

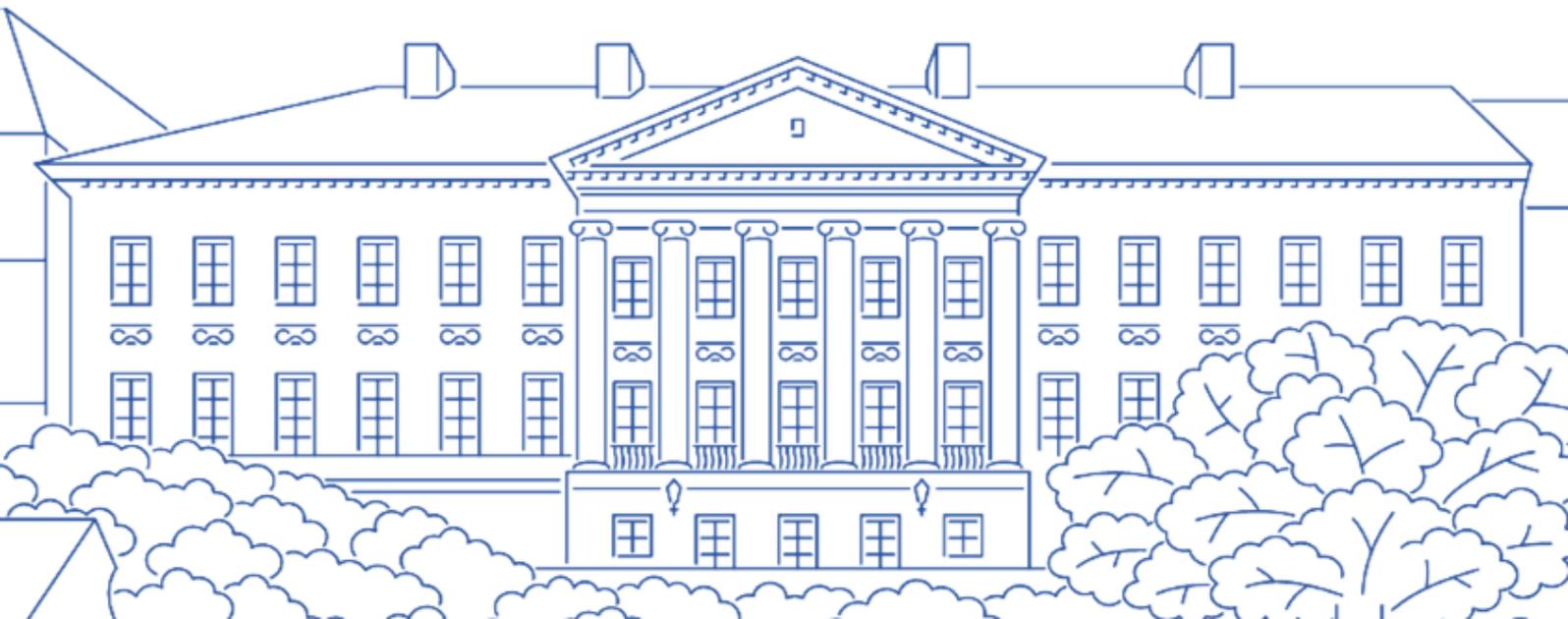


Õiguskantsler

**2016-2017 OVERVIEW OF
THE CHANCELLOR OF JUSTICE
ACTIVITIES:

NATIONAL PREVENTIVE
MECHANISM**

Tallinn 2017



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Introduction

The Chancellor must monitor respect for the fundamental rights of individuals held in custodial institutions. This task arises from the Act under which the Chancellor has been assigned the role of the national preventive mechanism set out in Article 3 of the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). To perform this task, advisers from the Inspection Visits Department of the Chancellor's Office carry out either announced or unannounced visits to these institutions.

