



Foreword to “Human Rights in the Defence Forces”

One of the primary duties of every democratic country is to guarantee and protect human rights. The human rights situation influences a number of the central processes in the functioning of a country – political and administrative governance, the balance between power of the people and administrative powers, as well as the position of national defence and law enforcement structure and functions related to continuous operation of the government apparatus.

The principle of equal treatment and prohibition on discrimination are among the cornerstones of the Estonian constitutional order, and uniform adherence to the principle is obligatory for every government institution and body, every institution and official. Estonia has acceded to many international legal acts and become a member of many international organizations – among others legal acts and organizations orientated to protecting human rights.

In today’s democratic society, great attention is paid to promoting gender equality and the rights of minorities. The topic of minority rights and gender equality is salient also in power structures, where people’s administrative dependence on other people is, due to official relations, visibly greater in than civilian life. In April 2013, the Defence Resources Board began accepting applications from female citizens wishing to volunteer for military service. A study conducted in November 2012 among schoolchildren who graduated this year showed that there was among the girls a higher than expected interest in military service (7% of female high school seniors wanted to join the Defence Forces as conscripts). At the same time, military structures have limited opportunities to accommodate female conscripts, to say nothing of the lack of necessary training for this purpose among the officers and NCOs who deal with training.

Rights during compulsory military service and the addition of women to conscript ranks are just two specific examples that point to the need to continue research in the area of human rights in the Defence Forces. The actual range of topics is even broader. For this reason, it is particularly salient to determine the human rights situation in the armed forces. This study stemmed from precisely this consideration.

The study “Human Rights in the Defence Forces” was prepared by the Institute of Human Rights in cooperation with Turu-uuringute AS, a market research company. This is the second study to cover human rights in the Defence Forces. In 2005, the Jaan Tõnisson Institute, in conjunction with Faktum research centre, carried out the first human rights related study in the Defence Forces. The research set the goal of determining the human rights situation in the Estonian Defence Forces in light of various aspects ranging from respect for human dignity to freedom of speech; it also aimed to determine the particularities related to gender and ethnic structure of the Defence Forces members. The Institute of Human Rights and the International Centre for



Defence Studies deemed it necessary to carry out a repeat study in the Defence Forces in 2013 and to conduct regular studies in future as well. Besides mapping the human rights situation in the Defence Forces, an objective of the research was to provide specific recommendations on how to organize better safeguards for human rights in the future.

As for any military organization, order and discipline are vital to the Defence Forces. This leads to a need to circumscribe freedoms and rights in some situations. For this reason, it is important that these restrictions be necessary, justified and not disproportionate or arbitrary. It is fundamentally important that the restrictions not violate the nature and the general principles of human rights. Human rights apply to one and all, including Defence Forces members, and protection for their human rights is just as salient as for any other individuals. This study does not cover alternative service.

It is paramount to human rights protection that people, including Defence Forces members, know their rights and be able to stand up for them. Defence Forces members must know what action to take if they find their human rights are being violated. The goal of this study is to gain an overview of the human rights situation in the Defence Forces, draw attention to problems and contribute to finding a solution to them.

The study consists of three parts.

- 1) survey of Defence Forces conscripts;
- 2) survey of professional Defence Forces members;
- 3) correlations between human rights and security and armed forces in today's world.

As part of the study, surveys were conducted among both conscripts and professional Defence Forces members. The immediate goal of the study was to determine the following:

- awareness of human rights among conscripts and professional Defence Forces members;
- adherence to human rights in the Estonian Defence Forces;
- perceptions regarding conscripts' mutual relations and incidents of bullying;
- applicable punishments and opinions of the appropriateness of the punishments;
- attitudes toward women's military service and opinion among women regarding working for the Defence Forces;
- satisfaction with compulsory military service and working for the Defence Forces.

The same methods used in the 2005 empirical study were used to conduct this study, with a modification made so that the research conducted by the International Centre for Defence Studies or the Defence Forces would not be repeated.

Where possible, the current study was compared to the study conducted in 2005 to gain an overview of what had changed and what had not, and what the direction of the changes has been. A report prepared in 2012 collaboratively by the Estonian Institute of Human Rights and Turu-uuringute AS, "Human Rights in Estonia," also constitutes a comparison base.



(See <http://www.eihr.ee/eesti-inimõiguste-aruanne-2012-2/>.) This comparison shows that the awareness of people in fulfilling compulsory military service regarding human rights is even somewhat higher than in society as a whole, but they are not able to precisely define what human rights are. What is positive, however, is that the professional Defence Forces members are well-abreast of human rights. This is a very important basis for general respect for human rights in the Defence Forces.

The third part of the study – “Correlations between human rights and security and the armed forces in today’s world,” focused on international trends in guaranteeing human rights based on the experiences of other countries’ security policy and armed forces.

The general belief overwhelmingly shared by conscripts is that human rights should not be circumscribed during compulsory military service. In principle, this must indeed be so. Yet due to the specific nature of Defence Forces services, there is a need for some rights to be curtailed, and Defence Forces members have to be up to date with which rights may be circumscribed, and to what extent.

The general framework of Estonian law is laid down in the Constitution, which also specifies instances where a person can be forced to perform work or be in service against his or her free will. Article 29 of the Constitution states the following:

Every citizen of Estonia is entitled to freely choose his or her area of activity, profession and position of employment. The law may provide conditions and procedures for the exercise of this right. Unless otherwise provided by law, citizens of foreign states and stateless persons in Estonia enjoy this right equally with citizens of Estonia.

*No one may be compelled to perform work or service against his or her free will, **except for service in the defence forces or alternative service**, or work required to prevent the spread of an infectious disease or to contain a natural disaster or catastrophe, or work which a convicted offender is required to perform according to the law and pursuant to a procedure established by law.*

Thus military service is an obligation enforced by the state, which compels a citizen to serve in the Defence Forces at the time appointed for military service. Conscripts are obliged, based on their position, to take part and complete military training.

