspected establishments providing nursing care services because he had developed a suspicion that ill-treatment of persons could occur and the fundamental rights and freedoms of individuals might not always be guaranteed in these establishments. During the inspection visits the Chancellor found two more serious problems: unlawful restriction of the fundamental right to liberty of the service recipients and absence of a nurse call system. The following subdivisions contain a more detailed overview of these problems and the Chancellor's proposals for eliminating them.

4.1. Restriction of the liberty of persons receiving the nursing care service

In two of the establishments the Chancellor found that liberty of the service recipients had been unlawfully restricted. In one of the establishments[29] the door of a five-person ward was closed with a latch from the outside in order to prevent one of the persons from leaving the service provider on his own. The Chancellor found that such a restriction of the fundamental right to liberty at the nursing care provider is not permitted. On this basis, the Chancellor proposed to immediately stop locking the door of the ward from the outside and to remove the latch from the door.

In another establishment[30] a patient was wearing a soft glove which was attached to the bed with a gauze strip. The staff explained that it was fixation for medical purposes. The Chancellor admitted that on certain occasions fixation of a person for the duration of a medical procedure may be necessary in order to ensure the person's right to the protection of their health. However, such a restriction of the fundamental right to liberty can only be permissible until the completion of the medical procedure. Otherwise, this may amount to unjustified restriction of the fundamental right to liberty, which in such a form may lead to torture or cruel or degrading treatment.

In addition, the inspection of one of the establishments revealed that it had approved a procedure for the application of means of restraint.[31] However, as the establishment was not providing in-patient psychiatric services or involuntary treatment, it had no right to apply any means of restraint in the course of the provision of health services. The Chancellor found that

29 See the summary of inspection visit to Pärnu-Jaagupi Care Home Foundation: http://oiguskantsler.ee/sites/default/files/IMCE/inspection_of_parnu-jaagupi_care_home_2012.pdf.

30 See the summary of inspection visit to Tapa Hospital Ltd: http://oiguskantsler.ee/sites/default/files/IMCE/inspection_of_tapa_hospital_2012.pdf.

31 See the summary of inspection visit to Jõgeva Hospital Foundation: http://oiguskantsler.ee/sites/default/files/IMCE/inspection_of_jogeva_hospital_2012.pdf.

the existence of such a procedure may cause misunderstanding among the hospital staff with regard to the lawfulness of the use of means of restraint within the provision of other health services, including nursing care service, and proposed to abolish the above procedure.

4.2. Nurse call system

Two of the inspected nursing care providers[32] had no nurse call system in wards and toilets to enable patients to effectively notify hospital staff of any need for assistance. The possibility to effectively notify staff of the need for assistance increases a patient's likelihood to receive swift and adequate help, thus contributing to their exercise of the right to health. An effective nurse call system also helps patients to notify the staff of their need for care, providing of which could to a large extent depend on the staff, considering the state of health of the patients. Failure to comply with an individual need for care may pose a real danger leading to torture or cruel or degrading treatment.

Therefore, the Chancellor proposed to these establishments to ensure the possibility of the use of the nurse call system for persons receiving the nursing care service.

32 See the summary of inspection visit to Rapla County Hospital Foundation: http://oiguskantsler.ee/sites/default/files/IMCE/inspection_of_rapla_county_hospital_2012.pdf and the summary of inspection visit to Jõgeva Hospital Foundation: http://oiguskantsler.ee/sites/default/files/IMCE/inspection_of_jogeva_hospital_2012.pdf.

PART II

CHANCELLOR OF JUSTICE AS OMBUDSMAN FOR CHILDREN

I INTRODUCTION

The United Nations General Assembly adopted the Convention on the Rights of the Child [33] on 20 November 1989. Estonia ratified the Convention on 26 September 1991. Under Article 4 of the Convention, States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the Convention. The UN Committee on the Rights of the Child considers the establishment of an independent supervisory institution on the rights of children as one of the obligations of States Parties under Article 4. In Estonia, the function of the independent supervisory institution on the rights of children (i.e. ombudsman for children) is performed by the Chancellor of Justice since 19 March 2011.[34]

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

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

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

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

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

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

33 Available online: http://www.ohchr.org/en/professionalinterest/pages/crc.aspx.
34 See the Chancellor of Justice Act, § 1(8). Available in English at http://www.legaltext.ee/text/en/X30041K8.htm.

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

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

The following part of the overview describes the main proceedings concerning the rights of children in 2012, as well as inspection visits to children's institutions and activities relating to promoting the rights of children.

II. PROCEEDINGS

In 2012, the Chancellor opened 164 cases concerning the rights of children. Of these, 71 were substantive proceedings and 93 cases were outside the competence of the Chancellor. In those cases, the Chancellor explained to the petitioners the Chancellor's competence and advised them how to best protect their rights. Children themselves contacted the Chancellor for the protection of their rights on three occasions during the reporting year. In the remaining cases the Chancellor was contacted by parents or other legal representatives of a child.

During the reporting year, the Chancellor opened 16 cases to verify the constitutionality of legislation concerning children. Of these, three cases were opened on the Chancellor's own initiative and 13 on the basis of a petition. For example, the Chancellor analysed the legislation of several rural municipalities regulating admission to pre-school child care establishments and dismissal from them, and in several of the regulations found provisions which were contrary to the Constitution. To verify the lawfulness of activities of persons and agencies exercising public authority, the Chancellor initiated 55 proceedings, of these 23 on his own initiative and 32 based on a petition. These cases are described in more detail in the following subdivisions.

During the reporting year, several parents contacted the Chancellor because of the shortage of kindergarten places. Although in the Chancellor's opinion rural municipality or city authorities are clearly in breach of the Pre-school Child Care Institutions Act if they do not ensure a kindergarten place for entitled children in their territory, the Chancellor nonetheless did not carry out proceedings in these cases. The reason is that it is fairly doubtful whether anyone would obtain a kindergarten place as a result of the Chancellor's proceedings because, due to the limits of his competence, the Chancellor cannot force rural municipality or city authorities to create kindergarten places. Having recourse to the court would ensure a much higher probability of success as, unlike in the case of the Chancellor's proceedings, compliance with a court judgment is mandatory. It is known that on several occasions the court has granted a claimant's request in such cases,[35] including obliging a rural municipality or city authority to compensate the cost of a place in a private kindergarten for the claimant. Therefore, the Chancellor explained to the petitioners that in such cases they could significantly more effectively exercise their rights through court proceedings rather than via the Chancellor.

At the same time, the Chancellor found that obtaining a kindergarten place through court does not resolve the overall problem with the provision of the service. Systematic changes are needed; inter alia, as concerns the issue of admission to child care institutions and dismissal from them. Namely, in a situation of shortage of kindergarten places, rural municipality and city authorities have also attempted to alleviate the problem by establishing extra criteria for admission to child care institutions and dismissal from them.

For example, the scrutiny of Keila Rural Municipality Administration regulation No 1 of 10 March 2011 „The procedure for the admission of children to and dismissal from pre-school child care institutions in Keila rural municipality" revealed that the rural municipality administration, in violation of the Pre-school Child Care Institutions Act, in addition to establishing the procedure for the admission of children to and dismissal from pre-school child care institutions, had also established substantive criteria for the admission and dismissal (The conditions for the admission of children to and dismissal from Keila rural municipality pre-school child care institutions, case No 6-5/111616).

35 See, e.g., Pärnu Administrative Court judgment of 1 December 2011 in case No 3-11-1757, available online in Estonian: https://www.riigiteataja.ee/kohtuteave/maa_ringkonna_kohtulahendid/menetlus.html?kohtuasjaNumber=3-11-1757/26.

More specifically, Keila rural municipality required that, in order to obtain a place in a kindergarten, in addition to the child himself or herself both of the child's parents also had to be registered as the inhabitants of the municipality, and the child could be two to seven years old. However, under the Act, only the child's residence according to the population register has significance and a child is entitled to a kindergarten place already from the age of 1.5 years. A child could be dismissed from a pre-school child care institution in Keila rural municipality if a medical decision for this existed, if a parent or a caregiver had not paid the kindergarten fee for two months, or if the child had been absent from a kindergarten for unknown reasons for a month. In all these cases the Chancellor found that the legislator had not authorised Keila rural municipality administration to establish such additional conditions. The Chancellor also drew the attention of Keila rural municipality administration to these contradictions. The rural municipality administration largely admitted the violations and eliminated them by establishing a new procedure for the admission of children to and dismissal from pre-school child care institutions on 24 January 2013. However, the rural municipality administration did not agree to abolish the condition that at least one of the parents must be registered as a resident of Keila municipality in order to grant a child a kindergarten place.

Inspired by the regulation of Keila rural municipality, the Chancellor also randomly scrutinised procedures for the admission of children to and dismissal from pre-school child care institutions in other rural municipalities and cities. The Chancellor had to note that the majority of rural municipality and city authorities were in violation of the Act, having also established additional substantive conditions for the admission and dismissal besides the procedural rules. As this seemed to be an overall attempt to resolve the shortage of kindergarten places by unlawful means, the Chancellor contacted the Minister of Education and Research and, on the one hand, drew the Minister's attention to such a widespread misuse of a norm (overstepping the authority) and, on the other hand, called the Minister to find a solution to the problem. The Minister in his reply promised to analyse the conditions for the admission of children to and dismissal from pre-school child care institutions, and to provide guidance to local authorities with regard to this issue.

Besides resolving the problem of shortage of kindergarten places, it is also important to create for all children, regardless of their special needs, equal opportunities for care and acquiring pre-school education. Ensuring equal opportunities for all children presumes that the state should create the conditions which take into account the needs of children with special needs and, inter alia, will make available the necessary support services.

During the reporting year, the Ministry of Education and Research initiated amendment of the Pre-school Child Care Institutions Act. According to the Draft Act for the Amendment of the Basic Schools and Upper Secondary Schools Act and other relating Acts, there is also a wish to amend the current Pre-school Child Care Institutions Act.[36] One of the amendments suggests eliminating the duty of the Minister of Education and Research to establish minimum staff levels for child care institutions. According to the current minimum staff levels, in certain conditions child care institutions are required to establish positions of support specialists (speech therapist, special education teacher). However, entry into force of the planned amendment would create a situation where the Pre-school Child Care Institutions Act would not clearly provide for the obligation of managers of child care institutions to ensure access to a speech therapist and a special education teacher in these institutions. According to the Chancellor's assessment, this may worsen the situation of children with special needs, as the support services needed by them would no longer be necessarily available.

36 The Draft Act for the Amendment of the Basic Schools and Upper Secondary Schools Act and relating Acts, as at 13 December 2012, No 340 SE.

1. Compensation of a kindergarten place in Uuesalu kindergarten in Kiili rural municipality

Based on a petition from individuals, the Chancellor verified whether it is possible to ask an additional fee from parents of children in Rae rural municipality who attend a kindergarten in Kiili rural municipality, if Rae municipality does not compensate to Kiili municipality the full extent of the cost of the kindergarten place for these children (Compensation of the cost of a kindergarten place in Uuesalu kindergarten of Kiili rural municipality, case No 7-5/100748).

The Chancellor reached the conclusion that Kiili municipality cannot demand a higher fee from parents of children residing in Rae municipality and attending Uuesalu branch of Kiili kindergarten than the fee taken from parents of children residing in Kiili municipality, i.e. a higher fee than prescribed by Kiili rural municipality administration regulation adopted under § 27(7) of the Pre-school Child Care Institutions Act ("The rate and procedure for the payment of the fee paid by a parent in Kiili Kindergarten"). Thus, Kiili rural municipality cannot demand that the petitioners should pay the difference between the cost of the kindergarten place established by Kiili rural municipality administration and the cost compensated in practice by Rae rural municipality.