Places of detention means all institutions where persons are or may be deprived of their liberty, either by virtue of an order by a public authority or at its instigation or with its consent or acquiescence. Various types of custodial institutions exist in Estonia: prisons, police detention facilities (including a detention centre for aliens), psychiatric hospitals providing involuntary treatment, social welfare institutions providing 24-hour special care services, etc.

During the reporting period, the Chancellor carried out 25 inspection visits:

- psychiatric hospitals – 6
- 24-hour special care institutions – 2
- general care homes – 8
- prisons – 2
- police detention facilities – 3
- units of the Defence Forces – 2
- educational institutions for pupils requiring special educational measures due to behavioural problems or for pupils with emotional and conduct disorders – 2

Healthcare experts were involved in inspection visits on 18 occasions.

1. Psychiatric hospitals

During the reporting year, the Chancellor inspected six hospitals providing in-patient psychiatric care: [the Pärnu Hospital psychiatric clinic](#), [Wismari Hospital](#), [the Kuressaare Hospital psychiatric clinic](#), [the North Estonia Medical Centre psychiatric hospital](#), [the Tartu University Hospital psychiatric clinic](#) and [the Viljandi Hospital psychiatric clinic](#).

A couple of hospitals (Tartu University Hospital and Viljandi Hospital) now keep electronic records of events concerning restriction of the rights of individuals. The living conditions in the acute department of the North Estonia Medical Centre have been significantly improved compared to the last inspection. Smaller hospitals are also making an effort to expand possibilities for therapy, and many places have hired an activity supervisor or an occupational therapist.

At the same time, the hospitals still have problems with drawing up treatment documents and using unjustifiably extensive video surveillance of patients.

The inspections revealed that Kuressaare Hospital, Wismari Hospital and Pärnu Hospital did not always draw up decisions on involuntary treatment in time and in compliance with requirements. The liberty of patients undergoing treatment voluntarily is restricted arbitrarily if they are not allowed to leave the hospital or means of restraint are used on them. If on arrival in hospital a patient consents to treatment and to a stay in hospital, but at some point their condition requires them to be restrained, a decision on involuntary treatment must be drawn up after determining the need for restraint. Only the psychiatrist who directly assessed the patient's condition may make a decision on involuntary treatment without court authorisation.

Twenty-four-hour video monitoring of all patients in wards without exception unjustifiably interferes with the fundamental right of individuals to privacy. For example, extensive video surveillance was used in the acute department of the psychiatric clinic of the North Estonia Medical Centre, the Pärnu Hospital psychiatric clinic, and the Tartu University Hospital psychiatric clinic. Cameras were located in rooms for common activities (corridors, dining rooms and activity rooms), as well as in all the wards. The video stream could be constantly monitored from a nurse's workstation, and in all hospitals the recording could be retained for a certain period. However, patients are not properly notified about the fact and extent of video surveillance; indeed, some patients were unaware that their wards were under constant video monitoring.

Observation rooms (rooms for mechanical restraint) in some hospitals still do not comply with requirements. The observation rooms at Wismari Hospital and Tartu University Hospital psychiatric clinic were not safe and the privacy of restrained persons was not ensured. Access by unrestrained patients to mechanically restrained patients should be avoided, and restraint should not take place in the sight of other patients. A member of the medical staff should always be present beside a mechanically restrained patient.

Records of instances of applying means of restraint should always contain a fairly detailed description of reasons for applying the measure, as well as the circumstances that justify continued restraint. A brief note that a patient was restless or aggressive is not sufficient, because this does not indicate what exactly it was that presented a danger. In addition, chemical restraint should always be properly recorded.

2. Institutions providing a 24-hour special care service

During the reporting period, the Chancellor also inspected two special care institutions: [Valkla Home](#) (where 100 clients were receiving a 24-hour special care service under court authorisation) and [Sõmera Home](#) (where 356 clients were receiving a 24-hour special care service, including 42 clients with profound multiple disability).

The twenty-four-hour special care service financed from the state budget is intended for those in need of daily guidance, counselling, assistance, and supervision due to their mental health condition. Referral to the service of persons diagnosed with a mental disorder, severe or profound disability and incapacity for work in addition to the above needs is based on a rehabilitation plan.