This provision is refined by Section 49 of the Military Service Act, on circumscription of the fundamental rights and liberties of conscripts (see Annex A).

The topic of human rights received much attention in Parliament during proceedings on the Military Service Act. The Estonian President vetoed the law on the first go-around, on the grounds that Section 601 on respect for human dignity and adherence to rights of conscripts was unconstitutional. The problematic provision read: “The fundamental rights and freedoms of a conscript may be circumscribed in the cases provided by law. If no specific restriction is set forth in legislation, the commander may, for the purposes of Defence Forces training, apply only such circumscriptions as are necessary. The circumscription must conform to the purpose of Defence



Forces training and the principle of human dignity and must not distort the nature of other rights and liberties set forth in legislation.” The president stressed that Defence Forces personnel rights may be circumscribed only by legislation, and this may not be done by the Defence Forces itself, as the version of the Act stated.

The president also emphasized that it was natural and in the interests of the national defence that the fundamental rights of Defence Forces members be circumscribed more extensively than those of civilians; however, the basis for deciding the circumscriptions must be the first sentence of Article 3 (1) of the Constitution and Article 11 of the Constitution, which set forth the following principles:

Article 3. Governmental authority is exercised solely pursuant to the Constitution and laws which are in conformity therewith.

Section 11. Rights and freedoms may only be circumscribed in accordance with the Constitution. Such circumscription must be necessary in a democratic society and may not distort the nature of the rights and freedoms circumscribed.

The president noted that under Article 124 (3) of the Constitution, persons in the Defence Forces enjoy all constitutional rights, freedoms and responsibilities. In the interests of special aspects of service, legislation may provide for exceptions from this principle; the same section lists fundamental freedoms which may not be circumscribed under the exception provided in Article 124. According to the Constitution, the legal status of persons in the Defence Forces must likewise be established by law. Hence Article 124 also contains the abovementioned requirement that circumscriptions of fundamental freedoms of conscripts be set forth in legislation, and that major circumscriptions must be governed in detail in legislation (see Annex A).

The president stressed that legislation does not govern the majority of the circumscriptions of fundamental rights of conscripts necessary for completing military service. Thus the scope of application of the legal standard of the planned Military Service Act would encompass an unforeseeable number of restrictions on the fundamental rights of conscripts. Such a general provision would be constitutional only if it governed the use of special powers granted for circumscribing specific fundamental rights in certain exceptional cases.

The president said that it was not an absolute requirement that the circumscription of fundamental rights must be set forth in legislation. It stems from the letter and spirit of the Constitution that less intensive circumscriptions of fundamental rights may also be imposed by the executive branch – on the basis of a provision delegating authority that is precise, clear and in conformity with the intensiveness of the circumscription (General Chamber of the Supreme Court, 3 December 2007, 3-3-1-41-06, point 22). But this case does not involve such a provision delegating authority. In this case, the planned provision is not clear, precise or likely either proportional to the intensiveness of the conceivable circumscription. Considering the general nature of the norm, it should be noted that neither the commander applying the provision nor the conscript himself would be able to understand which of the conscript’s fundamental rights



could be circumscribed on what conditions and using what measures.

The conditions for the circumscription of fundamental rights and the measures applicable when such conditions exist must be set forth in law sufficiently clearly, i.e. specifically. Even when there exist clear provisions which govern the conditions and procedure for circumscription of fundamental rights, the commander may, for the purposes of Defence Forces training, apply only such restrictions as are necessary. The restriction must conform to the purpose of Defence Forces training and the principle of human dignity and must not distort the nature of other rights and liberties set forth in legislation. This is provided for in the Constitution (Articles 10, 11 etc). The second sentence of subsection 60 (1) of the proposed Military Service Act envisions independent yet vague grounds for circumscribing fundamental rights also in cases where legislation does not provide the conditions and procedure for circumscription in the manner required by the Constitution.

If the said provision is meant to legitimize military-service-governing legal acts inferior to the level of legislation, then this purpose will not be served by so general a provision. Due to its general wording, this may not be an independent ground for restricting the fundamental rights of conscripts; for instance the freedom of movement of conscripts or inviolability of property may not be circumscribed on this basis, although the explanatory memorandum to the legislation does refer to the need for such a circumscription.

If such a provision in the legislation were to be accepted, it would strip Article 3 (1) and Article 11 of the Constitution of their meaning as then it would not be necessary for any other legislation to set forth specific circumscriptions of fundamental rights. It would be sufficient, then, in all fields to have only an abstract provision that allows state representatives who feel such a need to circumscribe the fundamental rights of individuals, i.e. to decide what right is to be circumscribed in what manner as well as to actually circumscribe the right.

The principle of rule of law makes it impossible to consent to temporary, expedient seeming unconstitutional decisions even if they appear to be innocuous. Both the letter and spirit of the Constitution must be upheld in all situations.

The President's position was supported by the Parliamentary Constitutional Committee as well, and the Parliament amended the legislation with regard to the provisions cited by the President.

In addition to domestic legal acts, Estonia has also joined a number of Geneva conventions, which govern human rights in connection with state of war and armed forces (see Annex A).

In the survey, about two-thirds of conscripts agreed that all rights and rules of civilian life could not be applied in the Defence Forces.

The Institute of Human Rights plans to conduct the Human Rights in the Defence Forces regularly. There is no need to conduct such a study annually, but an eight-year interval is too



long. A three- to five-year cycle would be appropriate for a study of this type. It would allow the human rights situation and changes in the Defence Forces to be analyzed regularly. It would also create a comparison base to plan further steps for the protection of human rights.