



Õiguskantsler

2015 OVERVIEW OF THE CHANCELLOR OF JUSTICE ACTIVITIES

Chancellor of Justice as National Preventive Mechanism

Chancellor of Justice as Ombudsman for Children

Statistics of Proceedings

Tallinn 2015

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1. CHANCELLOR OF JUSTICE AS THE NATIONAL PREVENTIVE MECHANISM FOR ILL-TREATMENT

Since 2007, the Chancellor of Justice performs the functions of the national preventive mechanism against ill-treatment ([Chancellor of Justice Act](#), § 1(7)). The obligation to set up or designate at the domestic level one or several independent bodies for the prevention of ill-treatment arises from the [Optional Protocol](#) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which entered into force in respect of Estonia on 17 January 2007.

The main task of the preventive mechanism is to carry out regular inspection visits to closed institutions in order to verify the treatment of persons deprived of their liberty in places of detention and, if necessary, improve their protection against ill-treatment. The right not to be subjected to torture or ill-treatment means not only the right to physical integrity but also to human dignity and mental well-being. Thus, torture and ill-treatment means not only inflicting of physical pain but also includes, for example, causing of mental suffering, unsanitary living conditions in custodial institutions, failure to provide medical care, unlawful use of coercion or means of restraint, long-term overpopulation of a detention room, unfounded interference in privacy, etc. Places of detention are any places where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence. The Chancellor of Justice 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.

There are approximately 150 closed institutions in Estonia. They include, for example, prisons, the expulsion centre for aliens, the accommodation centre for asylum seekers, special schools for children with behavioural problems, rehabilitation centres for minors with addiction problems, psychiatric clinics, special social welfare institutions, etc. The Chancellor inspects places of detention regularly. The choice of institutions to be inspected and the frequency of inspections is based on certain criteria, such as the nature of an institution, the number of persons detained, how often detained persons change in the institution, the risk of ill-treatment. The Chancellor tries to visit each place of detention at least once every three years. Inspection visits may be either announced or unannounced, take place during the day or at night, on weekdays or weekends. If necessary, the Chancellor involves experts from different fields (e.g. general practitioners, psychiatrists) or persons with personal situational experience (e.g. a wheelchair user) in the inspection visits, or carry out the inspections in cooperation with a national supervisory authority (e.g. the State Agency of Medicines, the Social Insurance Board, the Rescue Board).

During the inspection, the advisors to the Chancellor have confidential conversations with the staff of the institution and with the detained persons without the presence of others. The inspection also involves a tour of the institution, in the course of which attention is paid to the living conditions of the persons in the institution, it is also established whether the situation in the institution makes it possible to prevent torture and inhuman or degrading treatment, how the health care services are organised, the relevant databases and documents are examined, etc. The methodology and criteria of the inspection visits on the basis of which the places of detention are assessed are described in more detail in the [Chancellor's 2010 Overview](#). As a

result of each inspection visit, a summary is compiled, containing recommendations and proposals to the inspected institution and other relevant authorities. Summaries of inspection visits are published on the [Chancellor of Justice website](#). Data protection requirements are observed when publishing the summaries (i.e. no personal or other sensitive data is disclosed).

1.1. Inspection visits

During the reporting period from **1 January to 31 August 2015**, the Chancellor made 12 inspection visits to closed institutions, of which 9 were unannounced visits. The Chancellor involved experts in the visits on 6 occasions. Of these, on 5 occasions the experts were general practitioners and on one occasion a wheelchair user with personal situational experience. In addition, on 2 occasions the Chancellor involved rescue service officials and on 5 occasions specialists from the State Agency of Medicines.

The following part provides a more detailed overview of the inspection visits to closed institutions, inter alia highlighting the shortcomings that were identified.

1.1.1. Police detention facilities

On 22 January, the Chancellor's advisers inspected the police detention centre of the North prefecture which is used for detaining persons in respect of whom criminal proceedings are pending, persons serving a sentence of short-term detention, persons detained as suspects in criminal proceedings, persons detained in misdemeanour proceedings, and in certain cases also persons brought for sobering up. At the time of the inspection visit, there were 47 detainees in the police detention centre, of whom 30 were serving arrest. An average detainee spends approximately 30 days in this police detention centre.

In the police building a random check of different cells was made, the working premises of the staff, the room for food distribution, washing rooms, rooms for short-term visits and procedural activities, the vehicle access sluice, and the outdoor exercise yard were inspected. Also the conditions in the escort bus in the vehicle access sluice were examined. Personal files of the persons detained in the cells of the detention centre at the time of the inspection, as well as other relevant materials, were examined. Random check of the book of registration of operations and the reports drawn up on the use of the isolation facility was performed.

In addition, the Chancellor's advisers talked to 13 randomly selected detainees during the inspection visit. The conversations revealed that the police detention centre had several problems with access to public information (e.g. the opportunity to read fresh newspapers regularly and without an unreasonable delay), the use of the telephone and procuring a call card, lending books from the library. It was also found that the brief information materials on the rights and duties of the detained persons prepared by the Police and Border Guard Board contained partially outdated information.

As a result of the inspection, the Chancellor made a [recommendation to the North Prefecture](#) to eliminate the shortcomings identified upon the inspection of the police detention centre.

The inspection visit to [East-Harju and West-Harju County constable stations of the North Prefecture](#) took place on 23 April. The police use the buildings of constable stations for short-term detention. The cellblock in West-Harju County was opened recently and has modern conditions of detention while the cellblock of East-Harju County is rather depreciated.