In addition, the Chancellor concluded that Rae rural municipality, in turn, is obliged under § 27(6) of the Pre-school Child Care Institutions Act to compensate to Kiili rural municipality the cost of the kindergarten place of children from Rae municipality who attend Uuesalu kindergarten (management costs, staff remuneration and social tax, and the cost of teaching aids).

As a result of the proceedings, the Chancellor recommended to Rae rural municipality administration to pay to Kiili rural municipality, under § 27(6) of the Pre-school Child Care Institutions Act, the proportional share of the maintenance costs, staff remuneration and social tax and the cost of teaching aids for the children of Rae municipality attending Uuesalu kindergarten. The Chancellor also recommended to Kiili rural municipality administration not to request from parents of children of Rae municipality attending Uuesalu kindergarten the payment of the difference between the cost of the kindergarten place established by Kiili rural municipality administration and the cost compensated in practice by Rae rural municipality.

In response to the Chancellor's recommendation, Rae rural municipality replied that the dispute has been resolved and Rae municipality would pay to Kiili municipality the kindergarten fee for children attending Uuesalu kindergarten as required under § 27(3) and (7) of the Pre-school Child Care Institutions Act.

2. Compensation of costs of transportation to school in Türi rural municipality

Based on a petition from an individual, the Chancellor verified whether Türi rural municipality council regulation No 21 of 29 August 2012 "The procedure for issuing of transportation cards to pupils of Türi rural municipality and compensating the cost of transportation to school from the budget of Türi rural municipality" violates the principle of equal treatment of persons (Compensation of transportation costs in Türi rural municipality, case No 6-4/121665).

The petitioner found that Türi rural municipality should compensate transportation costs in connection with the school attendance of the petitioner's children on the territory of another local authority (municipal school of another local authority), while according to the above procedure only the transportation costs in connection with attending municipal schools in Türi rural municipality are compensated.

As a result of the proceedings, the Chancellor reached the conclusion that the procedure established by Türi rural municipality, to the extent as regards the issue raised in the petition,

is not contrary to the Constitution or the Acts. § 10(1) of the Basic Schools and Upper Secondary Schools Act establishes a principle that each child subject to the duty to attend school should be guaranteed an opportunity to acquire basis education in the rural municipality or city of their residence. If a child attends a municipal school in another local authority, under § 83(1) of the Basic Schools and Upper Secondary Schools Act the rural municipality or city of the child's residence is obliged to participate in covering the operating expenses of the other municipal school (in proportionate share). The Act does not establish the obligation to compensate transportation costs. Compensation of transportation costs of only the children attending a school in the own territory of the respective local authority does not violate the principle of equal treatment under § 12 of the Constitution either, because a rural municipality's aim to support only the coverage of transportation costs of children in its own territory is legitimate, and the restriction of the right to equality by not compensating the transportation costs of children attending schools in the territory of other local authorities is proportionate.

3. Transfer of a child from one school to another without the consent of a legal representative

The Chancellor was contacted by a parent whose child had been dismissed from Tapa Upper Secondary School and admitted to Laagna Upper Secondary School on the basis of an application by the grandmother who was the child's actual caregiver, and without the knowledge and consent of the parent (Transfer of a child from one school to another without a parent's consent, case No 7-6/111395). The parent asked the Chancellor to verify whether the schools had acted lawfully.

The Chancellor reached the conclusion that the activities of Tapa Upper Secondary School in dismissing the child from the school and the activities of Laagna Upper Secondary School in admitting the child to the school without the consent of the child's legal representative (parent) had not been lawful. Under § 146(1) of the Family Law Act, if a child resides in a foster family for an extended period of time, the person actually caring for and raising the child (i.e. foster parent) has the right to decide on matters concerning usual care for the child and represent the child in such matters. Thus, § 146(1) of the Family Law Act distinguishes between matters of usual care and other more important matters outside the scope of usual care. Choice of a child's school is a decision having an important effect on the child's future life and, hence, the decision falls outside the scope of usual care. This opinion is also supported by the Basic Schools and Upper Secondary Schools Act and the Minister of Education and Research regulation No 43 of 19 August 2010 "General conditions and procedure for the admission of pupils to school and dismissal from school". More specifically, under § 3(1) of the regulation a minor is admitted to school only on the basis of a parent's application, and under § 28(1) clause 1 of the Basic Schools and Upper Secondary Schools Act a pupil is dismissed from school if the pupil or a parent of a pupil with limited active legal capacity has submitted the respective application to the school. Thus, the rights of decision of a parent entitled to provide the care of the child are not restricted by the fact that a grandmother may be the child's foster parent within the meaning of the Family Law Act, as the legislation leaves the issue of the change of school for the parent to decide.

As a result of the proceedings, the Chancellor recommended to both schools to comply with the conditions established by the Basic Schools and Upper Secondary Schools Act and the Minister of Education and Research regulation No 43 of 19 August 2010 when admitting children to or dismissing them from school in the future.

In response to the Chancellor's recommendations both schools replied that in future they would comply with the requirements of the above legislation when admitting pupils to or dismissing them from school.

III. INSPECTION VISITS

During the reporting year, the Chancellor visited 14 substitute homes: Tartu Small Children's Home (Inspection visit to Small Children's Home Käopesa, case No 7-7/111391), Viimsi Family Home (Inspection visit to Viimsi Family Home, case No 7-9/130079), Vinni Family Home (Inspection visit to Vinni Family Home, case No 7-8/121107), Haiba Children's Home (Inspection visit and follow-up visit to Haiba Children's Home, case No 7-8/120596), Keila SOS Children's Village of the Estonian Association SOS Children's Village (Inspection visit to Keila SOS Children's Village, case No 7-9/120492), Valga Children's Home Kurepesa (Inspection visit to Children's Home Kurepesa, case No 7-8/120732), Tallinn Children's Home Maarjamäe Centre (Inspection visit to Maarjamäe Centre, case No 7-8/120491), Tallinn Children's Home Lasnamäe Centre (Inspection visit to Lasnamäe Centre, case No 7-8/130125), Pärnu Children's Village (Inspection visit to Pärnu Children's Village, case No 7-8/121116), Oisu Family Home of South Järva County Children's Assistance Society (Inspection visit to Oisu Family Home, case No 7-9/121312), Koeru Family Home (Inspection visit to Koeru Family Home, case No 7-8/121311), Kohtla-Nõmme Children's Home (Inspection visit to Kohtla-Nõmme Children's Home, case No 7-8/121313), non-profit association Maria and Children (Inspection visit to Tudulinna Substitute Home, case No 7-9/121314); non-profit association Maria Children's Centre (Follow-up visit to Maria Children's Centre, case No 7-9/120507).

The Chancellor gave advance notice of all the inspection visits.

Based on the collected information, an analysis of the substitute home service was drawn up (case No 16-4/130211). The Chancellor analysed guaranteeing of the rights of children in substitute homes. The aim of the analysis was to assess the substitute home service from the viewpoint of the child – how the children feel in substitute homes, whether they are feeling well, has everything been arranged considering the best interests of the child and involving the child, preparing them for independent life.

The state has made considerable investments for creating the necessary living conditions for children, and new family houses in eleven substitute homes have been built or are currently under construction. Children and young people are mostly satisfied with their life in substitute homes and the main daily needs of children are generally met. Nevertheless, on several occasions the Chancellor found recurring and systematic shortcomings in terms of the guarantee of the fundamental rights of children. Eliminating them would even further improve the life in substitute homes. The main problems relate to the creation of family-like conditions for children in substitute homes, the need for a minimum standard for the substitute home service and cost-based financing, the activities of rural municipality or city authorities in exercising their guardianship and care duties in respect of children in substitute homes, and performing state supervision over the providers of the substitute home service.

1. Family-like living conditions

According to studies, the best growing environment for children is the family. Therefore, substitute care in Estonia should be organised in a way as to create an opportunity for as many children without parental care as possible to grow in a guardianship or foster family or find a new family through adoption, instead of growing up in an institution. Unfortunately, currently more children without parental care in Estonia live in institutions than in foster or guardianship families, in total more than 1100 children. Therefore, alongside preparing a new concept of substitute care and providing more efficient support to foster and guardianship families, it is equally important to create maximum family-like conditions for children living in substitute homes. In order to create maximum family-like conditions in substitute homes, the state has established several requirements for substitute homes, including a family-based care model and requirements for the ratio of children and teachers per one family in a substitute home.

The inspection visits revealed that there is still significant room for improvement in making the substitute home service an essentially family-like form of care. Only in few substitute homes children grow with a family elder who permanently lives with them. In most substitute homes at least four teachers working in shifts take care of the children of one family. Moreover, two thirds of such substitute homes have tried to stretch the statutory ratio of teachers and children in one or another way, whether by placing more than the prescribed maximum eight children in one family or by putting one teacher in charge of more than one family. The largest number of children in one family was 17 instead of the legally prescribed maximum of eight. In one substitute home three teachers were in charge of a total of 57 children. With the aim of optimising the working time of teachers, children are also transferred from one family to another for some periods (e.g. vacation period, or time when some children are in long summer camps or on school holidays). In such conditions it is difficult for children to establish lasting relationships based on trust with people who take care of them every day. The higher the number of children per one adult, the less time teachers have for children, the more superficial the relationships and the less similar such a form of care is to a family model.

By ignoring the legally prescribed ratio of teachers and children, other fundamental rights of children might also not be fully ensured, such as the right to security and all-round development. Examples of cases where teachers have been unable to prevent violence between children, cope with children with behavioural problems or teach sufficient skills for independent life (e.g. cooking, independent management of various matters) or where children lack the motivation to study or engage in hobbies, can mostly be found in those substitute homes where teachers work in shifts and the number of children per teacher is higher than the prescribed maximum.

In addition to lack of emotional human intimacy and trust-based relationships, other obstacles in ensuring a stable growing environment for children exist. Although transfer of children during their time in a substitute home should be avoided, both inside a substitute home as well as between different substitute homes, children are still being moved from one family or house to another and also from one substitute home to another. Last year 15% of all the children admitted to substitute homes had previously already lived in another substitute home. With each such transfer a child has to get used to new teachers, children and other persons around them, which does not contribute to making the service resemble to real families or the creation of a permanent social network around the child.

2. Minimum standards for the substitute home service

The legislation establishes rather detailed requirements for the substitute home service as regards the number of children per family, the number and qualifications of the staff, as well as food, rooms and equipment. It also describes which activities make up the substance of the service. All this requires a certain sum of money which the state pays for the provision of the service to each child. In addition, according to the law the substitute home service should meet the basic needs of the child. At the same time, financing of the service is currently not cost-based and there is no clear idea how much a service complying with all the requirements and meeting all the basic needs of the child would realistically cost.

The inspection visits show that the current funding per child from the state budget is not sufficient to comply with all the statutory requirements and meet all the other basic needs of the child, as the actual costs of the substitute homes are higher. The establishments complying with the minimum staff requirements are unable to ensure full coverage of all the other needs of the children (e.g. hobby activities). On the other hand, the establishments focusing more on providing various opportunities for the development of children, such as hobby activities, camps, school trips, do not have sufficient number of teachers to ensure individual attention to children and their supervision.

Thus, if the legislation establishes mandatory requirements for the substitute home service, the state should also have cost-based calculations to ensure that the funding per child is sufficient for providing the service to the extent and on the conditions provided for by the law.

Children without parental care are entitled to full maintenance by the state and the state should ensure it at least to the necessary minimum extent in a uniform manner for all the children entitled to the substitute home service. Guaranteeing this minimum standard for the children should not be made dependent on the capability of a substitute home to find sponsors or other additional sources for financing the service, as not all the substitute homes have them while the basic needs of the children still have to be met. The Chancellor observed that finding additional funds besides the money paid per child from the state budget does not depend on the form of ownership of a substitute home, but to a large extent on the enterprising initiative and capability of an establishment and in particular its management to participate in various projects and attract sponsors, as well as on the support of a particular local authority to the establishment. Some local authorities support substitute homes on their territory by compensating transportation costs of children, ensuring kindergarten places or municipal premises free of charge, etc. However, the majority of local authorities do not provide any support to the substitute homes managed by them or operating on their territory.