Use of the 24-hour special care service is voluntary, but those who could pose a danger to themselves or others due to their mental health are involuntarily consigned to the service in a closed institution under a court ruling. There the individual is under the constant supervision of the service provider and is not free to leave the grounds of the institution. A twenty-four-hour special care service under a court ruling is provided to minors in three locations and to adults in one location (Valkla Home). Estonia has a total of 47 24-hour special care service institutions, with 2699 residents as at the end of 2016 (including 110 persons referred to a closed institution under a court ruling).

During inspection of special care institutions this year, the Chancellor reviewed whether the freedom of movement of residents was restricted (e.g. by locking them in rooms, securing them to their beds) and how means of restraint were

used. The Chancellor also assessed the living conditions in these institutions and checked whether staffing was sufficient, the food was good and the residents were offered enough meaningful free-time activities. Dispensing of medications and access to healthcare services were reviewed. A general practitioner was involved as an expert in both inspection visits. During the visits, rooms were inspected, documents perused, and staff and clients were interviewed.

In Sõmera Home, the Chancellor assessed how assistance is provided to clients in transfer to smaller social welfare institutions under the reorganisation plan for special care institutions. Preparations for the changes were thorough, and the dedication of the staff left a good impression – this had not faltered, despite uncertainty arising from the plan to close down the institution. The Chancellor asked that residents be involved as much as possible in making reorganisation decisions, that they be kept informed and their opinions heard within the decision-making process.

In reference to Sõmera Home, the Chancellor noted that residents' freedom of movement must not be restricted without a legal basis. Without a court ruling, a client's freedom of movement may be restricted in specific and exceptional conditions, and only for up to three hours by placing them in a secure seclusion room. In doing so, the client may not be left or locked in just any room but in a room that complies with the requirements for a seclusion room.

In both of the care homes inspected, many residents were not involved in dynamic activities contributing to development of skills, which would help residents spend time by engaging in their preferred activities.

The inspections revealed that, in view of the specific nature of their clients, neither special care institution might have a sufficient number of competent activity supervisors constantly present. Their numbers should be sufficient and their work organised in such a way as to enable an individual approach to all clients and, if necessary, keep a constant eye on their movement and activities. Staffing should be sufficient so as to enable swift and safe resolution of tense and dangerous situations. The minimum staffing level laid down in legislation might not always be sufficient to provide quality service and ensure the fundamental rights of clients.

In comparison to the previous inspection visit, Valkla Home had not significantly improved conditions in the seclusion room – the room was not secure, nor did it create a calming environment. To ensure security, Valkla Home still extensively uses metal grids and barbed wire, which the Chancellor had already found inappropriate in 2015.

The Chancellor asked both care homes to ensure that nursing care services are available at least to an extent conforming to the statutory minimum requirement. A lingering suspicion also remained that in both care homes prescription medications – which should be taken only in specific circumstances – are dispensed to residents in the evenings and at night by an activity supervisor not qualified to make such decisions.

3. Institutions providing the general care service

During the reporting period, the Chancellor inspected the activities of eight general care homes (so-called old people's homes). Residents of general care homes are adults who need support in their daily lives and are unable to cope independently at home. Young or middle-aged people may also find themselves in this situation as a result of illness or trauma, but the majority of the residents in general care homes are the elderly in need of daily support. According to data from the Ministry of Social Affairs, 11 445 clients received the general care service in 2016.

The inspections in social welfare institutions focused on whether the freedom of movement of individuals had been restricted (e.g. locking them in their rooms, securing them to their beds), whether clients were treated with dignity (e.g. unjustified interference in privacy, unsanitary living conditions), and whether any risks to their life and health existed (e.g. number and presence of staff, nursing and care, meals, issues related to medication, access to healthcare).

As a rule, the Chancellor carries out inspection visits to general care homes without advance notice. A healthcare expert was involved in all the visits, and general practitioners as well as medical professionals qualified in geriatrics also contributed with their specialist expertise. The inspections involved examining the rooms and documentation plus interviews with staff and residents.