As a result of the inspection visit, the Chancellor emphasised that in terms of the fundamental rights of detainees the police should continue detention of persons only for a short term (in particular in the East-Harju police building) and, where possible, should rather prefer detention cells with more modern conditions. In addition, the Chancellor once again drew the attention of the police to his earlier recommendation in connection with a death that had occurred in the East-Harju constable station. Specifically, as regards the death of a detainee in the East-Harju cellblock, the Chancellor concluded that the supervision of persons in the cell had been insufficient. Already then the Chancellor noted that effective supervision of detainees is not ensured by merely adding a provision on the duty to perform supervision (either by means of security cameras or by conducting a physical check of the cells) in an officer's job description, but rather by the ability of the officer to realistically perform supervision alongside their other duties, and by the officer's awareness of the importance of performing this duty.

On 26 May, the Chancellor's advisers inspected Rapla and Paide police stations of the West Prefecture. The police use the buildings of the stations for short-terms detention of persons.

The inspection revealed that in Rapla cellblock the technical system for short-terms visits between detainees and their next of kin was not functional. The solution that is in use is depreciated and does not necessarily ensure the privacy of the visits. It was also found that both in Rapla and Paide police buildings the exercise yards for detainees did not have shelters or seating. The Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has previously pointed out the same problem.

In general, it could be said that the documents in relation to detainees had been drawn up properly in both police buildings, although some questionable aspects were found which were immediately pointed out to the officers during the visit. For example, by examining the documents in personal files of detainees in Rapla cellblock it was not always completely clear whether, when and by whom the person's next of kin had been notified of their detention. Also, the initial health examination report of the persons did not always contain a clear indication of whether any external injuries were found during the examination. Personal files in Paide cellblock revealed that in some cases the detention report drawn up in respect of a person did not allow for establishing the health damage that the person may have sustained, and the report did not contain a record of explaining to the detainee their rights and duties.

As a result of the inspection, the Chancellor made a [recommendation to the West Prefecture](#) to eliminate the shortcomings.

The inspection visit to Tallinn City Centre police station of the North Prefecture and to the East-Harju County police station and sobering-up facility was carried out in the night of 20 June. The aim of this unscheduled inspection was to verify whether and how the numerous school leaving parties taking place simultaneously affected the situation at police stations. The detention conditions in the cells, compliance with proper record-keeping, as well as the procedures for admission of persons into the cells were also examined. No considerable shortcomings were identified during the inspection, but based on the earlier practice the Chancellor found it necessary to draw the attention of the North Prefect to the security of persons in the sobering-up facility and recommended to install video surveillance in all the cells (see the Chancellor's [recommendation to the North Prefecture](#)).

1.1.2. Units of the Defence Forces

The Chancellor inspects units of the Defence Forces with the aim to verify compliance with the fundamental rights of conscripts. During the reporting period, the Chancellor's advisers visited three units of the Defence Forces: the Artillery Battalion (9 March), the Pioneer Battalion (16 July), and the Air Defence Battalion (16 July). The Defence Forces were notified of all the inspection visits in advance.

In the Artillery Battalion and the Air Defence Battalion, the Chancellor's advisers talked to the conscripts. No violations were identified upon the inspection, and thus the Chancellor did not make any recommendations to the battalions.

The inspection of the Pioneer Battalion revealed that the conscripts had to deposit their mobile phones for the working week, which is however inadmissible under the current legislation. More specifically, the [Military Service Act](#) establishes that the use of personal communication means and electronic devices is allowed for a conscript provided that this does not endanger the conscript or other persons and does not hinder carrying out the military training or performance of duties. Although the performance of the conscript service always inevitably involves restriction of the right of communication, this does not mean total exclusion from the outside world. The current legislation, inter alia, provides for a possibility to use a mobile phone for communication. Under the internal rules approved by the decree of the commander of the 1st infantry battalion, conscripts may use electronic means of communication during their free time and rest periods until "lights-out". The Chancellor made a [proposal](#) to immediately return to the conscripts their mobile phones and not to apply the unlawful requirement of depositing the phones in the future.

1.1.3. Providers of 24-hour special care services

During the reporting period, the Chancellor's advisers made unannounced inspection visits to five special care institutions: Valkla Home of Hoolekandeteenused Ltd, the Foundation Haraka Home, Erastvere Home of Hoolekandeteenused Ltd, Kodijärve Home of Hoolekandeteenused Ltd, and Pariisi Special Care Centre. General practitioners were involved as experts in all the inspection visits, in the inspection of Valkla Home a wheelchair user was additionally involved as a person with situational experience. Specialists from the State Agency of Medicines also participated in all the inspection visits.

In the inspection visits to providers of 24-hour special care services in 2015, the Chancellor pays particular attention to the handling and administering of medications. Although the situation has improved in comparison to 2014, problems with the mishandling and administering of medications to clients still exist. The main problems also included ensuring of the living conditions in line with human dignity for recipients of special care services and unlawful restriction of their fundamental right to liberty. The Chancellor was also concerned about the insufficient number of activity supervisors in special care homes as it has a direct impact on the quality of the service.

The Chancellor's advisers visited Valkla Home of Hoolekandeteenused Ltd on 31 January and 5–6 February. At the time of the inspection visit, Valkla Home had an operating licence for providing 24-hour special care services to 100 adults on the basis of a court ruling. At the time of the visit, there were 93 adult persons staying at the centre.

The Chancellor's latest inspection visit to Valkla Home took place on 27 February 2014. Then the Chancellor established that the institution lacked a sufficient number of activity supervisors, in the evenings some of the clients were locked in their bedrooms, living conditions respecting human dignity were not ensured (in particular in sanitary facilities and washing rooms), a suspicion arose that clients were administered sedative medications as not part of their treatment plan, etc. This year's inspection visit did not bring any positive surprises. The Chancellor's advisers had to note once again that the care home still had problems with restricting the liberty of the clients, administering of medications, ensuring living conditions respecting human dignity, and sufficient number of staff. The Chancellor's advisers also found that the room used for seclusion of the clients was unsafe and the activity taking place in the room could not be monitored.

