

# The Constitution and Interpretation of the Authority Dilemma for the Leadership of the National Defence After Estonia Regained its Independence

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## ABSTRACT

After the restoration of independence in August 1991, Estonia had no national defence, defence capability or capacity for international defence cooperation. The armed forces had to be 'invented'. However, this can be regarded as an advantage, since retraining and reorganising an existing system is usually more difficult. The main principles of national defence were established in Chapter 10 of the Constitution, which was approved in a referendum held in June 1992. This chapter, which was influenced by the presidential constitution of 1937/1938, did not answer the question of whether the Commander of the Defence Forces would be placed under the authority of the President, the parliament or the government. Two voluntary national defence organisations, the Defence League and the Home Guard, which competed with each other, already existed in Estonia when the Defence Forces were established. The Ministry of Defence was established even later. There were fears that subordinating the Commander of the Defence Forces to the government may lead to the politicisation of the army and uneven development due to frequent changes of government. These problems were eased by subordinating the commander to the President – however, this caused tension between the Ministry of Defence and the Defence Forces Headquarters. The parliament had the right to appoint and remove the Commander of the Defence Forces, but the proposal had to come from the President. This conflict culminated in summer 2000 when the Commander of the Defence Forces was removed as a result of a vote in the Riigikogu, which the President called an issue of civilian control; the removal, as well as the Defence Minister and government keeping their positions, was decided by one vote, allegedly given by accident...

The Constitution was amended in 2011. The President remains the highest leader of national defence, but executive power in the leadership of national defence has been granted to the government.

## Introduction

After regaining independence in 1991, Estonia initially lacked any national defence structures and even the basic capacity for self-defence, let alone international defence cooperation. The armed forces of the independent state had to be “reinvented” or built from scratch. This can also be considered an advantage, given that the comprehensive reforming and retraining of an existing system is usually a complicated task. There were no legislations governing defence and no armament, national military personnel, training system or other factors critical to national defence. National defence traditions to be relied upon dated back to the pre-World War II period and were important in terms of conveyance of values, as well as ceremonies and rituals, etc., but not necessarily relevant in the context of building up a defence suitable for a small independent state. Moreover, the nostalgic aspect could even have an inhibitory effect on the organisation of modern national defence.

When the development of national defence was started in Estonia, people had a lot of good will and enthusiasm to get things done, but the relevant skills and knowledge were limited. There was no experience of organising national defence in the country. The principles of national defence were sought to be formulated in Chapter 10 ‘National Defence’ of the Constitution drafted by the Constitutional Assembly and approved by referendum in summer 1992. The Constitution gave rise to a major conflict that affected the development of national defence for two decades after the restoration of independence due to the ambiguous and contradictory wording regarding the leadership of national defence. Simply put, the question was: who is the Commander of the Defence Forces subordinate to?

Following the amendment to the Constitution which was approved by the Parliament in April 2011 and entered into force on the 22nd of July

the same year<sup>1</sup> and by which the problematic provision of the Constitution was changed, it is appropriate to make a brief retrospect of how the problem came into being, what the causes were and how solutions to it were sought, given that all this constituted a separate chapter in the development of national defence in Estonia.

## Background

The first years of the development of national defence after Estonia regained its independence have been metaphorically referred to as the period of an “adventure film” or “people’s theatre” in which the actors did what they deemed fit to build up the primary defence capacity and counterbalance the foreign troops that were still present in the country. Despite the proposals published in some newspaper articles and set out in official documents (by Rein Helme, Ants Laaneots and Hannes Walter)<sup>2</sup> and the first relevant discussions, Estonia initially lacked an official defence concept or doctrine formulating the principles of national defence. The principles of the defence concept are considered to have been presented for the first time and in the most concise way in the ‘National Defence’ chapter of the Constitution; the fundamental principles set out there were gradually supplemented in various acts of law on national defence.<sup>3</sup> Thus, the Constitution certainly had a significant impact on the overall national defence-related thinking in subsequent years.