Similarly to the previous reporting period, the problems include ensuring decent living conditions, compliance with health protection requirements applicable for social welfare institutions, unlawful restriction of freedom of movement of clients, incorrect handling and administration of medication to clients. Some problems also occurred in relation to lack of privacy during hygiene procedures, maintaining records of the care service (absence of mandatory care plans), and regular assessment of the need for healthcare services. In some care homes, high doorsteps, narrow doorways and absence of a lift made it difficult to move around in a wheelchair or a wheeled walking frame.

Frequently, numbers of care staff in care homes were insufficient, in particular at night, which directly affects the quality of service provided. On several occasions, the Chancellor's advisers formed the impression that even though the staff of the institutions were dedicated to their work and cared about the clients, clearly not enough specialists were available to deal directly with clients. More than the statutory minimum number of staff are required if clients are in need of special care and the building has a specific character. In that case, an institution should be able to deploy more competent and motivated staff to deal with the clients.

In several care homes, the Chancellor's advisers found unlawful restriction of freedom of movement of clients – the practice of locking doors of departments as well as rooms, thus impeding residents from freely moving around. The general care home service is provided on a voluntary basis, i.e. at a person's own request (i.e. these are not closed institutions where individuals may be kept against their will). It is inadmissible to restrain persons either physically (locking or using means of binding) or by using medication. Freedom of movement was restricted mostly for clients with dementia and serious memory problems whose behaviour could be problematic and unpredictable and who are difficult to handle. In view of this, the Chancellor sent a memorandum to the Ministry of Social Affairs in autumn 2016 and requested that development of a care service aimed at persons suffering from dementia and having reached the retirement age should be initiated. In the reply, the Ministry of Social Affairs agreed with the Chancellor's proposal and considered it necessary to create a suitable legal framework for providing a service for elderly people with dementia and to develop the respective service. The Ministry in its reply also pointed out that the principles of funding social services should be reviewed in the course of the administrative reform to ensure the capacity of local authorities.

In July 2017, the Chancellor wrote about the problems of general care services and the funding of the social sphere in a circular concerning the quality of the general care service. The aim was to draw the attention of all general care service providers to the shortcomings found during the inspections, so as to contribute to improving the quality of the service and prevent possible violations.

The Chancellor's advisers also discussed the issue of the rights of the elderly at the autumn conference "Elderly patients in healthcare institutions" organised by Tartu University Clinic and Ida-Viru County Central Hospital in autumn 2016. The Chancellor's advisers discussed the challenges facing healthcare institutions and medical professionals at the bioethics seminar "Right to freedom versus the right to protection of health – an inevitable and unmanageable moral conflict?" organised in cooperation between the Estonian Bioethics Council and the Ministry of Social Affairs on 16 December 2016. In a special edition of the law journal

Juridica, a Chancellor's adviser wrote about the right to privacy of the elderly. Motivated by the problems of restriction of freedom of movement of clients in social welfare institutions, on the initiative of the Chancellor the special edition of Juridica published an analysis of the limits of acting in self-defence and in an emergency in social welfare and healthcare institutions.

4. Prisons

Estonia has three prisons – Tartu, Viru, and Tallinn Prison – each with approximately 800–1000 convicted and remand prisoners. During the reporting year, the Chancellor inspected [Tartu Prison](#) and [Tallinn Prison](#). Tartu Prison is a relatively new facility, while the premises at Tallinn Prison are in a desperate state of repair – its new buildings should be completed in 2018.

The Chancellor intensely reviewed restrictions imposed on prisoner access to the internet. Under § 31¹ of the [Imprisonment Act](#), prisoners are only allowed access to legislation and judicial decisions on the internet. Internet access restrictions apply equally to convicted prisoners as well as to remand prisoners who have not yet been convicted and who may eventually also be acquitted.