In addition, a question arose whether metal grids on the windows of Valkla Home and the wire fence with barbed wire surrounding the territory of the institution served their purpose and took into account the interests of the clients. More specifically, the inspection revealed that in all the departments providing 24-hour special care services on the basis of a court ruling the windows in common rooms as well as in at least half the bedrooms were covered with metal grids. The wings of the building were surrounded by a wire fence with a height of 3.5 to 4 metres, which also had an additional barbed wire barrier. Under § 11⁴⁹(1) of the Social Welfare Act providers of special social welfare services must ensure the provision of 24-hour special care services in the conditions which are suitable for this, correspond to the needs of the service recipients, and are safe. On this basis, it can be concluded that suitable conditions of detention should contribute to these aims, including not causing stress, fear, inferiority and restlessness among the service recipients. Several workers of the institution noted that the aim of the metal grids was first and foremost reassuring of the community around Valkla Home. In this connection, the Chancellor had a suspicion whether and to what extent the metal grids took into account the concerns of the residents of Valkla Home. It was also unclear whether any alternative measures for ensuring safety had been considered. In addition, the Chancellor drew the attention of Hoolekandeteenused Ltd to the fact that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has found the existence of metal bars on the windows of the rooms of psychiatric intensive care units to be an inappropriate measure and referred to the availability of alternative solutions (see the CPT [report of 19 July 2013 to Slovenia](#), para 83).

According to the assessment of the wheelchair user participating in the inspection visit as a person with situational experience, several of the leisure rooms in Valkla Home were not accessible as there was no lift or a possibility to use a ramp. The staff of the institution did not know how to use the existing stair crawler. In terms of accessibility, the wheelchair user also had problems in toilets, with access to the yard and moving in the vicinity of Valkla Home. The needs of wheelchair users had also not been taken into account in bedrooms or showers, and in several places the doorsteps were higher than admissible.

As a result of the inspection, the Chancellor sent a [proposal to Hoolekandeteenused Ltd](#) to eliminate the above shortcomings and to better protect the fundamental rights of persons at Valkla Home.

On 25 February, the Chancellor's advisers inspected the provision of 24-hour special care services for clients with a profound multiple disability at the Foundation Haraka Home. Haraka Home provides the 24-hour special care service for 27 people, of which 20 places are for persons with a profound multiple disability. At the time of the inspection, 19 clients were

receiving the service for persons with a profound multiple disability, and 6 clients were receiving the 24-hour special care service.

As a result of the inspection, the Chancellor recognised Haraka Home for creating a pleasant home-like atmosphere for its clients. The efforts of the institution in finding opportunities for different activities for the clients and for services supporting their well-being (e.g. massage, physiotherapy) also deserve recognition. However, the Chancellor also found some shortcomings.

For example, the inspection revealed that video surveillance was used for monitoring of the clients in common rooms and in bedrooms. The care home explained that upon the admission of a client the guardian is informed of the video surveillance but no separate written consent of the client or guardian is asked. Considering that a care home is the home of the people living there, the Chancellor believes that this constitutes an interference in privacy. In the Chancellor's opinion, video surveillance in the interests of the safety of the clients is understandable but, nevertheless, monitoring of the clients by video cameras presumes the existence of a legal basis, including the existence of a consent in conformity with the legislation. In the Chancellor's opinion, such a restriction of human dignity and privacy cannot be purposeful.

The inspection revealed that access to the restricted territory of the care home was free, as the double vehicle gate was open, and stones had been placed on both sides of the gate to prevent the gate from closing by itself. One of the accommodation units was located immediately next to the vehicle gate while the open gate was also visible from other accommodation units. Front doors of the accommodation units were open and, thus, anyone could walk into or out of them. The front door opened silently. Even though it was not established during the inspection that any of the clients had left the house and the territory of the care home without the knowledge of the staff, it cannot be ruled out that in such a situation this could happen. Therefore, the Chancellor in his recommendation drew the attention of Haraka Home to the fact that leaving of the clients of the care home from the rooms and the territory of the home without the knowledge of the staff endangers the safety of the clients, their life and health (see the Chancellor's [recommendation to Haraka Home](#)).

The Chancellor's advisers visited [Erastvere Home, Kodijärve Home and Pariisi Special Care Home](#) in the period from 29 June to 2 July. The problems revealed by the inspection were in general similar in all the three institutions. Both at Erastvere Home and Kodijärve Home it was found that the number of activity supervisors was insufficient for ensuring the safety of the clients. The number of activity supervisors at Erastvere Home did not conform to the statutory minimum requirement and did not take into account the specific nature of the institution. Therefore, at night the staff did not have constant control and overview of the movement of the clients, their activities and whereabouts. Kodijärve Home complied with the statutory minimum requirement but also in that institution the number of activity supervisors did not take account of the specific nature of the institution, first and foremost as regards the model of family houses, as a result of which in several family houses the clients were on their own at night. The Chancellor has made a recommendation concerning the number of activity supervisors to both institutions also as a result of his previous inspection visits.

Second, the inspection revealed that in none of the three institutions the services of a medical nurse were sufficiently available. The Chancellor recommended to ensure the availability of nursing care services to the extent that conforms at least to the statutory minimum requirement, and to do it in a manner that allows the nurse to personally assess a client's condition. Although

the law does not specify whether or not physical presence of a nurse has to be ensured, the Chancellor is of the opinion that availability of independent nursing care is ensured when the nurse has the opportunity to personally examine a client and assess the client's condition. This means that the statutory requirement is complied with when the nurse is physically present at the institution, or also when the nurse is not present part of the time but there is an agreement that in case of necessity the nurse can be contacted by phone and called to the institution to assess a client's condition.