The development of national defence was characterised by an acute shortage of people with relevant knowledge and experience. There were a number of enthusiastic and diligent people from different backgrounds – former Soviet army officers, officers who had served in the armed forces of Western countries, as well as some men with experience from the Estonian Defence Forces in the pre-World War II period, and a few officers

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<sup>1</sup> “Act Amending the Constitution of the Republic of Estonia,” *RT I*, 27.4.2011, 1.

<sup>2</sup> See: Hellar Lill, “Eesti riigikaitsepoliitika kujunemisest. Esimesed visioonid 1991–1995,” *Akadeemia* 9 (2009), 1740–1751.

<sup>3</sup> Rein Helme, “Uus hüsteeria kaitsekontseptsiooni ümber,” *Eesti Aeg*, 30.8.1995.

who had fought in different armies during World War II. In spring 1992, the names of 421 regular officers of Estonian descent were ascertained, 16 of them from Western countries. Around 60 of them were involved in the creation of the Estonian Defence Forces.<sup>4</sup>

The shortage of civilians with an appropriate background and experience was even more acute. Also, the officers were usually servicemen with varying level of training and experience from several different (and mostly large) countries, and thus had to adjust to the national defence of the small independent state. There were no people with knowledge of the higher strategic level, where, figuratively speaking, the state and the army meet. Ants Laaneots, the then Chief of Staff of the Defence Forces, has said:<sup>5</sup> “In the early years, the creation and development of the Defence Forces was only possible thanks to the fanatical and often self-sacrificing work of a small number of military enthusiasts”.<sup>6</sup>

## **Formulation of the Constitution’s ‘National Defence’ chapter and reasons for this**

“It is with some bewilderment that I recently read in a newspaper that the Prime Minister has taken upon himself the task of governing national defence and has committed to fill the security vacuum with the help of our partner countries. Once again I am forced to recall the simple principle: it is common in Estonia to have one President at a time. Let’s draw the line

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<sup>4</sup> Urmet Kook, “Ants Laaneots: rahvuslik ohvitserkond “saab valmis” 10 aasta pärast,” *Riigi Kaitse (Eesti Päevaleht)*, 28.9.2004.

<sup>5</sup> General Ants Laaneots was the Chief of Staff of the Estonian Defence Forces from 1991–1994 and 1997–1999 and the Commander of the Defence Forces from 2006–2011. He was promoted to Colonel in 1992, Major General in 1998, Lieutenant General in 2008 and General in 2011.

<sup>6</sup> Ants Laaneots, “Eesti Kaitsejõud aastail 1991–2011,” – *Kakskümmend aastat taasiseseisvust Eestis, 1991–2011: ettekannete kokkuvõtted teaduskonverentsil “20 aastat taasiseseisvust Eestis, 1991–2011” 20. augustil 2011 Tallinnas = Twenty years of restored statehood in Estonia, 1991–2011: the proceedings of scientific conference “20 years of restored statehood in Estonia, 1991–2011,” 20 August 2011, Tallinn*, koostaja ja peatoimetaja Leili Utno (Tallinn: Välis-Eesti Ühing, 2011), 175.

here.”<sup>7</sup> It is safe to say that the penultimate sentence of this quotation from 1993, which has even been used in a song, is the best-known statement of President Lennart Meri and its original context is not really remembered or acknowledged – as is often the case with quotations. The quotation is a vivid example of the interpretation problems and disputes concerning the governance of national defence in the 1990s and partly also in the next decade, which directly stemmed from the concept of national defence provided in the Constitution. The distribution of authority for the governance of national defence and more specifically the question of the subordination of the Commander of the Defence Forces has been regarded as the most problematic issue arising from the Constitution in the field of national defence. Constitutional disputes over the institutional roles and powers of the President and the Government resulted from the fact that, on the one hand, the Constitution appointed the President as the supreme commander of national defence, while, on the other hand, it stated that the executive power was vested in the Government and that the Parliament had the right to appoint the Commander of the Defence Forces.<sup>8</sup> Thus the Constitution sought to accommodate the national defence model of a presidential state in the context of a parliamentary state.<sup>9</sup>