Obviously, internet access for prisoners should not be unlimited since this may also contribute to planning new criminal offences. However, current information technology enables imposition of reasonable restrictions and alleviation of risks, while also allowing convicted and remand prisoners considerably more extensive access to the internet.

The experience of several countries demonstrates that internet use expands the opportunities of prisoners to keep abreast of developments in society, to better prepare for life on their release and to participate in internet-based education. Therefore, in an opinion sent to the Supreme Court, the Chancellor concluded that a restriction denying access to websites [www.oiguskantsler.ee](#) and [www.riigikogu.ee](#) is excessive. The Supreme Court declined to entertain the case of internet use of prisoners in terms of constitutional review.

In the Chancellor's opinion, many problems in the open prison sections of all prisons derive precisely from outdated legal rules regulating internet access.

Persons assigned to an open prison are those convicted of less serious offences. Prisoners whom it is not expedient to keep in a closed prison, those whose behaviour has been law-abiding, and those in respect of whom sufficient reason exists to presume that they would not commit further offences are also assigned to an open prison section. The main purpose of an open prison is to get prisoners

used to law-abiding behaviour prior to their release. Scarce opportunity for internet use prevents prisoners from looking for information on jobs, optimal routes for proceeding from one place to another, and public transport. Without learning to use a computer, prisoners will not learn how to write a CV, and it is also difficult to imagine modern education without a computer and the internet.

Almost complete isolation of prisoners from the rest of the world leads to a situation where they are unable to start a law-abiding life upon release from prison, for example finding a job that matches their skills. The Minister of Justice agreed to revise the rules and practice concerning prisoner internet access.

In separate proceedings, the Chancellor emphasised that short-term leave from an open prison is important for maintaining family relationships and positive social contacts and helps prisoners to start leading a law-abiding life upon release. The Chancellor asked the prison always to take this into account when deciding on grant of short-term prison leave.

During the inspection of Tallinn and Tartu prisons, considerable attention was paid to communication by convicted and remand prisoners with their next of kin. A commendable initiative are the "family days" organised by Tartu Prison, where prisoners can meet their next of kin without having a glass or wire barrier separating them. Short-term contact visits (i.e. without a barrier) help to maintain relationships with family members, especially with children. The Chancellor's recommendation to both prisons was that, as a rule, individual short-term visits with family members should also take place without a separating barrier.

In both prisons, access by convicted and remand prisoners with mobility disability (e.g. those using a wheelchair) to different parts of the prison (including the medical department) was complicated without assistance.

In Tartu Prison, the Chancellor paid particular attention to the section where mothers with children up to three years old were serving their sentence. Women are able to work in the section but have no opportunity to study or participate in social programmes.

A suspicion remained that handcuffs were used to escort pregnant women from the prison to hospital for childbirth and subsequently during return to prison. Prison officers are present at childbirth; male officers also stay with the woman in a postnatal ward, sometimes around the clock. The Chancellor asked the prison to organise supervision of women at birth by using different measures.

5. Police detention facilities

The Chancellor inspected the cellblock of [Viljandi](#) police station in the South Prefecture and the cellblock of [Narva](#) police station in the East Prefecture. The Chancellor's advisers also inspected buildings currently under construction for the detention centre of the migration bureau of the information management and procedural department of the Police and Border Guard Board.

The Chancellor asked that during construction of the new building for the detention centre it should be kept in mind that this is neither a prison nor a police detention centre. Keeping persons subject to expulsion and asylum seekers in a building where living conditions and the environment are similar to a prison should be avoided. The centre will have separate rooms for persons in need of enhanced supervision. Persons with special needs (e.g. with a mobility disability) must have equal accessibility to free-time and public areas and to the outdoors.

In the Chancellor's opinion, to prevent and detect ill-treatment it is extremely important to record as precisely as possible and maintain records of the health condition of persons admitted to a cellblock. In Viljandi cellblock, external injuries or their absence were sometimes recorded and sometimes not.