In all the three institutions, various shortcomings with regard to medications were found. The most serious concern had to do with administering of prescription medications. Based on the observations during the inspection, the Chancellor's advisers had a reasoned suspicion that administering of prescription medications which have to be taken only in case of the presence of certain indications was not decided by a staff member having medical training but instead by an activity supervisor. As persons without medical training are not necessarily able to assess all the health risks in aggregate when administering a medication, while incorrect administration of a medication may have serious or undesired consequences for the patient, the Chancellor recommended that the decision of administering medications to the clients "in case of necessity" should be made only by a health care worker with relevant medical training.

In addition, the inspections revealed that both at Erastvere Home and Pariisi Special Care Home some of the bedrooms could be passed through and some bedrooms were shared by more than two clients. At Erastvere Home, several washing rooms and toilets also lacked a possibility of locking the door, while at Pariisi Special Care Home there were not enough screens which could have been used during hygiene procedures. A situation where clients have to share a room with more than two other residents constitutes an unfounded interference in the privacy of the clients. This is also not in compliance with the health protection requirements for 24-hour special care services, according to which up to two persons may live in one bedroom. The situation where some clients are forced to live in pass-through bedrooms also amounts to unfounded interference in their privacy. On this basis, the Chancellor made a proposal to the institutions to take steps to ensure an appropriate ratio of the number of bedrooms and clients, so that no pass-through rooms are used as bedrooms and the clients do not have to share a bedroom with more than one other client. The Chancellor also recommended to ensure possibilities for performing hygiene procedures or other more intimate personal procedures in privacy.

As a positive aspect, the inspections showed the range of services offered to clients at Kodijärve Home. The Chancellor recognised Kodijärve Home for having created numerous opportunities for various activities for the clients, including activities aimed at improving the ability to cope independently and activities taking into account the specificity, level of development and interests of different clients.

1.2. Other work for the prevention of ill-treatment

In addition to inspection visits to closed institutions, the Chancellor's tasks include other work for the prevention of ill-treatment. The prevention of ill-treatment is aimed at raising awareness among staff working at and individuals held in the places of detention, as well as among the wider public, of the essence of ill-treatment and the need to fight it.

For example, the Chancellor has sent memorandums to the institutions within his supervisory competence to draw their attention to the main shortcomings identified in the inspected institutions. On 11 March 2015, the Chancellor sent [memorandums](#) to the providers of nursing

care services, 24-hour special care services and involuntary psychiatric care. In all the three memorandums, the Chancellor drew the attention of the service providers to shortcomings with the handling of medications and administering them to clients and patients, compliance with the requirements for seclusion rooms, and ensuring the privacy and human dignity of the clients and patients. The Chancellor also found that several providers of special care services and nursing care services did not have a sufficient number of staff.

In addition, the Chancellor has also organised training events and information days, as well as distributed information materials during the inspection visits in order to help persons whose liberty is restricted to better understand their fundamental rights and freedoms and to effectively implement various complaint mechanisms. Similarly, in order to improve awareness, a special section on the prevention of ill-treatment has been created on the [Chancellor of Justice homepage](#).

The training project in the course of which the Chancellor's adviser R. Sults explained fundamental rights to the conscripts of the Defence Forces also continued in the first half of 2015. He delivered six lectures in different battalions and three lectures at the Estonian National Defence College. In addition, at the summer seminar of the Police and Border Guard Board on 23 July 2015 the Chancellor's adviser Jaanus Konsa introduced the Chancellor's activities as the national preventive mechanism, the case-law of the European Court of Human Rights relating to ill-treatment, and the recommendations reflected in the reports of international organisations. On 11 March 2015, the Chancellor's junior adviser Marje Allikmets and Deputy Chancellor of Justice Nele Parrest delivered a presentation „The Chancellor of Justice supervision in adult social welfare institutions“ at the Ministry of Internal Affairs at a seminar for representatives of county governments. On 22 May 2015, Marje Allikmets and the head of the Children's and Youth Rights Department Andres Aru delivered a presentation „The Chancellor of Justice supervision in custodial institutions“ for education inspectors at the information day held in Harju County Government.

In order to raise the overall awareness of society about the prevention of ill-treatment, the Chancellor and the Chancellor's advisers have published both paper and internet articles on issues of ill-treatment. In the first half of 2015, the journal *Sotsiaaltöö* published the article „[ÜRO puuetega inimeste konventsioon lõhkumas eestkotesüsteemi](#)“ [The UN Convention on the Rights of Persons with Disabilities is destroying the system of guardianship] by Nele Parrest and head of the Social Rights Department Kärt Muller.

During the reporting period, on several occasions the Chancellor also analysed the constitutionality of legislation either directly or indirectly related to the prevention of ill-treatment, and also carried out several ombudsman proceedings. For example, the Chancellor analysed the constitutionality of internal prison rules to the extent that they restrict the possibilities of convicted and remand prisoners to acquire and transfer movable property in prison. The Chancellor also scrutinised the lawfulness of the use of means of restraint and its supervision in prison, the lawfulness of restricting the liberty of children in rehabilitation, cases relating to ill-treatment of children, the practice of telephone use in prison, etc.

As the national preventive mechanism, the Chancellor considers the consistent development of the knowledge and skills of his staff as extremely important. For better performance of the functions of the preventive mechanism, on 1 September 2015 the Inspection Visits Department was established at the Office of the Chancellor of Justice. The task of the department is to carry out inspection visits to closed institutions as well as to open institutions performing public

functions, and to organise activities for the prevention of ill-treatment. The department has a staff of six people. Previously, the tasks of the national preventive mechanism had been divided between different departments of the Chancellor's Office and the performance of the tasks was coordinated by one of the Deputy Chancellors.