The main features of the future principles of national defence were outlined during the discussions and debates of the Constitutional Assembly, which was composed of the members of the Supreme Council and the Estonian Congress and which acted from the 13th of September 1991 to the 10th of April 1992 and held a total of 30 sessions.<sup>10</sup> The Constitution was approved by referendum on the 28th of June 1992. The Constitution, in particular its Chapter 10, is definitely the most important legal

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<sup>7</sup> Speech of the President of the Republic at the threshold of the second year of his term of office in Estonian Television, 7 October 1993, <http://vp1992-2001.president.ee/est/k6ned/K6ne.asp?ID=4238> (accessed 18.11.2011).

<sup>8</sup> Constitution of the Republic of Estonia before the amendment that entered into force on 22 July 2011.

<sup>9</sup> Märt Rask's interview to Urmas Ott, 4 December 2001 – *Põhiseaduse tulek*, koostaja ja toimetaja Eve Pärnaste, koostaja-konsultant Ülle Aaskivi, intervjuude autorid Urmas Ott ja Inge Rumessen (Tallinn: SE&JS, 2002), 247.

<sup>10</sup> *Põhiseaduse tulek*, 50–72.

source that determines the bases of national defence. As regards national defence-related legislation and a fixed conceptual basis in the first years of restored independence, it is actually possible to talk only about Chapter 10 of the Constitution, as other relevant documents were only slowly beginning to emerge.

Also Ülo Uluots,<sup>11</sup> the first Minister of Defence after the restoration of independence, referred to a lack of clarity in governance in his political testament issued at the end of his term of office, in which he stated that the Defence Forces and the Defence League were not subordinate to the Ministry of Defence and that the Minister of Defence could issue only requests, not orders, to the Commander of the Defence Forces.<sup>12</sup> In his interview to *Päevaleht* in October 1992 Ants Laaneots, who was fulfilling the tasks of both the Chief of Staff of the Defence Forces and the Commander of the Defence Forces, unequivocally confirmed his direct subordination to the President: “The Chief of Staff of the Defence Forces is subordinate to the President, as Lennart Meri, the Head of State, also confirmed at the meeting. As the Commander of the Defence Forces has not been appointed yet, I am fulfilling these tasks in accordance with the statutes of the Defence Forces Headquarters. I report directly to the President.”<sup>13</sup> This raises the question whether the wording of the Constitution would also have allowed for a different interpretation in practice. However, subsequent relations largely relied on the original interpretation and the powers and subordination initially enforced. One can speculate whether many dissensions could have been avoided or mitigated if the National Defence Council, which includes both the Minister of Defence and the Commander of the Defence Forces and in which personal interaction would have enabled relations to be put in place a reasonable way, would have started work immediately. An important role was also played by the powerful personality of President Lennart Meri who – as is evident from the above quotations – interpreted the Constitution precisely in this way.

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<sup>11</sup> Ülo Uluots was the Minister of Defence in the first Government of Tiit Vähi from 18 June 1991 to 21 October 1992.

<sup>12</sup> Ülo Uluots, “Poliitiline testament,” 1992, KMA 1/18, 10.

<sup>13</sup> Sulev Hallik, “Kolonel Laaneots: Meie rahvas ei ole sissisõjaks valmis,” *Päevaleht*, 31.10.1992.



*President of Estonia Lennart Meri (on the right) and Defence Minister Andrus Öövel attach lieutenant general's shoulder marks to Commander of Defence Forces Aleksander Einsoo (1995). Lembit Michelson /ETA/ Estonian Film Archives*

When thinking about the reasons behind the development of the wording of the 'National Defence' chapter of the Constitution, two aspects, in particular, should be addressed.