3. Activities of rural municipality or city authorities in exercising their guardianship and care duties in respect of children

At least equally important with the local authorities' support to substitute homes is the role of local authorities as guardians of children without parental care. The task of a child's legal representative is to support the development of the child and ensure their all-round well-being. However, in almost all the substitute homes there are children whose guardian local authorities do not perform their guardianship duties but have unlawfully delegated the substitute homes to make decisions and perform acts which, according to the law, should be performed by a child's legal representative (including representation in pre-trial and judicial proceedings, applying for the establishment of a degree of disability or for rehabilitation).

Local authorities have also failed to show sufficient interest in the development and well-being of children under their guardianship in substitute homes. This is characterised by problems with case management plans which should be the most important documents in ascertaining individual needs of the child, planning the activities necessary for their development and for monitoring their well-being. Such plans have either not been drawn up, revised once a year or properly signed as required by the law. One in four substitute homes has children who have not been periodically visited by a representative of the local authority of their residence in order to ensure that a child's legal representative has a personal contact the with the child and is familiar with the child's situation. This also means failure to ensure the right of the child to be involved in making the decisions concerning him or her.

4. State supervision

State supervision over the quality of the substitute home service is performed by county governors. However, the quality of their work is rather uneven. For example, county governors have interpreted differently the legally prescribed requirements for the substitute home service (e.g. requirement to have a case management plan or establish the ratio of children and teachers) which leads to a different application of the law in substitute homes in different counties. Shortcomings could also be observed in the preliminary and follow-up supervision performed by county governors. County governors often fail to make use of the opportunities upon granting operating licences and concluding contracts under public law to ensure that no more children than the legally prescribed maximum are placed in a family in a substitute home

or that the local authority should draw up a case management plan for each child. County governors often also fail to verify whether the substitute homes in practice comply with the recommendations given to them in the course of supervision. For example, some problems have been pointed out year after year but more effective measures available under the legislation to ensure compliance with the recommendations, e.g. issuing of precepts, have not been used.

The Chancellor has sent the summaries of the inspection visits with his recommendations to the respective substitute homes, as well as the respective rural municipality or city administrations and county administrations, and other authorities if necessary. The Chancellor will carry out a follow-up inspection in one year to verify compliance with his recommendations.

The Chancellor has submitted his general analysis of the substitute home service and the recommendations based on it to the Riigikogu social affairs committee, the Minister of Social Affairs, county governors, rural municipality or city administrations and substitute homes.

IV. PROMOTING THE RIGHTS OF CHILDREN

1. Studies and analyses

Besides supervisory functions, the tasks of the Ombudsman for Children include raising awareness of and promoting the rights of children. In order to better plan his awareness-raising work the ombudsman considers it necessary to carry out surveys and analyses to obtain an overview of the awareness of society about the issues relating to the rights of the child.

Based on information from Statistics Estonia, the Ombudsman for Children prepared an overview of child poverty in Estonia[37]. In March 2012, the Chancellor of Justice Indrek Teder as the Ombudsman for Children organised a roundtable "Child poverty - looking for solutions!" in order to introduce the overview and seek solutions to problems of child poverty. Invited to the roundtable were members of the Riigikogu social affairs committee, Minister of Social Affairs, Minister of Regional Affairs, Minister of Education and Research, representatives of the Association of Estonian Cities, the Association of Municipalities of Estonia, universities and NGOs.

By organising the roundtable the Ombudsman for Children wished to draw attention to problems of child poverty and offer an opportunity to seek solutions to the problems in a joint discussion of specialists and decision makers. The topics explored by the roundtable and the results of the overview were also widely covered by the media.

On the initiative of the Ombudsman for Children and the Ministry of Social Affairs, and in cooperation with the Praxis Centre for Policy Studies, a monitoring survey of the rights of the child and parenting was carried out for the first time in 2012[38]. The aim of the monitoring was to find out society's awareness of the issues relating to the rights of the child and analyse attitudes and problems concerning issues of raising children and supporting parenting, viewed from the angle of children as well as adults. For this, information was collected from both the adult population and children.

The results showed that both among adults and children it is necessary to enhance awareness of the substance of the rights of the child. Most people have heard about the rights of the child but have often not understood their substance. The results of the monitoring survey also showed that more attention than before should be given to informing the Russian-speaking population, as this group of society knew less about the rights of the child than Estonian-speaking population.

Based on the monitoring, it may be claimed that the attitudes prevalent in society tend to support involvement of children in decision-making concerning them, and taking into account the opinion of children. However, these attitudes are not always expressed in actions: while children usually have a say in family matters, their opportunities in having a say and expressing their opinion at school and more widely on the level of community and society are rather limited in practice. The need for a wider involvement of children and better explanation of decisions concerning children is also shown by the fact a considerable number of children replied that teachers had treated them unfairly and bullied them at school.

One in ten children replied that they had witnessed violence at home. Such children need assistance and support even when they themselves have not been direct victims of violence because, indirectly, they are victims too. Therefore, it is particularly important that everyone

37 Available online in Estonian: http://lasteombudsman.ee/sites/default/files/ylevaade_vaesus_ja_sellega_seotud_probleemid_lastega_peredes.pdf.

38 Summary of the monitoring survey on the rights of the child and parenting is available online in English: http://oiguskantsler.ee/sites/default/files/IMCE/summary_of_the_monitoring_of_the_rights_of_the_child_and_parenting.pdf.

who notices a child in need of assistance should notify the child protection workers or the police about it.

The monitoring also showed that both children and parents felt that they did not have sufficient time to be together with each other. It was also found that a quarter of the children do not live with their father. A child needs the care and closeness of both parents. Therefore, it is particularly important that parents should find time to talk to their children, to listen to them and spend time together. It is also important to support the relationships between a child and a parent living apart, except in cases where communicating with the parent living apart is not in the best interests of the child.

Although the majority of society does not support corporal punishment of children, almost four in ten parents find that in certain situations corporal punishment of children would be conceivable. One in four parents noted that during the past year they had rarely felt happy for their children. One fifth of the parents noted that they were often in stress. All this shows that parents need guidance and support in their role as parents. It is also necessary to make parents more aware of how to raise a child without violence and what consequences corporal punishment can have on the development of the child.

A seminar to introduce the results of the monitoring was organised in the Office of the Chancellor on the International Day for the Protection of Children. The results were widely reported by the television, radio, printed and online media. The summary of the monitoring survey is available on the website of the Ombudsman for Children also in English and Russian alongside the full reports in Estonian.

2. Advisory body to the Ombudsman for Children

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

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

In 2012, members of the advisory body met four times. At the meeting in January, discussions with advisers to the Ombudsman for Children were focused on the substance and principles of the rights of the child. The advisory body participated in preparing the questionnaire for the monitoring of the rights of the child and parenting in January, as well as in commenting the results of the monitoring in May.

Members of the advisory body together with advisers of the Children's Rights Department helped to select films for the programme of the spring youth films festival Just Film.

In May the advisory body had a discussion with child psychiatrist Anne Kleinberg about the reasons, effects and consequences of corporal punishment. At the meeting in September, members of the advisory body expressed their opinions on the possibilities of raising children without violence, offering their solutions for supporting parents and raising awareness.

In October, some members of the advisory body participated in preparing the ombudsman's public address for the prohibition of corporal punishment of children, discussing the purpose and messages of the address with various specialists at the roundtable convened by the Ombudsman for Children, and giving examples of the relevant debates held in their own organisations.

In cooperation with the members of the advisory body, adviser to the Ombudsman for Children Andra Reinomägi participated in summer camps of the association *Eesti 4H* and of the Scouts to introduce the principles of the rights of the child, and in November in cooperation with the Estonian Association of Pupils' Representative Bodies she attended the general assembly of the Association in Paide where she organised a workshop on the rights of the child and corporal punishment.

3. Public address for the prohibition of corporal punishment of children

In November, the Ombudsman for Children sent a public address to the Minister of Social Affairs to prohibit corporal punishment of children[39]. 31 organisations and establishments joined the ombudsman's address. Corporal punishment of children violates the basic principles of human rights – the right to physical integrity and human dignity. The need for prohibiting corporal punishment of the child has been also highlighted by both domestic and international organisations. For example, Estonia has been criticised by the UN Committee of the Rights of the Child as well as the Council of Europe Committee of Social Rights for the lack of regulations on the matter. The Ombudsman for Children sent the relevant address also to the Ministers of Justice, Internal Affairs, and Education and Research, as well as the Riigikogu.

4. Local cooperation

During the reporting year, advisers to the Ombudsman for Children also cooperated with several non-profit associations and organisations, in addition to state and local government bodies, for protecting and promoting the rights of children: the Estonian Association of School Psychologists, the Estonian Association of Pupils's Representative Bodies, Just Film, the Union for Child Welfare, the Chamber for the Protection of the Interests of Children, children's helpline, Family Centre You and Me, etc.

5. International cooperation

In spring 2012, the first meeting of all the three ombudsmen of children of the Baltic countries took place. During the two-day meeting, the participants exchanged examples of good practice, shared experiences and discussed common problems and future cooperation possibilities.

In the framework of international cooperation, in spring 2012 the Finnish ombudsman for children and the adviser to the Finnish parliamentary ombudsman visited the Chancellor of Justice, and together with the Chancellor's advisers they participated in the inspection visit to Maarjamäe Centre of Tallinn Children's Home.

In August 2012, the Chancellor of Justice was visited by the Polish ombudsman for children Marek Michalak, who was Chairman of the European Network of Ombudspersons for Children (ENOC), in order to assess the suitability of the Chancellor of Justice to become a member of ENOC. The Chairman of ENOC together with advisers to the Chancellor also participated in the inspection visit to Lasnamäe Centre of Tallinn Children's Home.

In September 2012, the Chancellor of Justice was accepted as full member of the European Network of Ombudspersons for Children (ENOC). In October 2012, the Chancellor of Justice

39 Available online: http://lasteombudsman.ee/en/chancellor-of-justices-public-address-to-the-minister-of-social-affairs-on-prohibition-of-corporal.

Indrek Teder and head of the Children's Rights Department of the Chancellor's Office Andres Aru attended ENOC General Assembly and Annual Conference in Cypros.

In the course of a study visit in autumn 2012, the Children's Rights Department of the Chancellor's Office visited Finnish and Norwegian ombudsmen for children and parliamentary ombudsmen, the Norwegian parliamentary group dealing with the rights of children and other Norwegian state agencies and organisations protecting the welfare of children. Advisers of the Children's Rights Department of the Chancellor's Office together with the Finnish parliamentary ombudsman participated in an inspection visit to a rehabilitation establishment for young people with behavioural problems and mental disorders.

6. Participation in the activities of other institutions

During the reporting year, officials from the Children's Rights Department also participated in the activities of other institutions: Andra Reinomägi participated in the working group for the preparation of the concept of the welfare of the child and in the working group "Custody rights of parents in a violent family"; Andra Reinomägi and Margit Sarv participated in the work of the study grant committee of the non-profit association SEB Charity Fund; Andres Aru was a member of the editorial board of the magazine *Märka Last* published by the Union for Child Welfare.

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

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

In the framework of the children's and youth films festival Just Film, as part of the Black Nights Film Festival (PÖFF), a special programme on the rights of the child was shown already for the second consecutive year. This year's special programme was prepared in cooperation of Just Film, Ombudsman for Children, Ministry of Justice and the Union for Child Welfare.