During the reporting period, the Chancellor's advisers participated in the following training events on the prevention ill-treatment:

- Nele Parrest, Marje Allikmets, Angelika Sarapuu, Aigi Kivioja, Kristi Ploom and Eva Lillemaa attended the training course „The provision of 24-hour special care services to persons with a profound multiple disability“ organised by the non-profit association Henk on 27–28 January 2015.
- Nele Parrest, Marje Allikmets, Angelika Sarapuu, Aigi Kivioja, Kristi Ploom, Kristjan Ots, Kristel Lekko, Maria Sults, Kāti Mägi and Eva Lillemaa attended the training course on medications on 2 April 2015.
- Angelika Sarapuu attended the training course „Autism spectre disorders“ on 28 April 2015.

In addition, the Chancellor of Justice considers international cooperation with other preventive bodies and relevant international organisations to be very important. The Chancellor has been an active member of the Council of Europe Network of National Preventive Mechanisms (NPM) against torture and other cruel, inhuman or degrading treatment and punishment, and has replied to several queries concerning the work of the NPM. During the reporting year, advisers to the Chancellor attended the following international events:

- Nele Parrest attended the conference dedicated to the 25th anniversary of the CPT "*The CPT at 25: taking stock and moving forward*" in Strasbourg on 1–3 March 2015.
- Jaanus Konsa participated with a presentation at the IPCAN seminar "*Democratic policing of public assemblies*" in Paris on 22–23 March 2015.
- Marje Allikmets attended the conference "*Strengthening the Follow-up on NPM recommendations in the EU*" in Vienna on 28–29 April 2015.
- Jaanus Konsa participated in the ATP workshop "*Integrating the Preventive Approach*" in Helsinki on 4–6 May 2015.
- Marje Allikmets was on a study trip to the French national preventive mechanism for ill-treatment in Paris from 29 May to 6 June 2015. During the study trip, Marje Allikmets participated in a 5-day inspection visit to a psychiatric hospital.
- Nele Parrest and Indrek-Ivar Määrts participated in the NPM workshop "*Implementing a preventive mandate*" in Riga on 16–19 June 2015.
- Ksenia Žurakovskaja-Aru participated in the workshop "*Preventing torture and ill-treatment of female detainees through gender-sensitive monitoring*" in Bristol on 9–13 August 2015.

2. THE ROLE OF THE CHANCELLOR OF JUSTICE IN PROTECTING AND PROMOTING THE RIGHTS OF THE CHILD

Estonia ratified the [UN Convention on the Rights of the Child](#) 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 recognized in the Convention. In Estonia, the [Chancellor of Justice](#) performs the role of an independent Ombudsman for Children. The task of the [Ombudsman for Children](#) is to ensure that all the agencies, institutions and people who make decisions concerning children respect the rights of children and proceed from the best interests of children in their decision-making.

In eight months of 2015, the Chancellor initiated 97 proceedings directly related to the rights of children. Children themselves contacted the Chancellor for the protection of their rights on four occasions during the reporting period. Advisers at the Children's Rights Department of the Chancellor's Office also provided explanations about the rights of the child by telephone.

During the reporting period, the Chancellor received a number of petitions with a request for assistance in connection with mental or physical ill-treatment of a child by a parent or family member. The Chancellor has no competence to interfere in the resolving of such cases, but nonetheless the advisers to the Chancellor explained to the petitioners which authorities they should contact and, if necessary, forwarded the information about a child in need to child protection officials of local authorities. In 2015, the Chancellor also received several petitions from persons who were concerned about how to prevent repeated sexual offences against children by persons who have served their sentence but may still pose a threat.

With regard to educational violence it was good to note that the Chancellor's 2012 appeal to explicitly prohibit the corporal punishment of children has now taken the form of a legal provision in the [Child Protection Act](#) entering into force in 2016. However, in order for the understanding of inadmissibility of violent educational measures to become part of people's values and behaviour, it is necessary to distribute knowledge and skills of positive educational methods. Therefore, it is laudable that the Ministry of Social Affairs has begun to test the programme [The Incredible Years](#). The training offered within the programme teaches parents to prevent situations leading to stress and conflicts, and the parents receive assistance in setting limits and boundaries for children.

In case of ill-treatment of children, it is most important to notice and interfere. In order to recognise an ill-treated child, notify the right authorities about the suspicion of ill-treatment and assist the child without causing them new suffering, it is important for everyone to acquire the necessary skills and knowledge and become aware of their responsibility. In this regard, the Chancellor eagerly looks forward to the training and guidelines for school and kindergarten teachers which the Ministry of Social Affairs and the Ministry of Justice are required to implement under the implementing plan for the strategy for the prevention of violence in 2015–2018. Taking responsibility should also be encouraged by the more specific obligation under the new Child Protection Act for all persons who have knowledge of a child in need of assistance to immediately notify of the child to the local authority or to child helpline service 116 111. The Act also obliges child protection officials, within ten days of receiving the notice, to assess the child's need for assistance and decide on the suitable manner of assistance.

Various possibilities exist to avoid the repetition of sexual offences against children. For example, a limitation to work in occupations having contact with children applies to persons who have been punished for sexual offences. Everyone can enquire in the public [Criminal Records Database](#) whether a person having a contact with the child has been convicted for a sexual offence. In order to be able to supervise high-risk probationers, the Ministry of Justice has to implement the model for inter-institutional cooperation and information exchange as required by the implementing plan for the strategy for the prevention of violence.

At the same time, the possibility of elaborating legal rules should not be neglected either. Although the [Supreme Court](#) found detention after service of a sentence to be unconstitutional, it concluded that the conditions for supervision of conduct after service of the sentence could be made tougher if necessary. First and foremost, in case of sexual offenders convicted for rape it is possible to consider e.g. imposing of restrictions on the choice of residence, and in certain cases mandatory participation in treatment or therapy or electronic surveillance are not excluded either.