**First**, when describing the development of the leadership as stated in the Constitution, it should be admitted that the Constitution as such reflects a certain socio-political and socio-economic situation in society.<sup>14</sup> Undoubtedly, this points to the then political situation in which Estonia actually had two armed voluntary organisations that competed against each other: the Defence League and the Home Guard. In addition, it was feared that the Defence Forces to be created could be politicised by executive power, which is why it was sought to counterbalance this possibility by strengthening the role of the President in national defence. It was

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<sup>14</sup> Rait Maruste, Anneli Albi, "Eesti Vabariigi põhiseadus Euroopa Liidu õiguskorras," *Juridica* I (2003): 3–7.

feared that if the Commander of the Defence Forces were made directly subordinate to the Government, the Defence Forces would not be able to function normally due to rapid changes of the Governments.<sup>15</sup> The fears concerning the functioning of the principles of democratic governance of national defence in the first years after the restoration of independence are illustrated by the questions posed by Tõnu Parming in an article on national defence issues in the collection titled *Pontes Novi* in 1995: “For example, how strong is civilian control over the armed forces in a situation where it has not been decided whether the Defence Forces are actually subordinate to the President or, through the Minister of Defence, to the Government? How firm is civilian control over the armed forces in a situation where the Commander of the Defence Forces basically refused to talk with the Government for a long time and has publicly named ministers crooks? And where the only General [of Estonia] states in an interview published in foreign media that certain persons and entities have suggested that he should take the helm of the state?”<sup>16</sup> The initial wording of the Constitution has also been explained by fears of potential undemocratic power ambitions of a then political leader. The same article by Tõnu Parming contains a reference to worries concerning the authoritarianism of Edgar Savisaar in 1995: “[---] exceptionally strong and – compared to NATO member states – large armed formations are subordinate to the Minister of the Interior with an authoritarian disposition. Anyhow, Edgar Savisaar has more “guns and bayonets” (as was said in the old days) than Major General Aleksander Einseln.”<sup>17, 18</sup>

**Second**, when drafting, discussing and adopting the Constitution, the Constitutional Assembly faced a complex challenge as regards the

<sup>15</sup> *Põhiseadus ja Põhiseaduse Assamblee*, toim. Viljar Peep (Tallinn: Juura, 1997), 305–306.

<sup>16</sup> Tõnu Parming, “NATO, Eesti ja sõjateegilisi küsimusi Läänemere ruumis,” – *Pontes Novi: Eesti Üliõpilaste Seltsi ja Helsingi Ülikooli põhjala osakondade ühisväljaanne*, toimkond: Timo Höykinpuro jt (Tartu: Eesti Üliõpilaste Seltsi Kirjastus, 1995), 119.

<sup>17</sup> *Ibid.*, 119–120.

<sup>18</sup> The first quotation refers to the statements of Aleksander Einseln who was the Commander of the Defence Forces from 4 May 1993 to 4 December 1995, and the second quotation refers to the period when Edgar Savisaar was the Minister of the Interior in the Government of Tiit Vähi from 12 April to 10 October 1995 and controlled police and border guard units.

regulation of national defence issues, because, unlike a number of other areas, Estonia then lacked any relevant relations or arrangements in the sphere of national defence that could be relied upon. According to Jüri Adams, a member of the Constitutional Assembly, it was unclear what the future national defence of Estonia would look like and thus it was not possible to address national defence issues in the Constitution in detail.<sup>19</sup> A similar view has been supported by Jüri Luik who has said that the authors of the 'National Defence' chapter of the Constitution were not aware what the national defence system of an independent state means or how national defence should actually be governed with such system.<sup>20</sup> This has been explained by the fact that, when developing the national defence governance system and defining the subordination relationships, the Constitutional Assembly and its working party dealing with issues of national defence guided themselves by the Estonian Constitution of 1938, which provided for the appointment of the Commander or Commander-in-Chief of the armed forces by the President of the Republic.<sup>21</sup> The ways of thinking could also have been affected by the general national defence practice prevailing in the Republic of Estonia before World War II, whereby the Minister of Defence was a relatively marginal figure compared to the Commander-in-Chief of the Defence Forces or the Commander-in-Chief of the Armed Forces, as well as by the significant personal authority of General Johan Laidoner, a hero of the War of Independence who served as the Commander-in-Chief in the years 1918–1920, 1924–1925 and 1934–1940.<sup>22</sup> In its final report the expert panel on the Constitution concluded that “neither the Constitutional Assembly’s working party for national