6. Units of the Defence Forces

During the reporting period, two inspection visits were carried out to units of the Defence Forces. The Chancellor did not identify any significant shortcomings in the [Logistics Battalion](#). After the inspection visit to the Navy, the Chancellor asked that both active service members and conscripts on watchkeeping duty should not stay in an environment posing a health hazard during repair and maintenance work on ships.

7. Maarjamaa Education College

The Chancellor inspected [Emajõe Centre](#) and [Valgejõe Centre](#) of Maarjamaa Education College, which are educational institutions for pupils requiring special educational measures due to behavioural problems or for pupils with emotional and conduct disorders. Maarjamaa Education College also provides a 24-hour special care service to minors under a court ruling.

The inspection revealed that Valgejõe Centre had problems with ensuring the safety of children. Pupils said that they had experienced both mental and physical violence from their peers. Children did not feel sufficient trust towards staff. The staff of the centre mentioned that they would need clearer guidelines on how to

deal with violent incidents. The centre did not have enough night attendants, so it could happen that pupils were left on their own for a while at night. Both in Valgejõe and Emajõe Centre, security checks of children took place without a legal basis.

In both centres, placement of pupils in a seclusion room caused concern. Specific requirements must be complied with when placing children under 24-hour special care in a seclusion room. For example, the service provider must notify the police or the ambulance service of each such incident.

The Chancellor asked both centres to let young people have more say in resolving matters of everyday living of direct concern to them and in planning activities. For example, they could themselves make plans concerning options for spending free time, choice of food, and decorating rooms. Pupils should also be given more information about educational opportunities. Young people could have more opportunities to move and spend time outdoors.

In Valgejõe centre, the windows of children's bedrooms were covered with white plastic, which let light inside but completely blocked the view outside. Some bedrooms could be locked so that the door could not be opened from the inside.

The Chancellor emphasised to Maarjamaa Education College that telephone use by children should be flexible, taking into account the working schedules of their parents and the working hours of different authorities. The presence of staff during phone conversations interferes with pupils' privacy. Restricting communication with next of kin (including by phone) is not allowed as a disciplinary sanction.

8. Promotional activities

In addition to inspection visits, the Chancellor of Justice performs other work that prevents mistreatment, which is aimed at increasing the awareness of people working and held in detention facilities as well as of the general public of the nature of mistreatment and the need to fight it. For example, officials working under the Chancellor of Justice have carried out training and information events to increase the awareness of people working and held in detention facilities and distributed information materials during inspection visits to help people whose freedom has been restricted gain a better understanding of their fundamental rights and freedoms and to use various complaint mechanisms efficiently. In order to raise general awareness, the Chancellor of Justice and the Chancellor's advisers have published various articles about mistreatment in print media and online publications.

International cooperation with other preventive mechanisms and relevant international organisations is also extremely important to the Chancellor of Justice. The Chancellor of Justice has been active in the European network of National Preventive Mechanisms (NPM) against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and she has close contacts with several other NPMs in other countries.

8.1. Circular letters

On 11 July 2017, the Chancellor of Justice sent a circular letter to Estonian social policy makers, municipalities and care homes to increase future funding of care homes in order to improve their living conditions and the quality of the provided services. In the circular letter, the Chancellor of Justice noted, among other things, that many problems with general care homes have raised from the scarcity of professional staff. For example, residents of a care home were locked up, detained or forcibly given tranquilizers, although the law does not allow it. Humanly, it is difficult to blame a carer who alone is responsible for so many residents dangerous to oneself and others. However, the dignified treatment of people living in care homes is possible and necessary. The situation can also be improved by motivating and educating carers and creating working conditions that prevent apathy.