2.1. The Chancellor's memorandum to the Minister of Justice on bringing § 179 of the Code of Enforcement Procedure in conformity with the Constitution

The procedure applied to a court ruling regulating the visiting rights of a parent in respect of a child is of special character, as it does not involve the classical claimant-debtor relationship. Enforcement takes place in respect of the child and the law must take into account the interests and rights of the child in order to find a balance between the interests of the parents and the child. The law must ensure the protection of the child from the parents if the parents fail to exercise their right of custody in the best interests of the child. As a result of the analysis, the Chancellor reached the opinion that the procedure under § 179 of the [Code of Enforcement Procedure](#) establishing the enforcement of a court decision on visiting rights was in conflict with the Constitution, as it did not allow the bailiff to place the best interests of the child first and to take into account the child's own will, assuming that the child's maturity and level of development enables them to express their will, and the child's will has been assessed by a person with specific expertise.

2.2. Restriction without a legal basis of the liberty of children in rehabilitation

Currently, there is still no statutory basis for involuntary restriction of a child's liberty in the institutions providing rehabilitation services. In Estonia, there are currently two closed institutions providing rehabilitation services to children with behavioural and addiction problems.

Tallinn Children's Shelter (*Tallinna Laste Turvakeskus*) is an institution administered by Tallinn Social Welfare and Health Board and at present it has 48 beds for children aged 10–17. The rehabilitation programme lasts for 6–9 months. The programme ends in spring, which means that the children are sent back home for the summer. A child may also be referred to the service repeatedly, i.e. the child may return in the autumn. Children with different problems and needs have been referred to the programme but they all are subjected to the same regime and receive the same service.

Jõhvi Youth Treatment and Rehabilitation Centre is an institution owned by OÜ Corrigo and its main objective is to provide treatment and rehabilitation services to young addicts aged 14–18. The service is funded from the state budget via the National Institute for Health

Development. The target group is similar to Tallinn Children's Shelter. The service is provided for up to 16 children. The programme ends on 30 June in the year following the school year in which the child was referred to the service. Children referred to Jõhvi also have different problems and needs. The problem arising from this is that due to the absence of regulation it is not completely clear who exactly belong in the target group of the service: whether these are children with an addiction problem, behavioural disorder, or children with complex disorders. Children with different needs and problems end up in the rehabilitation centres.

In terms of fundamental rights, the main problem lies in the fact that currently children are sent to receive the rehabilitation service in closed institutions on the basis of referrals by juvenile committees as well as by local government bodies of the place of residence of the children. However, the law has not given the juvenile committees or local government bodies the right to restrict the liberty of children for purposes of referral to rehabilitation. Essentially, the liberty of the children is restricted without a legal basis.

Restricting the liberty of minors is currently possible for the application of involuntary treatment under the Mental Health Act, for placement in the special care service, placement at a school for children requiring special treatment due to behavioural problems, taking into custody, or the execution of imprisonment. In all these cases, a clear legal basis for the restriction of liberty exists and all these cases also require a court authorisation for restricting the liberty.

Problems with the organisation of study also exist. In Tallinn and Jõhvi, studying takes place in small classes. Such an organisation of study requires a recommendation by the counselling committee. At the same time, the abilities and previous learning experience of the children coming to the centre are very different, i.e. not all of them fulfil the conditions for referral to a small class and the counselling committee cannot give a recommendation for all the children. If no recommendation in respect of a child exists, no funding for the study of that child in a small class is provided. Moreover, some of the children are not capable of learning in a mainstream class either.

The centres also carry out security checks of children, lock children in a seclusion room, restrict the communication of children, examine the content of children's correspondence and telephone messages, children are obliged to give a urine sample upon return to the centre from home. In the opinion of the staff of the centre, such restrictions are indispensable for successfulness of the rehabilitation, and similar restrictions have been applied in the centre for years. However, no legal basis for applying such restrictions exists.

The Chancellor has repeatedly drawn attention to the problems. More systematically, the problem was explained in the Chancellor's 2009 report to the Riigikogu. Then the Riigikogu agreed with the Chancellor's criticism and requested the Government to prepare the relevant regulation. Unfortunately, no regulation concerning the activities of these institutions has yet been adopted.

2.3. Substitute home service

At the end of 2014, the Ministry of Social Affairs drew up a Green Paper on Alternative Care. This policy document reflects the intended developments in the organisation of substitute care and also proposes solutions for problems highlighted by the Chancellor in his 2013 [analysis](#).

The Chancellor's recommendations to the Minister of Social Affairs concerned the standard and financing model of the service meeting the basic needs of the child.

With regard to the service standard, the Chancellor was concerned that so far it was unclear what exactly are the basic needs which the substitute home should meet. To overcome this deficiency, the Ministry of Social Affairs intends to supplement the quality requirements of the service. In addition to the current requirements on staff and rooms, additional principles will be established to enable assessing how the service affects the quality of life of the children and help to ensure the rights of children, for example, to participate in making the decisions concerning them.

2.4. The shelter service

A shelter is a temporary service intended for a child in distress, e.g. a child separated from the family or departed ("run away") from home. Until now, the shelter service is essentially unregulated. Only health protection requirements for rooms apply, but the service standard is optional. A possible regulation of the service has been prepared in the Draft Social Welfare Act, the revised version of which was submitted to the Government for new approval in July 2015.

Over the years, the Chancellor has received information from the petitions and phone calls as well as from the inspection visits to substitute homes about the possible problems in the provision of the shelter service. The main problems relate to the length of children's stay in the shelter, the living conditions, and restriction of communication with their next of kin. Therefore, similarly to the substitute home service, based on the information gathered during the inspection visits the Chancellor decided to analyse the problems in relation to the shelter service.

In the first half of 2015, the Chancellor's advisers inspected five institutions: three shelters and two substitute homes providing the shelter service.