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<sup>19</sup> *Põhiseadus*, 142.

<sup>20</sup> Mart Soidro, “Kaitseminister Jüri Luik: Me oleme kaitseväes liialt julgelt kasutanud pika nõukogude-taustaga inimesi,” *Keskus*, 26.6.2002.

<sup>21</sup> The presidential constitution that came into force on 1 January 1938 set up the institution of the President of the Republic with large-scale powers and the right to appoint the Commander and the Commander-in-Chief of the armed forces. The bicameral Parliament was composed of the lower house, which was elected, and the upper house, which was appointed by the President. Because of the state of national emergency, the official title of the head of the armed forces was Commander-in-Chief until the *de facto* end of the existence of the Republic of Estonia.

<sup>22</sup> Merle Maigre, “Tsiiviil-militaarsuhted Eestis,” *Diplomaatia* 38, November (2006).

defence nor the members of the Constitutional Assembly had an entirely clear idea of the scope of authority that this general clause (appointing the President as the supreme commander of national defence) was expected to entail.”<sup>23</sup> Rein Helme who was the chairman of the National Defence Committee of the Parliament from 1992–1995 criticised the Constitutional Assembly for its excessive nostalgia for the Constitution of 1938 in the context of regulating national defence matters, figuratively describing the conflict of authority in the governance of national defence as follows: “So, the current situation is such that, if one of two best friends would tomorrow be appointed as the Minister of Defence and the other as the Commander of the Defence Forces, their friendship would certainly be over, however good-natured or wise they are.”<sup>24</sup>

As the possible third aspect, Vello Saatpalu, a member of the Constitutional Assembly, pointed to an *argumentum ad hominem* aspect already in 1992, stating that the inclusion of the President in the Constitution as the supreme commander of national defence “is certainly on the conscience of those who, being the advocates of a presidential state, could not accept their defeat and literally used every chance they had to plant provisions into the Constitution of Estonia, which will have to be kept in mind during the forthcoming arrangement of the Constitution.”<sup>25</sup> Saatpalu’s explanation is not likely, however; the wording probably resulted from a combined effect of the two abovementioned reasons.

## **Interpretations and effects of the Constitution’s ‘National Defence’ chapter**

As a result of the two aspects described above, the approach to the governance of national defence was formulated in the Constitution in a contradictory manner, and the attempt to combine the elements of two

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<sup>23</sup> Final report of the expert panel on the Constitution of the Republic of Estonia, <http://www.just.ee/10738> (accessed 18.11.2012).

<sup>24</sup> Rein Helme, “Väheseadustatud Riigikaitse,” *Postimees*, 15.1.2000.

<sup>25</sup> Vello Saatpalu, “Seekord aitab,” *Postimees*, 11.12.1992.

*The leadership structure of national defence after the restoration of Estonian independence was modelled on the pre-WWII Estonian national defence practice, which was greatly influenced by the authority of the Estonian Commander-In-Chief during the Estonian War of Independence and also from 1934 onwards General Johan Laidoner. Estonian War Museum*



different systems of government has to be regarded as failed. Disputes over the governance problem reached a milestone in the ruling of the Constitutional Review Chamber of the Supreme Court in 1994, which stated that the situation where the President of the Republic gives orders to the Commander of the Defence Forces, bypassing the Government of the Republic, is not in line with the spirit of the Constitution.<sup>26</sup> This ruling was prompted by the Peacetime National Defence Act approved by the Parliament and sent by President Lennart Meri to the Constitutional Review Chamber of the Supreme Court.