Advisers of the Children's Rights Department of the Chancellor's Office and of the Ministry of Justice selected for the special programme films which draw attention to issues important for children and young people, are suitable for watching together with friends, parents and classmates, and stimulate debate about the substance of the film and the rights of children. The seven selected films were shown 15 times during the festival. A debate with the audience was held at least at one of the showings of each film. Best Estonian experts shared their views during the debates which were chaired by advisers of the Children's Rights Department of the Chancellor's Office and the Ministry of Justice. In addition, in the framework of the special programme a free showing of a film took place in the Chancellor's Office, followed by a debate on the topics of raising children without violence.

Interest in the special programme on the rights of the child was high: a total of 1611 children and adults visited the programme. Four showings were fully sold out; the average occupancy rate of the hall was 73.6%, which was significantly higher than the average for the festival.

8. Homepage and Facebook profile

To inform about the rights of children and explain the institution and activities of the Ombudsman for Children, the Facebook profile of the Ombudsman for Children[40] has been created, and in March 2012 the homepage of the Ombudsman for Children[41] was opened.

40 See at https://www.facebook.com/lasteombudsman.
41 See at http://lasteombudsman.ee/en/welcome.

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

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

9. Lectures, presentations and speeches

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

27 January. M. Sarv, presentation "Notifying about a child in need, and data protection" at the annual conference of the Data Protection Inspectorate "Vigade parandus: laste andmete kaitse" [Correction of mistakes: protection of the data of children].

15 February. A. Reinomägi, presentation on protecting and promoting the rights of children and young people at the days of various cities and rural municipalities.

16 February. M. Tammesalu, presentation on the work of the Ombudsman for Children and the rights of children for the heads of kindergartens in Põlva County.

20 March. M. Sarv, presentation "Notifying about a child in need, and data protection" at the meeting of the Estonian Association of Social Pedagogy Teachers.

21 April. A. Reinomägi, presentation and leading a workshop at the information day „Kevadsoss 2012" of the Institute of Sociology, Social Work and Policy (SOSS).

26 April. A. Aru and M. Sarv, presentation "Notifying about a child in need, and data protection" at the roundtable meeting of the partnership programme "Riskilaps" [Child at risk].

15 May. M. Sarv, presentation "Notifying about a child in need, and data protection" at the seminar "Varajane märkamine ja sekkumine" [Early detection and intervention], organised by the Chamber for the Protection of the Interests of Children.

20 July. A. Reinomägi, presentation and participation in discussion round at the international conference "Rich in Children – Rich in What?".

16 August. A. Reinomägi, introduction of the results of the monitoring survey for the Board of the Estonian Association of Teachers.

19 September. A. Reinomägi, presentation at the Praxis Youth Monitoring seminar.
20 September. A. Aru, presentation on notifying about a child in need and privacy at the seminar "Lapse õigused meedis" [Rights of the child in the media], organised by the Union for Child Welfare in Ida-Viru County Administration.

21 September. A. Aru, presentation "Best interests of the child" and participation in the roundtable "Establishing the best interests of the child in cases of domestic violence" organised by the Union for Child Welfare at the Office of the Chancellor of Justice.

24 September. A. Reinomägi, presentation "Satisfaction of the basic needs of the child is an issue of the rights of the child and sustainability of the state" at the roundtable discussion "Child benefits – the way of the Nordic countries or southern Europe?", organised by the faction of the Social Democratic Party in the Riigikogu.

26 September. A. Aru, lecture "The rights of the child" for the students of social work at Tallinn University.

3 October. A. Aru, moderator at the international conference „Tõenduspõhine praktika töös riskilaste ja -noortega: Norra kogemus" [Evidence-based practice in working with children and young people at risk: Norwegian experience], organised in cooperation of the Ministry of Social Affairs, the Ministry of Education and Research and the Ministry of Justice.

23 October. A. Aru, presentation on notifying about children in need at Viimsi school.

3 November. A. Reinomägi, presentation and organising a workshop at the general meeting of the Estonian Association of Pupils' Representative Bodies in Paide.

14 November. A. Aru, presentation "Best interests of the child" at Järva County year of children conference in Türi community centre.

15 November. A. Aru, training for the members of juvenile committees in Viljandi County.

22 November. A. Aru presentation "Substitute care in Estonia" to representatives of the Finnish Child Welfare Association at the meeting organised by the Estonian Union for Child Welfare at the Baltic Film and Media School.

10 December. A. Reinomägi, introduction of the guidelines for notifying about children in need at Pirita Majandusgümnaasium.

12 December. A. Reinomägi, presentation "Prohibition of corporal punishment of children: principles, activities, cooperation" at the roundtable on parenting.

18 December. A. Reinomägi, presentation at the Christmas seminar "Involving children in child protection" for child protection workers of the Ministry of Social Affairs, the Advisory Centre for Families and Children and NGOs contributing to supporting the welfare of children.

A. Reinomägi, introducing the rights of children at Tallinn 32nd Secondary School, for grade 6 of Tallinn English College, grade 4 of Pääsküla Upper Secondary School, grades 7–8 at the camp of the Estonian Temperance Union and the event organised on the International Day for the Protection of Children by the youth assembly of the Estonian Union for Child Welfare, 4H summer camp, anniversary camp of Scouts, and for parents and teachers at Simuna school.

10. Articles, opinions, interviews

A. Reinomägi. Nähtav kuristik rukkis. [Obvious catcher in the rye] – *Postimees* 14 February 2012.

A. Aru, A. Reinomägi. Laste vaesus vajab lahendusi. [Child poverty needs solutions] – *Märka Last,* spring 2012.

A. Reinomägi. Vaesuses elavad lapsed vajavad abi. [Children in poverty need help] – *Saarte Hääl* 15 May 2012.

A. Aru. Iga lapsehoidja vastutab tema hoolde usaldatud lapse eest. [Each child minder is responsible for the child trusted to them] – *Eesti Päevaleht* 17 July 2012.

Interview with Andres Aru, head of the Children's Rights Department of the Chancellor's Office, „Virossa yritetään kieltää lasten ruumiillinen kuritus". – *Keskisuomalainen* [newspaper in central Finland] 5 September 2012.

A. Aru. Ikka veel ihunuhtlus? [Still corporal punishment?] – *Märka Last*, autumn 2012.

A. Reinomägi. *Püüdes lapsepõlve*. [Catching the childhood] – special paper of the Just Film festival *Just Leht* (published as an insert of *Postimees* daily) 16 November 2012.

A. Reinomägi. Lapse õiguste ja vanemluse monitooring: lapsi saab rohkem kuulata ja kaasata. [Monitoring of the rights of the child and parenting: better listening to children and involvement is possible] – *Sotsiaaltöö* No 6, 2012.

During the reporting year, Andra Reinomägi gave three television interviews on the tpoic of the monitoring of the rights of the child and parenting, and Andres Aru appeared in two television programmes – on the issue of citizenship of children in *Pealtnägija* programme on ETV and on the issue of the rights of children in *Õigusnõu* programme on Tallinn TV.

Indrek Teder gave a radio interview on child poverty to the Vikerraadio programme *Päevakaja*.

Andra Reinomägi talked on the radio about the overview of child poverty and the monitoring of the rights of the child and parenting on seven occasions, also giving an interview to the French radio channel *Radio France Internationale*.

Andres Aru gave two radio interviews on the issue of the monitoring of the rights of the child and parenting.

PART III

STATISTICS OF PROCEEDINGS

1. General outline of statistics of proceedings

1.1. Petition-based statistics

In 2012, the Chancellor of Justice received 2040 petitions. In comparison to 2011, the number of petitions has dropped by 3.9%.

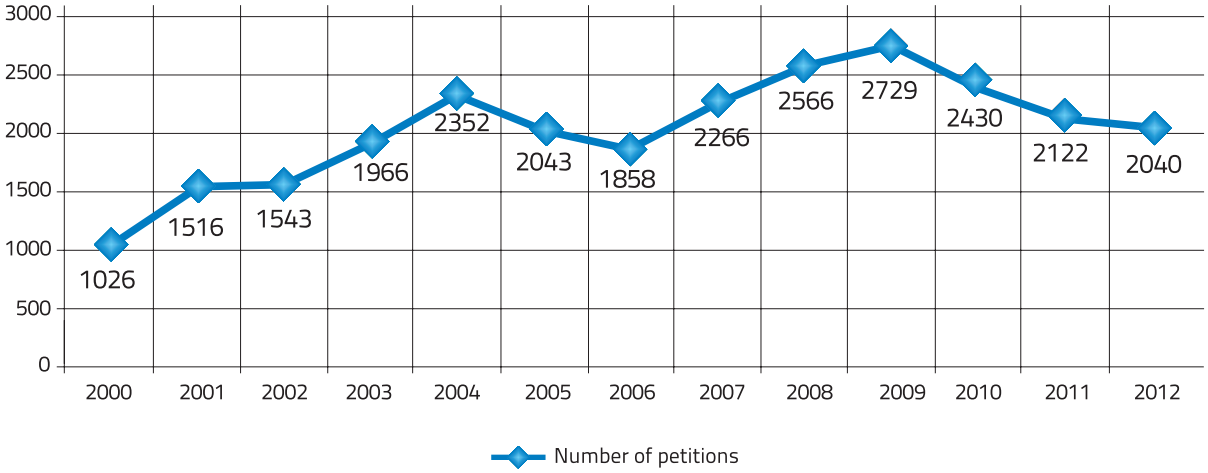

Figure 1. Number of petitions 2000–2012

1.2. Statistics based on cases opened

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

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

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

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

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

During the reporting year, the Chancellor opened 1610 cases, which is 7.4% less than in 2011. As at 5 February 2013, 1509 of the cases had been completed, in 29 cases follow-up proceedings were being conducted and 72 cases were still being investigated. In 296 cases substantive proceedings were conducted, and in 1314 cases no substantive proceedings were initiated for various reasons. 52 cases were opened on the Chancellor's own initiative, and 44 inspection visits were conducted.

Table 1. Distribution of cases by content

Type of case	Number and proportion of cases opened					
	2007	2008	2009	2010	2011	2012
Cases accepted for proceedings, including	474 *27.2%*	480 *24.7%*	449 *22.1%*	480 *24%*	395 *22.7%*	296 *18.4%*
constitutional review proceedings	150 *8.6%*	151 *7.8%*	124 *6.1%*	168 *8.4%*	127 *7.3%*	98 *6%*
ombudsman proceedings	252 *14.5%*	258 *13.3%*	231 *11.4%*	214 *10.7%*	186 *10.6%*	109 *6.8%*
special proceedings	72 *4.1%*	71 *3.7%*	94 *4.6%*	98 *4.9%*	82 *4.7%*	89 *5.5%*
Non-substantive proceedings of cases	1266 *72.8%*	1464 *75.3%*	1584 *77.9%*	1523 *76%*	1344 *77.3%*	1314 *81.6%*
Total cases, including	1740	1944	2033	2003	1739	1610
own-initiative proceedings	70 *4%*	66 *3.5%*	82 *4%*	75 *3.7%*	72 *4.1%*	52 *3.2%*
inspection visits	28	33	49	42	53	44