The Chancellor recommended that in the future Tartu Children's Shelter should check the background of the volunteers working in the shelter. The involvement of volunteers is good and reasonable but in order to prevent the occurrence of any undesirable incidents it is first necessary to establish that these people do not have a criminal record for offences which make it inadmissible for them to work with children. For this, the shelter itself can make an enquiry or ask the volunteers themselves to submit a transcript from the criminal records database. The shelter replied that since the beginning of September they require volunteers to present a transcript from the criminal records database.

In Narva Social Work Centre's shelter for children the main problems were that the number of staff in relation to the number of children was too small and the children could not attend kindergarten. At the time of the inspection visits, one carer was in charge of ten children. The Chancellor recommended to the shelter to ensure that at any time a sufficient number of carers is on duty, so that children receive sufficient attention and can spend time outdoors. The Chancellor also invited Narva City Social Assistance Board not to deprive the children at the shelter of the opportunity to attend kindergarten, and to maintain at least this part of the child's previous life arrangements.

In Siimusti children's home Metsatareke the children of the shelter and of the substitute home lived in the same families. In the opinion of experts this is not a good solution because the needs of these children are different. A child in the shelter needs crisis assistance focused individually

on him or her and not merely in the margins of everyday family life. However, a child in the substitute home needs first and foremost a stable family environment in which children do not change on a daily basis. Therefore, the Chancellor recommended not to place children of the shelter and the substitute home together.

In Kohtla-Järve Children's Shelter and Sillamäe Child Social Welfare Institution Lootus the Chancellor did not identify any violations of the rights of the child.

2.5. Public address of the Chancellor of Justice to managers of educational institutions

A petitioner raised an issue of the admissibility of political agitation in educational institutions. As a result of the proceedings, the Chancellor made a public address to managers of educational institutions and drew their attention to the fact that promoting the ideology of a specific political party or specific political views is not admissible in educational institutions.

The Chancellor in his address noted that in general the Constitution grants parents the right to decide according to which ideology or beliefs they educate their children. The Convention on the Protection of Human Rights and Fundamental Freedoms also requires that in the exercise of any functions which it assumes in relation to education and to teaching, the state shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions. Promoting the ideology of a specific political party or specific political views in an educational institution – either at a kindergarten or at school – is incompatible with the above principles.

2.6. Chancellor's task to introduce and promote the rights of children

Besides the supervisory function, the tasks of the Chancellor of Justice also include raising awareness of the rights of children and strengthening the position of children in society as active participants and contributors. The Chancellor of Justice as the Ombudsman for Children organises different analytical studies and surveys concerning the rights of children, and makes recommendations and proposals for improving the situation of children based on them. 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.

In order to encourage and support active participation of children in analysing and understanding their rights and duties, an [advisory committee to the Ombudsman for Children](#) has been established at the Office of the Chancellor of Justice. Members of the advisory body include representatives from different children's and youth organisations who are involved in the work of the Ombudsman for Children. In 2015 the advisory body met once in order to discuss the relationship between children and the media. The Chancellor's advisers explained to the children the legislation and guidelines which should be observed when talking about children in the media, and the children shared with the Chancellor's advisers their own experience and ideas concerning communication with the media.

In order to allow some more active young people to take a "behind-the-scenes" glimpse of the work of journalists and offer young people an opportunity to express their opinion on the topic of violence in different media channels, on 8–10 May practical media sessions were held with participation of 16 young people. In the framework of the sessions, several excursions introducing the work of the media and meetings with experts were organised. The young people visited the Baltic Film and Media School, the studios of the Estonian Public Broadcasting,

editorial offices of the *Eesti Päevaleht* daily, and the office of JustFilm. During the sessions, the young people discussed the issues of violence with experts, and with the assistance of instructors they produced [media stories](#) expressing the ideas of young people themselves.

In the first half of 2015, the Chancellor's advisers carried out several training courses on the rights of child, delivered lectures and presentations for specialists working with children, e.g. presentations on the rights of the child in alternative care for the staff and managers of substitute homes in different locations in Estonia, a training day for representatives of juvenile committees on the rights of juvenile offenders, and training sessions for staff of the *Rajaleidja* centres on the principle of taking the interests of the child as a primary consideration.

Film evenings on the rights of the child, along with the explanations by a school psychologist on the possibilities of receiving psychological assistance and counselling, were held for parents in Valga and Jõhvi.

The Chancellor's advisers explained the rights and duties of the child and debated on the topic of corporal punishment in topical discussion groups organised in cooperation between the Estonian Children's Literature Centre, Eduard Vilde Museum and the Office of the Chancellor of Justice. In the topical discussion groups, which were inspired by the story *Minu esimesed triibulised* [My first stripes] by Eduard Vilde, children were given a brief background on Eduard Vilde and the above story, and issues of equality, justice, violence-free education, and noticing, were discussed with children. In addition, children could engage in a role-play based on scenes from the story and to create their own ending for them.

The Ombudsman for Children can contribute to making society more child-friendly also by recognising good people who have done something remarkable either together with children or for children. At the recognition event *Lastega ja lastele* [With Children and for Children], instituted by organisations promoting the interests of children and held for the second time this year on the international Day for Protection of Children, recognition was given to persons who with their new initiatives or long-term activities had significantly contributed to the well-being of children.

3. STATISTICS OF PROCEEDINGS

The statistics of proceedings covers the period **from 1 January to 31 August 2015**.