In accordance with the proposal of the Constitutional Review Chamber of the Supreme Court, the Government of the Republic set up an expert panel for legal assessment of the Constitution in 1996. In 1997,

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<sup>26</sup> See: Lauri Almann, "Riigikaitse õiguslik korraldus – põhijooned ja arengud," *Riigi Kaitse (Eesti Päevaleht)*, 2.6.2006.

the report of the expert panel was published, which, on the one hand, admitted that national defence was “more or less” sufficiently regulated in the Constitution.<sup>27</sup> On the other hand, the report stated that the inconsistency stemming from the authority conflict described above was directly inhibiting the development of the Defence Forces, causing subordination and authority conflicts and preventing the establishment of normal cooperation between the two central bodies governing national defence – the Ministry of Defence and the Defence Forces Headquarters.<sup>28</sup> An important conclusion was that the appointment of the President as the supreme commander of national defence involved a threat of double governance at the highest level of the chain of command. The appointment of the Commander of the Defence Forces by the Parliament gave the Commander an unreasonably strong position alongside the Minister of Defence, and quite similar legal status. The committee recommended the elimination of the empty and confusing wording of section 127 of the Constitution, which appointed the President of the Republic as the supreme commander of national defence, and amending section 127 of the Constitution as follows: “*The Government of the Republic shall ensure external security of the state and govern national defence on the basis of law. The Prime Minister shall form the National Security Council pursuant to the procedure provided by law. During a state of war, the Defence Forces shall be subordinate to the Prime Minister.*”<sup>29</sup> It was also found that this governance system does not require the legitimisation of the institution of the Commander of the Defence Forces in the Constitution.<sup>30</sup>

One must admit that despite attempts to mitigate it, the conflict of authority had a suppressive effect on the development of national defence through the 1990s, giving both the Commander of the Defence Forces and the Minister of Defence opportunities to interpret the relationship of subordination differently and, in case of problems, refer to the omissions on the part of the other. The explanatory memorandum to the amend-

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<sup>27</sup> Final report.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*



*President of Estonia Lennart Meri at the presidential palace Kadriorg on the day he took the oath of office. On the right Chief of Staff of the Estonian Defence Forces Colonel Ants Laaneots, who according to contemporary view was subordinated directly to the President (6 October 1992). Tiit Veermäe/ETA/Estonian Film Archives*

ment of the Constitution of 2011 stated that “most of the political problems relating to the Defence Forces which have arisen after the restoration of independence and adoption of the Constitution pertain to the unclear civilian control of the Defence Forces.”<sup>31</sup>

The confusion in the distribution of authority created a negative background for the development and organisation of national defence by the Ministry of Defence and the Defence Forces Headquarters, creating uncertainty in the formulation of doctrines and planning of national defence, and in balancing self-defence capacity with collective defence. It has been suggested that, in addition to the official national defence plan-

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<sup>31</sup> Explanatory memorandum to the amendment of the Constitution of the Republic of Estonia, 27 April 2011, <http://www.riigikogu.ee/?page=eelnou&op=ems&eid=1325102&emshelp=true&u=20110409232849> (accessed 14.4.2012).

ning, there was also secondary double-planning, which was made possible due to the authority conflict and a lack of democratic governance practices in national defence. Margus Kolga, Deputy Undersecretary for the Defence Policy of the Ministry of Defence in charge of integration with NATO, later admitted: “Although the planning documents submitted to NATO were signed by both the Minister and the Commander of the Defence Forces, their contents were all too often not reflected in the planning documents of the Defence Forces and, even worse, the Defence Forces were engaged in entirely other matters.”<sup>32</sup>