8.2. Articles and interviews

- Eva Lillemaa, "[Ressursi nappusega ei saa õigustada inimväarikust alandavat kohtlemist hooldekodudes](#)" (Scarcity of resources cannot justify degrading treatment in nursing homes), Delfi, 20.07.2017.
- Andres Aru, "Kas elu koos emaga vanglas võib olla lapse parimates huvides?" (Is living with their mother in a prison in the best interest of the child?), journal Sotsiaaltöö No. 4/2016.
- The Chancellor of Justice has a special radio broadcast "Law and Justice" in Radio Kuku, which is on-air every Sunday at noon and which re-broadcasts can be heard on Sunday and Wednesday evenings. In the [20 November broadcast](#), the Chancellor of Justice discussed the application of prohibition of ill-treatment in theory and practice with criminologist Jako Salla and the Head of Inspection Visits Department of the Office of the Chancellor of Justice Indrek-Ivar Määrts. The radio broadcast was dedicated to the 10th anniversary of OPCAT.

8.3. *Trainings and other events*

- The training programme wherein Raivo Sults introduces fundamental rights to conscripts serving in the Defence Forces continued in 2016 and 2017. In 2016, Raivo Sults introduced fundamental rights to conscripts in 5 battalions and delivered 2 lectures at the Estonian National Defence College. In 2017, he delivered 5 lectures in different battalions.
- Ksenia Žurakovskaja-Aru gave lectures on "The child and prison" to the students of the Estonian Academy of Security Sciences on 30 September 2016 and on 10 March 2017, in which she explained, among other things, what is ill-treatment, the OPCAT and the role of the Chancellor of Justice in the prevention of ill-treatment.
- Raivo Sults attended the summer school for the national preventive mechanisms on 14-17 August 2017 in Bristol.
- Indrek-Ivar Määrits attended the consultation meeting "Draft set of rules for administration detention of migrants and independent observatory of NPMs (NPM Obs)" organised by the Council of Europe on 3 May – 2 June 2017 in Strasbourg.
- Indrek-Ivar Määrits attended the cooperation seminar of preventive mechanisms „Network of SPACE national correspondents and Network of national prison monitoring bodies (especially NPMs)" on 3-5 April 2017 in Strasbourg.
- Raivo Sults attended the training seminar for ombudsmen of the armed forces on 19-22 March 2017 in Warsaw.
- On 28 November 2016, a colloquium dedicated to the 10th anniversary of OPCAT was organised in the Office of the Chancellor of Justice. In the colloquium, Estonia's renowned legal scholars discussed substance of the prohibition of ill-treatment and how the principle should be interpreted in practice.
- For the sixth time, the children's and youth film festival 'Just Film' held as part of the PÖFF Film Festival included a special programme on the rights of the child, prepared in cooperation between Just Film, the Chancellor of Justice, the Ministry of Justice, the Ministry of Social Affairs and the Estonian Union for Child Welfare. Bearing in mind the anniversary of OPCAT, three films speaking about youth in closed institutions were chosen into the programme – [4 Kings](#), [They Call Us Monsters](#) and [Starless Dreams](#). On 15, 17 and 18 November 2016, screening of the films were followed by debates with invited experts and recognised personalities analysing the films together with viewers.
- Eva Lillemaa made a presentation on respecting for fundamental rights in health care institutions at the conference of the Tartu University Hospital and

Ida-Viru Central Hospital "An elderly patient in health care institution" held on 21 October 2016.

- Eva Lillemaa and Maria Sults attended the training course „Training School 2016 – Modern forensic in-patient facility design standards“ on 21-22 September 2016 in Helsinki.

8.4. Projects

In autumn 2016, advisers from the Inspection Visits Department visited Danish and Swedish parliamentary ombudsmen within the [Nordic-Baltic Mobility Programme for Public Administration](#) and discussed the issues of supervision of migration authorities.

Similarly to the Estonian Chancellor of Justice, Danish and Swedish parliamentary ombudsmen also perform the functions of the national preventive mechanism under the Optional Protocol to the UN Convention on the Prevention of Torture. For example, they check how dignified treatment is ensured in closed immigration facilities. The Chancellor's advisers also visited the Ellebæk immigration detention centre, Sjælsmark deportation centre, and Auderødi asylum reception centre in Denmark, and Märsta detention centre, refugee accommodation centre, and Storboda prison in Sweden.