TOTAL PROCEEDINGS

| | |
|---|------------|
| Supervision of the constitutionality and legality of legislative acts | 114 |
| Supervision of compliance with the fundamental rights and freedoms | 148 |
| Participation in constitutional review court proceedings | 13 |
| Legal service (the Chancellor did not initiate substantive proceedings) | 682 |
| Disciplinary issues in respect of judges | 16 |
| Opinions on draft legislation and other documents | 10 |
| Other activities arising from law | 12 |
| TOTAL | 995 |

MORE DETAILED DESCRIPTION OF THE PROCEEDINGS

| | |
|--|------------|
| Supervision of the constitutionality and legality of legislative acts | 114 |
| Verification of constitutionality based on petitions by individuals | 77 |
| Verification of legality of Government regulations based on petitions by individuals | 2 |
| Verification of legality of regulations of Ministers based on petitions by individuals | 10 |
| Verification of legality of regulations of local government councils based on petitions by individuals | 15 |
| Verification of legality of regulations of rural municipalities and city governments based on petitions by individuals | 4 |
| Verification of legality of other legislation based on petitions by individuals | 2 |
| Verification of legality of local government councils based on a request by county governor | 1 |
| Own-initiative verification of constitutionality of Acts | 2 |
| Own-initiative verification of legality of regulations of local government councils | 1 |
| Supervision of compliance with the fundamental rights and freedoms | 148 |
| Verification of activities of state agencies or bodies based on petitions by individuals | 76 |
| Verification of activities of local government agencies or bodies based on petitions by individuals | 18 |
| Verification of subordinate public agencies or bodies performing public functions based on petitions by individuals | 14 |
| Own-initiative verification of activities of state agencies or bodies | 14 |
| Own-initiative verification of activities of local government agencies or bodies | 14 |
| Own-initiative verification of activities of other subordinate public agencies or bodies performing public functions | 12 |

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| Participation in constitutional review court proceedings | 13 |
| Providing an opinion on a legislative act in constitutional review proceedings | 13 |
| Other proceedings | 38 |
| Proceedings relating to activities of judges | 10 |
| Proceedings relating to other activities of courts | 6 |
| Opinions for government agencies on draft legislation and other documents | 9 |
| Opinions for other agencies and organisations on draft legislation | 1 |
| Other activities arising from law | 12 |
| Legal service (the Chancellor did not initiate substantive proceedings) | 682 |
| Declining to initiate proceedings of petition due to lack of competence | 271 |
| Declining to initiate proceedings of petition due to a petition not conforming to requirements established by law | 45 |
| Declining to initiate proceedings of petition due to a petition being clearly unfounded | 69 |
| Declining to initiate proceedings of petition due to a petition being filed more than a year after the petitioner found out about the violation | 7 |
| Declining to initiate proceedings of petition due to the person being able to file an administrative challenge or invoke other legal remedies | 147 |
| Declining to initiate proceedings of petition due to pending administrative challenge proceedings or other voluntary pre-trial proceedings | 4 |
| Declining to initiate proceedings of petition due to an existing court judgment, pending court proceedings or compulsory pre-trial proceedings | 132 |
| Declining to initiate proceedings of petition due to lack of substantial public interest for review of conformity of legislation with the Constitution or an Act | 7 |
| AREA OF LAW | |
| Public service | 13 |
| Building and planning law | 19 |
| Energy, public water supply and sewerage law | 9 |
| Financial law (incl. tax and customs law, state budget, state property) | 29 |
| Administrative court procedure law | 13 |
| Administrative law (administrative management, administrative procedure, administrative enforcement, public property law, etc) | 36 |
| Education and research law | 43 |
| Personal data protection, databases and public information, state secrets law | 31 |
| Language law | 4 |
| Environmental law | 21 |
| Citizenship and migration law | 21 |
| Local government organisation law | 19 |
| Pre-trial criminal procedure | 28 |
| Criminal and misdemeanour court procedure | 33 |
| Criminal enforcement procedure and imprisonment law | 184 |
| Traffic regulation law | 12 |
| Animal protection, hunting, and fishing law | 2 |
| Economic and trade management and competition law | 8 |

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| Substantive penal law | 9 |
| Non-profit associations and foundations law | 8 |
| Heritage law | 1 |
| Other public law | 40 |
| Other private law | 11 |
| Ownership reform law | 8 |
| Ownership law, including intellectual property and copyright law | 13 |
| Bankruptcy law | 4 |
| Family law | 38 |
| Police and law enforcement law | 16 |
| Constitutional review court procedure law | 1 |
| Agricultural law (including food and veterinary law) | 4 |
| Law of succession | 1 |
| International law | 11 |
| State legal aid | 12 |
| National defence law | 11 |
| Government organisation law | 11 |
| Social welfare law | 59 |
| Social insurance law | 19 |
| Consumer protection law | 3 |
| Telecommunications, broadcasting, and postal services law | 3 |
| Health law | 38 |
| Transport and road law | 4 |
| Civil court procedure law | 36 |
| Enforcement procedure law | 33 |
| Labour law (including collective labour law) | 9 |
| Electoral and referendum law, political parties law | 10 |
| Law of obligations | 27 |
| Misdemeanour procedure | 10 |
| Company, bankruptcy and credit institutions law | 3 |
| Other | 17 |
| TOTAL | 995 |

LANGUAGE OF PETITIONS

| | |
|--------------|------------|
| Estonian | 862 |
| Russian | 113 |
| English | 18 |
| Other | 2 |
| TOTAL | 995 |

REGION OF PETITIONERS

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| Harju County, except Tallinn | 81 |
| Hiiu County | 2 |
| Ida-Viru County, except Narva | 107 |
| Jõgeva County | 12 |

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| Järva County | 11 |
| Lääne County | 5 |
| Lääne-Viru County | 25 |
| Narva | 13 |
| Põlva County | 4 |
| Pärnu County | 17 |
| Rapla County | 5 |
| Saare County | 9 |
| Tallinn | 249 |
| Tartu | 162 |
| Tartu County, except Tartu | 9 |
| Valga County | 12 |
| Viljandi County | 12 |
| Võru County | 12 |
| Foreign country | 14 |
| Unspecified | 234 |
| TOTAL | 995 |