2. Opinions of the Chancellor of Justice

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

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

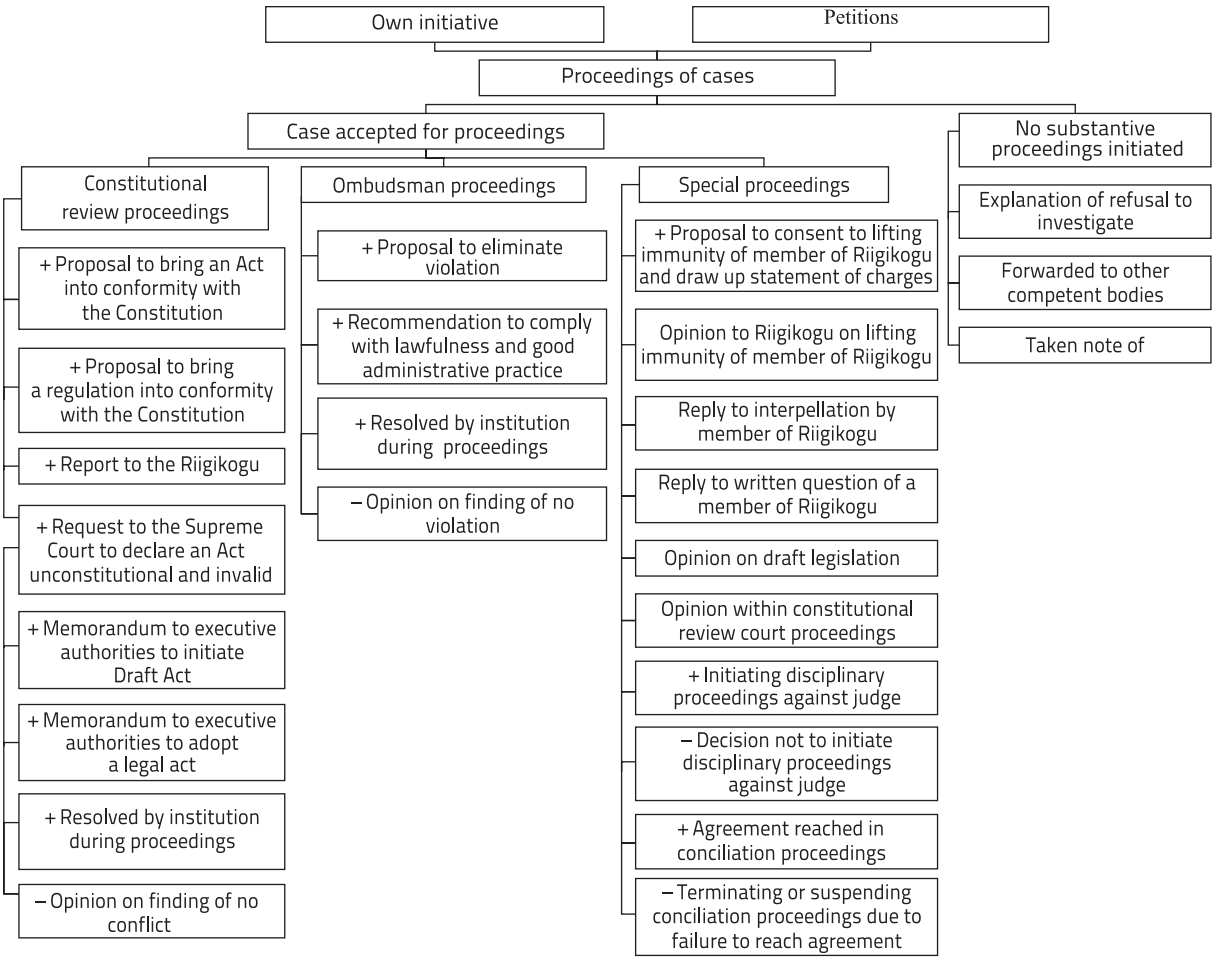

Figure 2. Distribution of cases opened and outcome of proceedings

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

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

No conflict was found:
– an opinion stating a finding of no conflict.

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

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

No violation was found:
– an opinion stating a finding of no violation.

The Chancellor's opinions in special proceedings

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

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

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

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

The figures concerning statistics of proceedings are based only on the proceedings opened in 2012. All the opinions of the Chancellor, including those concerning cases opened before 2012, are available in Estonian on the website of the Chancellor of Justice.[42]

The Chancellor opened 98 cases to review the constitutionality and legality of legislation of general application, which makes up 6% of the total number of cases and 33% of the total number of substantive proceedings of cases. Of these, 85 were opened on the basis of petitions and 13 on own initiative.

Within constitutional review proceedings the following were scrutinised:

- conformity of Acts with the Constitution (75 proceedings, of these 66 based on petitions by individuals and 9 on own initiative);
- conformity of Government regulations with the Constitution and Acts (5 proceedings, one of these based on a petition by an individual);
- conformity of regulations of Ministers with the Constitution and Acts (8 proceedings, of these 7 based on petitions by individuals and one on own initiative);
- conformity of regulations of local councils and rural municipality and city administrations with the Constitution and Acts (7 proceedings, of which 6 based on petitions by individuals);
- conformity of other legislation with the Constitution and Acts (3 proceedings, of which 2 based on petitions by individuals) (see also Figure 3).

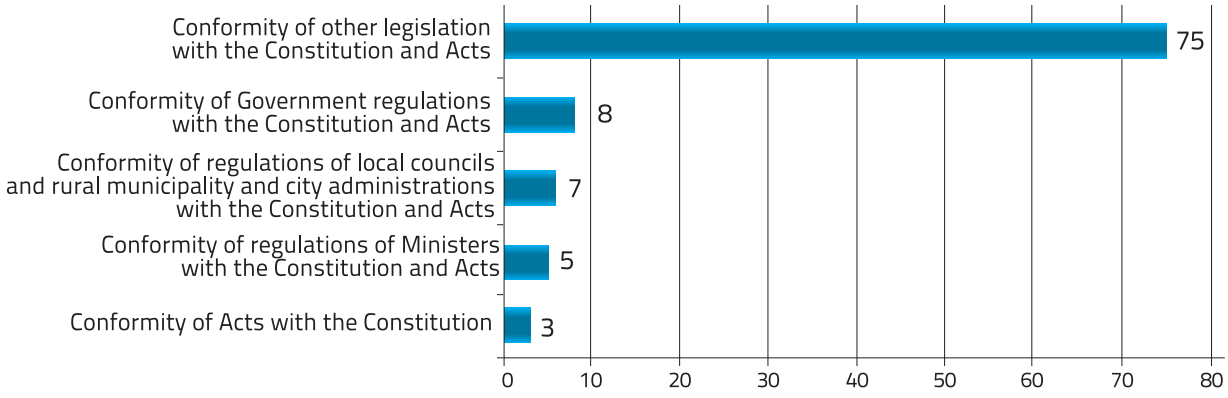

Figure 3. Distribution of constitutional review proceedings

42 http://oiguskantsler.ee/et/seisukohad/viimased-seisukohad

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

- proposal to bring an Act into conformity with the Constitution (4 case) [43];
- request to the Supreme Court for declaring legislation of general application unconstitutional and invalid (1);
- memorandum to executive authorities for initiating a Draft Act (5) [44];
- memorandum to executive authorities for adopting a legal act (3);
- opinion stating a finding of no conflict (45).

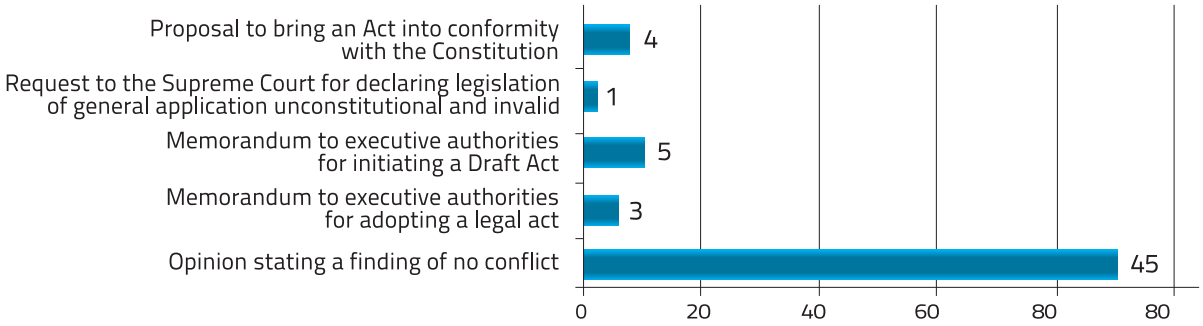

Figure 4. Chancellor's opinions upon review of conformity with the Constitution and Acts

In case of proceedings for review of conformity with the Constitution and Acts, the Chancellor found conflict with the Constitution or an Act in 13% of the cases. In 2011, the indicator was on the same level, i.e. 21%.

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

The Chancellor initiated 109 proceedings for verification of legality of activities of the state, local authorities, other public-law legal persons or of a private person, body or institution performing a public function. This makes up 6.8% of the cases opened and 37% of the total number of substantive proceedings. Of these, 70 were based on petitions by individuals and 39 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 (69 proceedings, of these 52 based on petitions by individuals and 17 on own initiative);
- activities of a local government body or agency (32 proceedings, of these 15 based on petitions and 17 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 (8 proceedings, of these 3 based on petitions and 5 on own initiative) (see Figure 5).

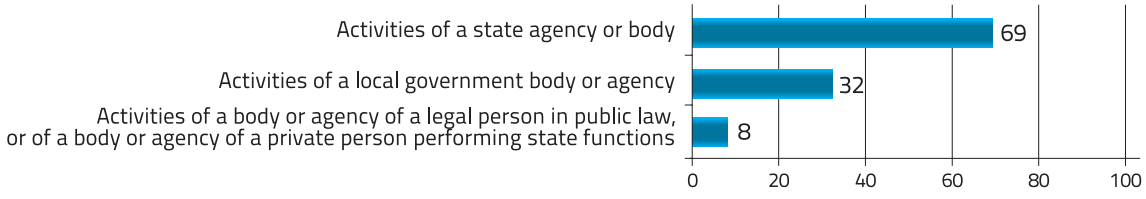

Figure 5. Distribution of cases opened for scrutiny of activities of persons, agencies, and bodies

43 Together with the cases opened in the previous years, in 2012 the Chancellor made 9 proposals which are available in Estonian on http://oiguskantsler.ee/et/seisukohad/otsing?sisutuup=seisukoht&menetluse_liik=3&dokumendi_liik=6.

44 Together with the cases opened in the previous years, in 2012 the Chancellor issued 23 memorandums which are available in Estonian on http://oiguskantsler.ee/et/seisukohad/otsing?sisutuup=seisukoht&menetluse_liik=3&dokumendi_liik=9.

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

- proposal to eliminate a violation (4 cases);
- recommendation to comply with lawfulness and good administrative practice (36);
- resolved by the institution during the proceedings (2);
- opinion stating a finding of no violation (33) (see also Figure 6).

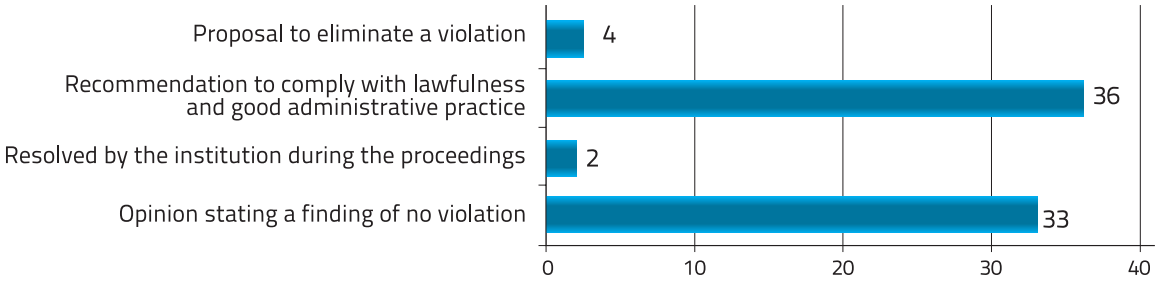

Figure 6. Chancellor's opinions upon scrutiny of activities of agencies and institutions performing public functions

In proceedings initiated for scrutiny of activities of persons, agencies and bodies, the Chancellor found a violation of the principles of good administration and lawfulness in 38.6% of the cases. In 2011, the indicator was 37.6%.

2.3. Special proceedings

There were 89 special proceedings during the reporting year, i.e. 45.5% of the total number of cases opened and 30% of the total number of substantive proceedings,

Special proceedings are divided as follows:

- providing an opinion on a legal act within constitutional review proceedings (34 proceedings);
- replying to interpellations by members of the Riigikogu (3 proceedings);
- replying to written questions by members of the Riigikogu (5 proceedings);
- proceedings for lifting the immunity of a member of the Riigikogu (2 proceedings);
- initiating disciplinary proceedings against judges and other proceedings relating to the activities of courts (17 proceedings);
- opinions on draft legal acts and documents (19 proceedings);
- other activities arising from law (9 proceedings) (see also Figure 7).

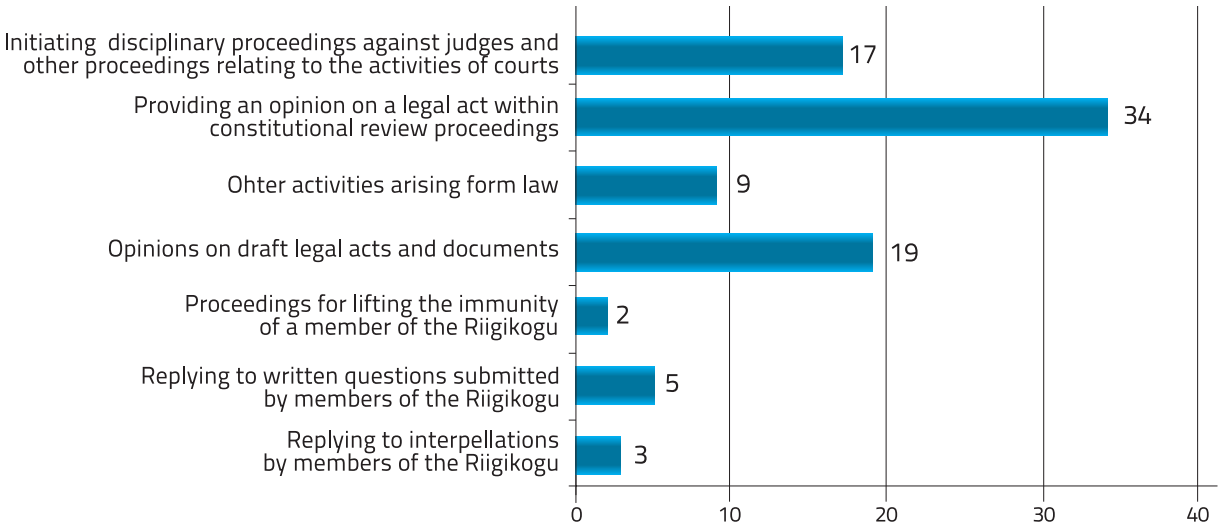

Figure 7. Distribution of special proceedings

The largest number of special proceedings were related to providing an opinion on a legal act within constitutional review proceedings and opinions on draft legal acts and documents (34 and 19 proceedings respectively).

2.4. Cases without substantive proceedings

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

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

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

In 2012, the Chancellor declined to open substantive proceedings in 1314 cases, which makes up 81.6% of the total number of cases.

Proceedings were not opened for the following reasons:

- lack of competence by the Chancellor (415 cases);
- the individual could file an administrative challenge or use other legal remedies (458 cases);
- judicial proceedings or compulsory pre-trial proceedings were pending in the matter (179 cases);
- petition did not comply with requirements under the Chancellor of Justice Act (127 cases)
- a petition was manifestly unfounded (108 cases);
- the petition had been filed one year after the petitioner discovered the violation (9 cases);
- administrative challenge proceedings or other voluntary pre-trial proceedings were pending (9 cases);
- no public interest for the review of conformity of legislation of general application with the Constitution or an Act (9 cases) (see also Figure 8).

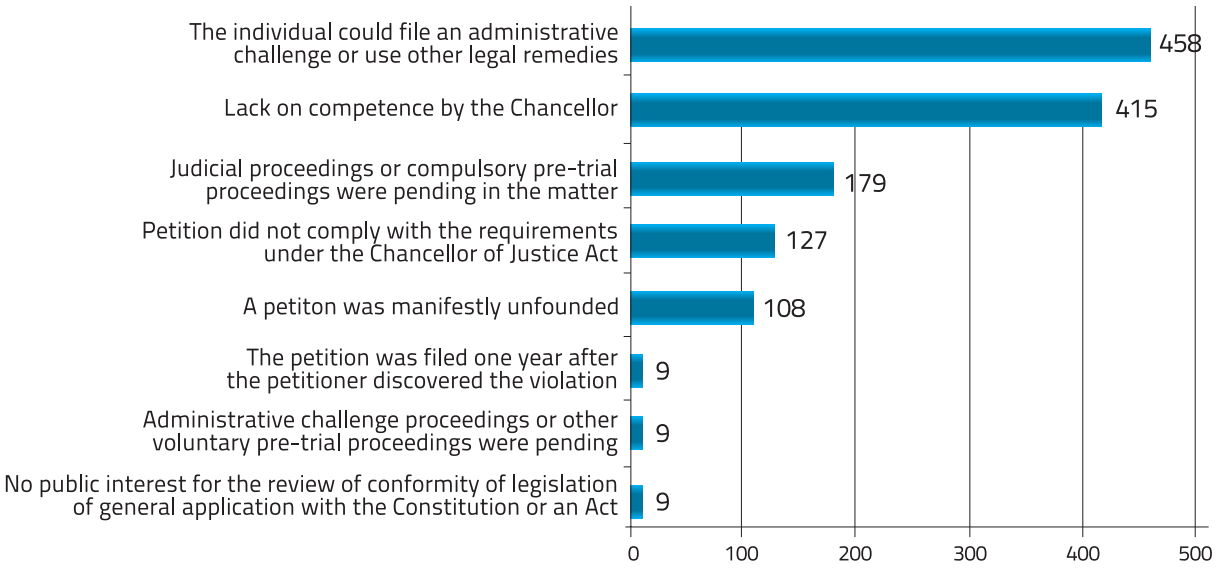

Figure 8. Reasons for declining to initiate proceedings of petitions

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

- an explanatory reply was given (1155 cases);
- a petition was forwarded to competent bodies (80 cases);
- a petition was taken note of (80 cases) (see also Figure 9).

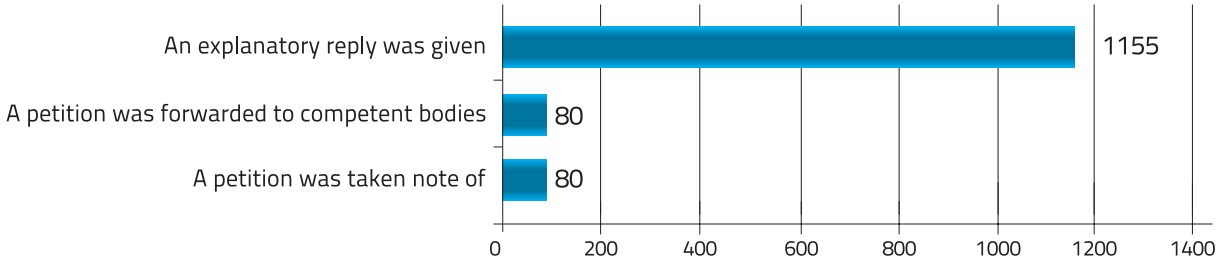

Figure 9. Distribution of replies in case of declining to accept a petition for proceedings

3. Distribution of cases by respondents

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

- the state (1171 cases);
- local authorities (239 cases);
- a legal person in private law (127 cases);
- a natural person (46 cases).
- a legal person in public law, except local authorities (12 cases) (see also Figure 10).

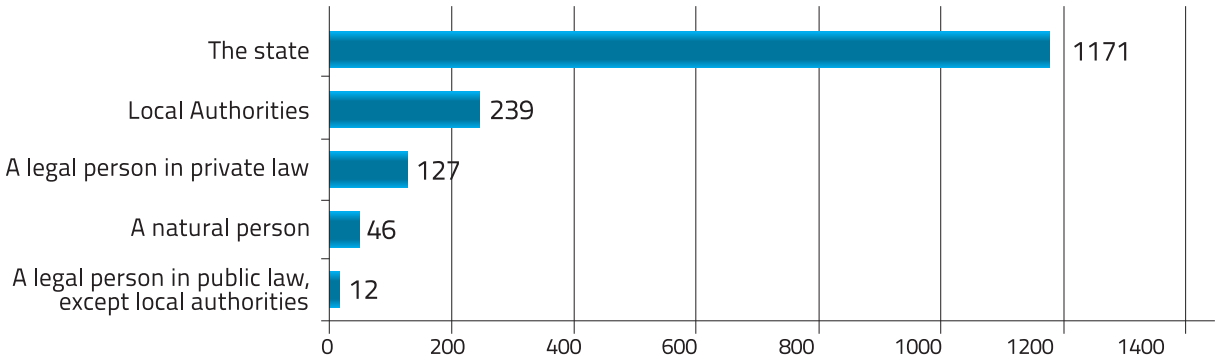

Figure 10. Distribution of cases by respondents

Distribution of cases opened in 2012 by areas of government and type of proceedings is shown in Tables 2 and 3 and Figures 12 and 13. Proceedings are divided by areas 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.

Table 2. Distribution of cases by respondent state

Agency, body, person	Cases opened	Proceedings initiated	Finding of conflict with the Constitution or an Act	Finding of violation of lawfulness or good administrative practice	No proceedings conducted
Riigikogu or the Chancellery of the Riigikogu	**41**	**5**	**0**	**0**	**37**
Supreme Court or other courts, except registry departments	**163**	**20**	**0**	**0**	**143**
State Audit Office	**1**	**0**	**0**	**0**	**1**
President of the Republic or Office of the President	**1**	**0**	**0**	**0**	**1**
Government of the Republic or Prime Minister	**10**	**3**	**2**	**0**	**7**
Chancellor of Justice or Chancellor's Office	**11**	**0**	**0**	**0**	**11**
Area of government of the Ministry of Education and Research	**21**	**4**	**1**	**0**	**17**
Ministry of Education and Research	16	4	1	0	12
Agency subordinate to the Ministry of Education and Research	5	0	0	0	5
Language Inspectorate	0	0	0	0	0
Area of government of the Ministry of Justice	**497**	**105**	**3**	**7**	**393**
Ministry of Justice	203	80	3	0	125
Agency subordinate to the Ministry of Justice	3	0	0	0	3
Bar Association	2	0	0	0	2
Data Protection Inspectorate	1	0	0	0	1
Health Insurance Fund	4	0	0	0	4
Harku and Murru Prison	15	1	0	0	14
Tallinn Prison	71	8	0	4	63
Tartu Prison	71	3	0	1	68
Viru Prison	46	12	0	2	34
Bailiffs	52	1	0	0	51
Notaries	2	0	0	0	2
Chamber of Bailiffs and Trustees in Bankruptcy	1	1	0	0	0
Trustees in bankruptcy	1	0	0	0	1
Prosecutor's Office	25	0	0	0	25
Area of government of the Ministry of Defence	**27**	**16**	**1**	**4**	**11**
Ministry of Defence	7	4	1	0	3

Agency, body, person	Cases opened	Pro-ceedings initiated	Finding of conflict with the Constitution or an Act	Finding of violation of lawfulness or good administrative practice	No pro-ceedings conducted
Agency subordinate to the Ministry of Defence	18	11	0	4	7
Defence Resources Agency	2	1	0	0	1
Area of government of the Ministry of the Environment	**35**	**5**	**0**	**0**	**29**
Ministry of the Environment	24	5	0	0	19
Agency subordinate to the Ministry of the Environment	1	0	0	0	1
Environmental Board	3	1	0	0	2
Land Board	5	0	0	0	5
Environmental Inspectorate	2	0	0	0	2
Area of government of the Ministry of Culture	**6**	**1**	**0**	**1**	**5**
Ministry of Culture	3	0	0	0	3
Heritage Board	3	1	0	1	2
Area of government of the Ministry of Economic Affairs and Communications	**52**	**15**	**0**	**2**	**37**
Ministry of Economic Affairs and Communications	38	10	0	2	24
Competition Board	4	0	0	0	4
Roads Administration	4	1	0	0	3
Patent Office	1	0	0	0	1
Consumer Protection Board	2	0	0	0	2
Technical Surveillance Authority	3	0	0	0	3
Maritime Administration	0	0	0	0	0
Area of government of the Ministry of Agriculture	**11**	**2**	**0**	**0**	**9**
Ministry of Agriculture	7	2	0	0	5
Agricultural Board	1	0	0	0	1
Agricultural Registers and Information Board	2	0	0	0	2
Veterinary and Food Board	1	0	0	0	1
Area of government of the Ministry of Finance	**81**	**22**	**1**	**1**	**59**
Ministry of Finance	47	17	1	0	30
Tax and Customs Board	32	5	0	1	27
Statistics Estonia	2	0	0	0	2
Minister for Regional Affairs, county administration, or subordinate agencies	**12**	**2**	**0**	**0**	**10**
Area of government of the Ministry of Internal Affairs	**106**	**27**	**2**	**7**	**80**
Ministry of Internal Affairs	30	13	2	0	16
Agency subordinate to the Ministry of Internal Affairs	3	0	0	0	3
Security Police Board	2	0	0	0	2

Agency, body, person	Cases opened	Pro-ceedings initiated	Finding of conflict with the Constitution or an Act	Finding of violation of lawfulness or good administrative practice	No pro-ceedings conducted
Police and Border Guard Board	68	13	0	7	56
Rescue Board	4	1	0	0	3
Area of government of the Ministry of Social Affairs	**88**	**14**	**3**	**1**	**74**
Ministry of Social Affairs	43	13	3	0	30
Agency subordinate to the Ministry of Social Affairs	4	0	0	0	4
Social Insurance Board	18	1	0	1	17
Health Board	7	0	0	0	7
Labour Inspectorate	3	0	0	0	3
Unemployment Insurance Fund	12	0	0	0	12
State Agency of Medicines	1	0	0	0	1
Area of government of the Ministry of Foreign Affairs	**7**	**2**	**0**	**0**	**5**
Ministry of Foreign Affairs	7	2	0	0	5
State Chancellery	**0**	**0**	**0**	**0**	**0**
National Archives	0	0	0	0	0
National Electoral Committee	**0**	**0**	**0**	**0**	**0**

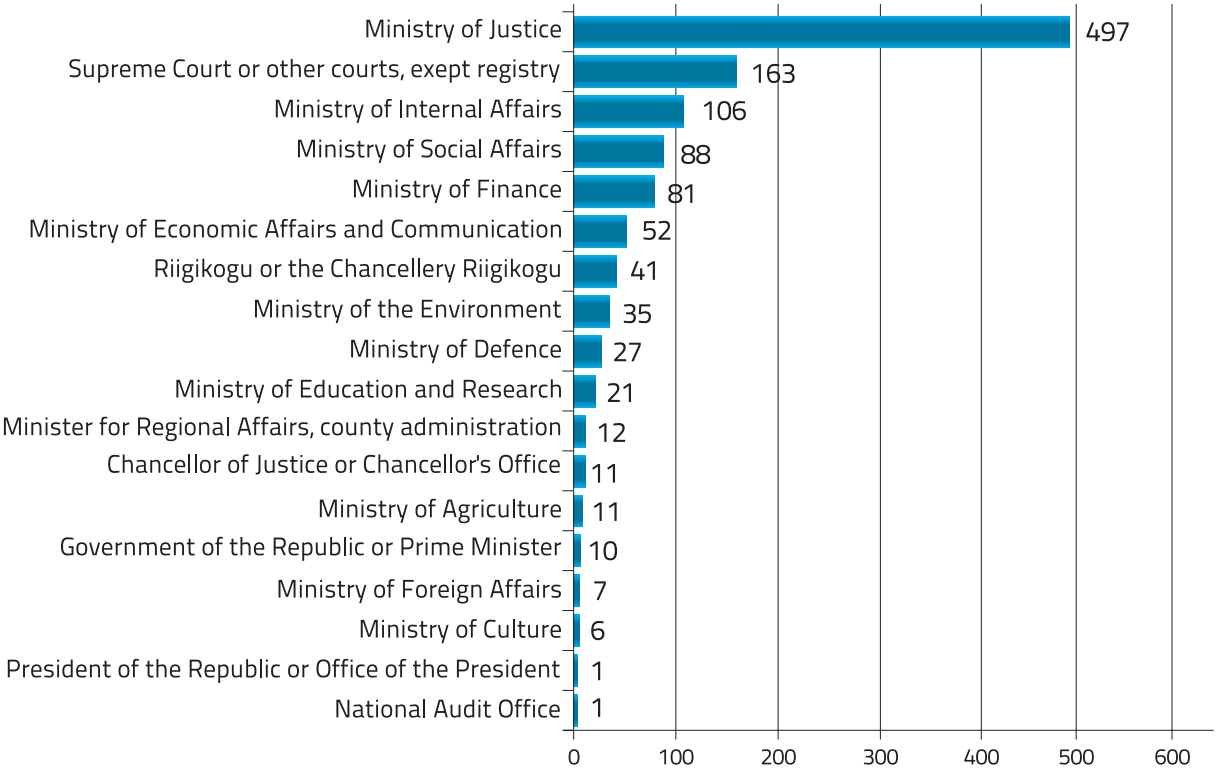

Figure 11. Distribution of cases by respondents on state level

Similarly to the previous years, the largest number of proceedings fell within the area of government of the Ministry of Justice and the majority of these were still related to criminal enforcement law and imprisonment law (see Table 2) and were initiated on the basis of petitions by prisoners. In 79% of the proceedings within the area of government of the Ministry of Justice, no substantive proceedings were initiated. In 2011, this indicator was the same.

As earlier, there is a large number of proceedings concerning the work of courts. In comparison to 2011, the number of proceedings concerning the area of government of the Ministry of Education and Research dropped almost by half, while the number of proceedings in the areas of government of the Ministry of Finance and the Ministry of Defence increased. In the case of other agencies, the distribution is similar to the previous year.

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

Agency, body, person	Cases opened	Proceedings initiated	Finding of conflict with the Constitution or an Act	Finding of violation of lawfulness or good administrative practice	No proceedings conducted
Harju County local authorities, except Tallinn city	45	7	0	2	38
Tallinn	66	6	0	0	60
Ida-Viru County local authorities, except Narva city	14	3	0	0	11
Narva	9	2	0	2	7
Jõgeva County local authorities	7	1	0	0	6
Järva County local authorities	4	2	0	0	2
Lääne County local authorities	4	1	0	0	3
Lääne-Viru County local authorities	12	6	0	5	6
Association of local government units or joint agency	2	0	0	0	2
Põlva County local authorities	6	0	0	0	6
Pärnu County local authorities	17	2	0	0	15
Rapla County local authorities	6	3	0	2	3
Saare County local authorities	5	0	0	0	5
Tartu County local authorities, except Tartu city	7	0	0	0	7
Tartu	16	1	0	0	15
Valga County local authorities	5	1	0	1	4
Viljandi County local authorities	6	1	0	0	5
Võru County local authorities	3	0	0	0	3

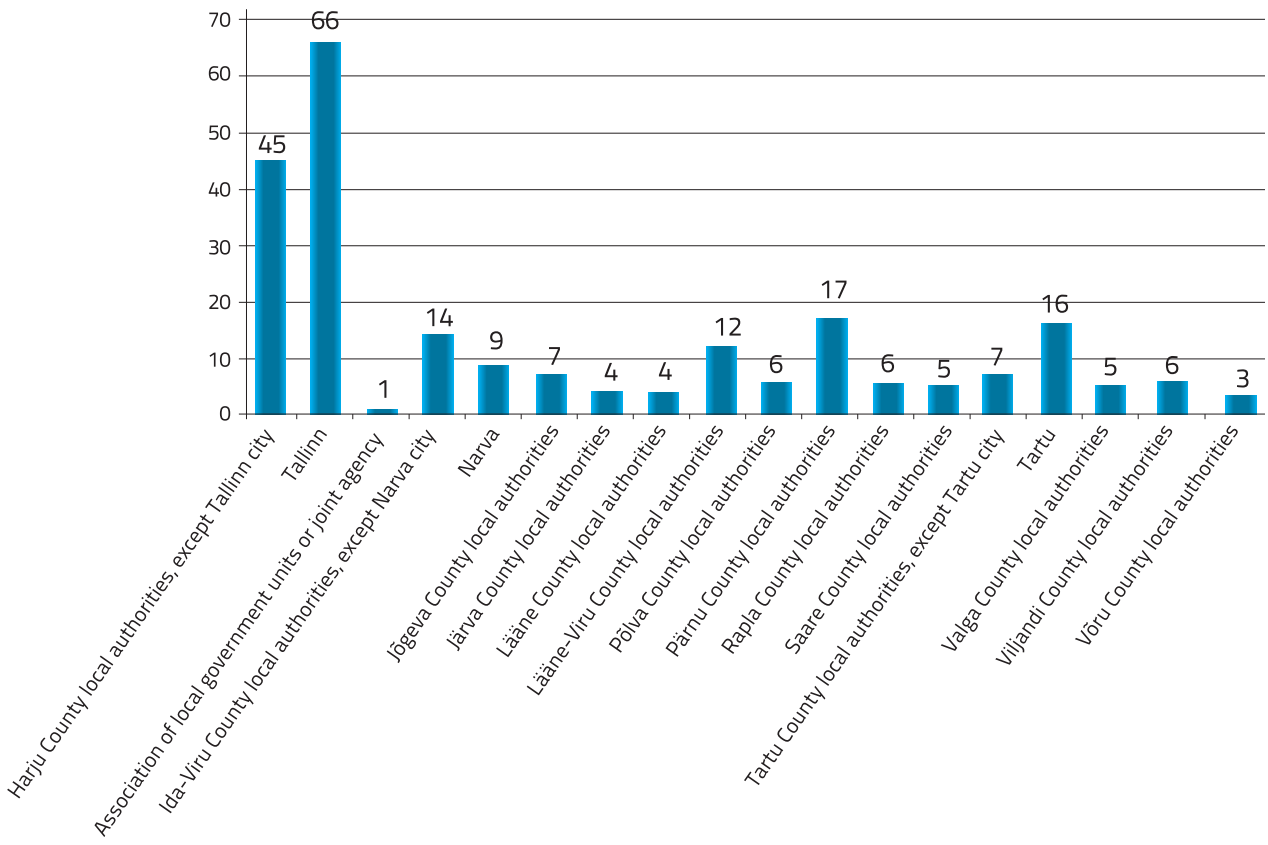

Figure 12. Distribution of cases by respondents on local government level

4. Distribution of cases by areas of law

Similarly to previous years, in 2012 the largest number of cases was opened in connection with criminal enforcement procedure, imprisonment law and civil court procedure law. At the same time, the number of proceedings relating to criminal enforcement procedure and imprisonment law has dropped by 16 proceedings in comparison to the previous year.

In comparison to 2011, the number of proceedings also dropped in the areas of criminal and misdemeanour court procedure, social welfare law and administrative law.

The biggest increase occurred in proceedings in the areas of financial law, civil court procedure law and other public law.

Table 4. Cases opened by areas of law

Area of law	Number of cases
Criminal enforcement procedure and imprisonment law	279
Civil court procedure law	83
Financial law (incl. tax and customs law, state budget, state property)	82
Social welfare law	77
Education and research law	69
Criminal and misdemeanour court procedure	68
Other public law	66
Law of obligations	62

Area of law	Number of cases
Enforcement procedure	61
Family law	49
Social insurance law	41
Administrative law (administrative management, administrative procedure, administrative enforcement, public property law, etc)	40
Labour law (including collective labour law)	40
Environmental law	39
Pre-trial criminal procedure	38
Building and planning law	35
Health law	31
Protection of personal data, databases and public information, state secrets law	28
Administrative court procedure law	27
Citizenship and migration law	26
Energy, public water supply and sewerage law	25
Ownership law (including intellectual property law)	25
Local government organisation law	23
Traffic regulation law	23
Public service	22
National defence law	22
Misdemeanour procedure	22
Ownership reform law	21
Police and law enforcement law	21
Government organisation law	19
Non-profit associations and foundations law	18
Transport and road law	17
Company, bankruptcy, and credit institutions law	13
Electoral and referendum law, political parties law	12
Economic and trade management and competition law	11
Other private law	10
State legal aid	10
Succession law	9
International law	7
Agricultural law (including food and veterinary law)	6
Telecommunications, broadcasting, and postal services law	6
Consumer protection law	5
Language law	4
Animal protection, hunting, and fishing law	4
Substantive penal law	2
Heritage law	1

5. Distribution of cases by regions

Still the largest number of petitions and cases opened on the basis of them was from the largest cities, including Tallinn (447 cases) and Tartu (217 cases). Among the counties, the largest number of proceedings were still in relation to Ida-Viru County and Harju County. 123 proceedings were initiated on the basis of petitions from Ida-Viru County, followed by 112 proceedings on the basis of petitions from Harju County. As before, the smallest number of proceedings was in relation to Hiiu County (3 cases). 36 proceedings were initiated on the basis of petitions received from abroad.

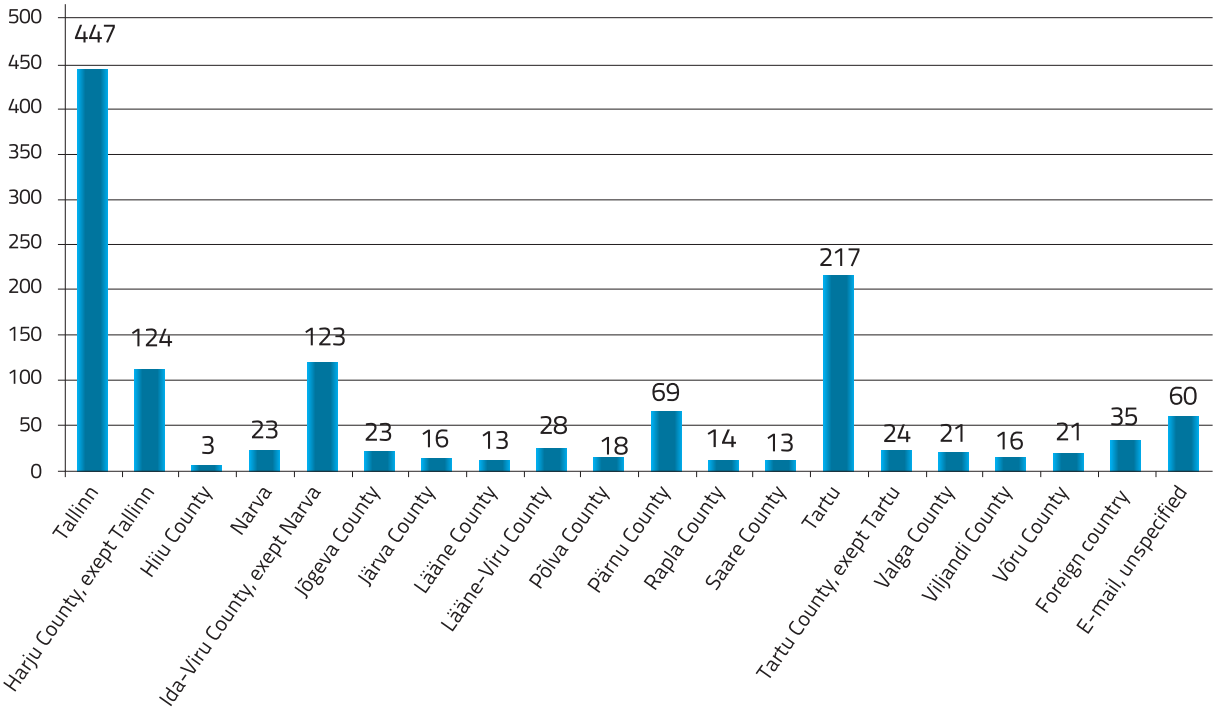

Figure 13. Distribution of cases by location of petitioner

6. Language of proceedings

Most petitions are in Estonian. 1381 cases, i.e. 85.8% of the total number of cases, were opened based on petitions in Estonian (see Figure 14). 164 cases, i.e. 10.2% of the total number of cases, were opened based on petitions in Russian. The number of petitions in English makes up only 0.6% of the total number of cases opened. Two petitions were filed in other languages.

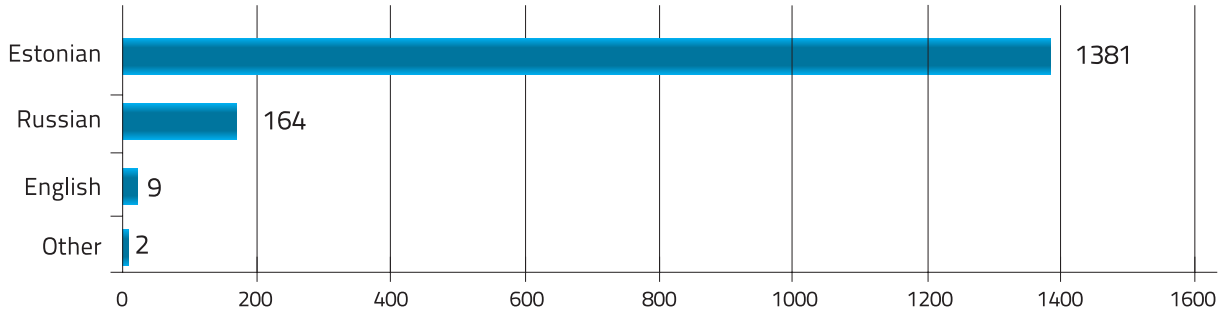

Figure 14. Distribution of cases by language of petition

7. Inspection visits

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

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

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

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

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

During the reporting year, the Chancellor made 44 inspection visits, of which 23 were to closed institutions, 13 to open institutions, and 8 to administrative authorities (see Table 5). There were 19 unannounced inspection visits to closed institutions.

Table 5. Inspection visits conducted by the Chancellor of Justice

	2007	2008	2009	2010	2011	2012
Inspection visits to closed institutions	18	19	25	27	33	23
Inspection visits to open institutions	5	10	17	6	14	13
Inspection visits to administrative authorities	5	4	7	9	6	8
Total inspection visits	28	33	49	42	53	44
of which, unannounced inspection visits	6	8	4	13	29	19

8. Reception of individuals

In 2012, 179 individuals came to a reception in the Office of the Chancellor of Justice, which is 39 people more than in 2011 (see Figure 15)

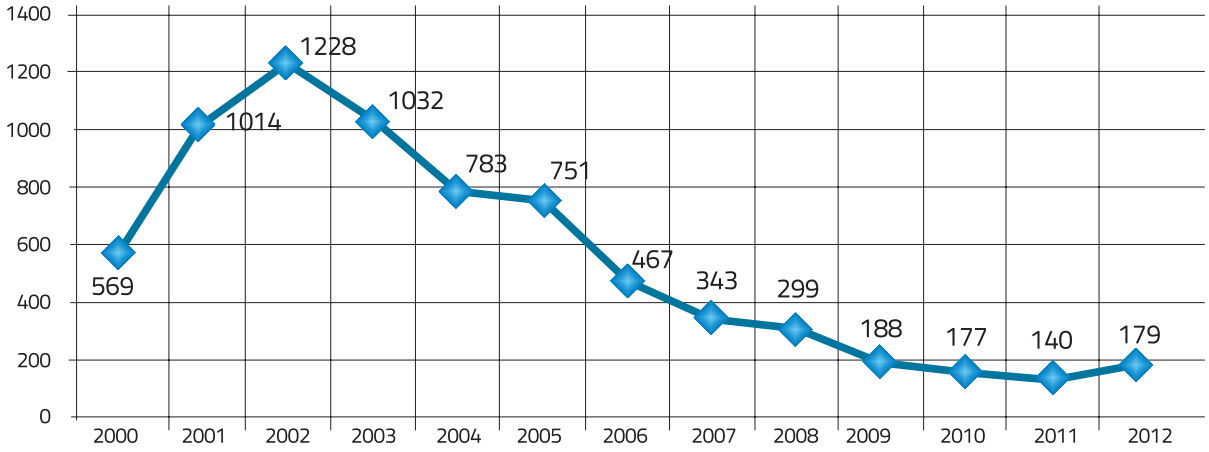

Figure 15. Number of persons coming to reception with the Chancellor in 2000–2012

Similarly to the previous years, the largest number of people coming to a reception were from Tallinn and Harju County (95 and 17 people respectively).

Questions raised during the receptions most frequently concerned issues relating to civil court procedure (22 persons), followed by issues of pre-trial criminal procedure (19 persons), social insurance law (14 persons), law of obligations and international law (12 persons in both cases).

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

9. Conclusion

Similarly to 2011, the number of petitions received by the Chancellor of Justice decreased during the reporting year. In 2012, the Chancellor received 2040 petitions, which is 3.9% less than in the previous year. In total, the Chancellor opened 1610 cases, which is 7.4% less than in the previous year.

During constitutional review proceedings, in 13 cases (i.e. 13.3% of the total number of review proceedings) the Chancellor found a conflict with the Constitution or an Act. As a result of ombudsman proceedings, the Chancellor found a violation of the principle of good administration and lawfulness in 42 cases (i.e. 38.5% of the total number of ombudsman proceedings), of which 2 were resolved by the institution in the course of the proceedings.

Periodic decrease of the number of cases opened could also be seen in the previous years (see Figure 1). At the same time, there has been a constant increase in the number of cases where the Chancellor was unable to help the petitioner directly through his proceedings. No significant changes have occurred in the distribution of the types of cases. As a particular development in the reporting year, only a certain decrease in the share of the ombudsman proceedings could be pointed out.

In 2012, the Chancellor made nine proposals to the Riigikogu, which is significantly more than in the previous years. The Chancellor also had to submit to the Supreme Court considerably more opinions in constitutional review cases.

Most cases were still opened based on petitions by prisoners to resolve issues relating to criminal enforcement procedure and imprisonment law falling within the area of government of the Ministry of Justice. In the majority of these cases (79%), no substantive supervision proceedings were initiated.

The distribution of proceedings by areas of law has been rather similar over the years. The largest number of proceedings, i.e. 17% of the total number of cases opened, still relate to criminal enforcement procedure and imprisonment law. A significant increase has occurred in proceedings relating to civil court procedure law and financial law.

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

The proportion of cases opened based on petitions in Estonian remained on the same level in comparison to the previous year, making up 85.8% of the total number of cases opened. The number of cases opened based on petitions in Russian has decreased, making up 10.2% of the number of cases in the reporting year. The number of petitions received by e-mail was 1290 in 2012, which is 63% of the total number of petitions received.

The number of inspection visits in 2012 was smaller than in 2011. During the reporting year, 44 inspection visits were carried out, of them 33 to supervise closed institutions, 14 to open institutions, and 6 to administrative authorities.

In 2012, 179 individuals came to a reception in the Office of the Chancellor of Justice. Questions raised during the receptions most frequently concerned issues relating to civil court procedure, pre-trial criminal procedure and social welfare law.
or government agencies or institutions