The unclear technical and legal subordination definitely was not the only issue. As the above example shows, there was also a question of the authority and credibility of the Minister and the Ministry. The fact that the Defence Forces as an institution were restored earlier than the Ministry of Defence also played a role.<sup>33</sup> Ants Laaneots has stated: “A peculiar feature of the recreation of national defence was the fact that Estonia lacked the Ministry and the Minister of Defence for a long time.”<sup>34</sup> He has explained that the Defence Forces Headquarters then had to deal with security and defence policy-related activities not typical for such an institution, as public authorities whose duties cover such activities simply did not exist.<sup>35</sup>

The conflict between the Commander of the Defence Forces and the Minister of Defence culminated with the so-called “battle of directives” in 1997, when Andrus Öövel, the Minister of Defence,<sup>36</sup> and Johannes Kert, the Commander of the Defence Forces,<sup>37</sup> issued contradictory and mutually exclusive directives on issues concerning the provision of military

<sup>32</sup> Margus Kolga, “Mis siis ikkagi kaitseväes toimub?” *Eesti Päevaleht*, 7.11.2006.

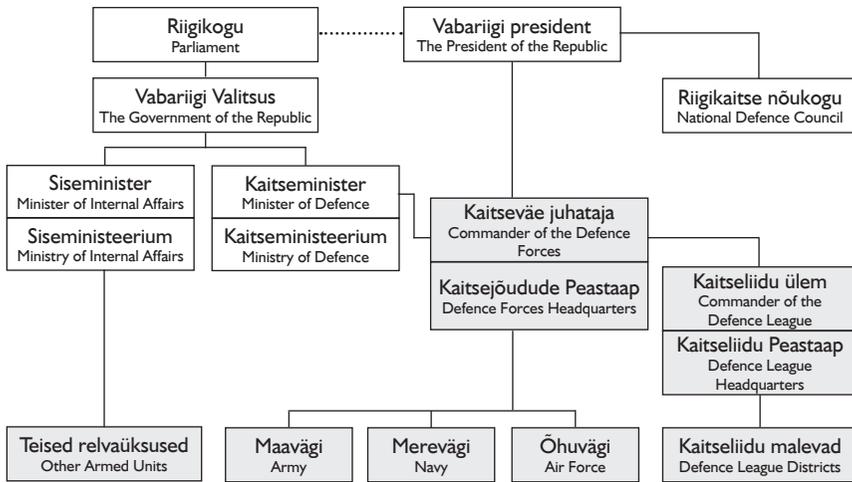
<sup>33</sup> The Supreme Council of the Republic of Estonia decided to establish the Defence Forces on 3 September 1991. The Defence Forces Headquarters was re-established on 31 October 1991, the Ministry of Defence on 13 April 1992, and Ülo Uluots was appointed Defence Minister on 18 July 1992.

<sup>34</sup> Laaneots, “Eesti Kaitsejõud,” 175.

<sup>35</sup> Ants Laaneots, *Eesti Vabariigi julgeolekukontseptsiooni areng aastail 1991–1994 ja kõrgkoolid: aulaloeng 8. veebruaril 1996* (Tartu: Tartu Ülikooli Kirjastus, 1996), 5–6.

<sup>36</sup> Andrus Öövel was the Minister of Defence in the Governments of Tiit Vähi and Mart Siiman from 17 April 1995 to 25 March 1999.

<sup>37</sup> Johannes Kert was the Commander of the Defence Forces from 1996–2000. He was promoted to Lieutenant General in 1998.



*The leadership structure of national defence from year 1996. The Commander of Defence Forces was subordinated to the President as well as to the Ministry of Defence. Eesti Kaitsejõud 1991–1996. Tallinn: Kaitseministeerium, Kaitsejõudude Peastaap, 1996*

education. Namely, instead of the military school that had been operating within the National Defence Academy of Estonia, a new military school was founded on the order of the Defence Forces Headquarters on the 9th of June 1997, and the admission of cadets was announced. Minister Öövel, in turn, revoked that document.<sup>38</sup> Johannes Kert, the Commander of the Defence Forces, then sent a letter to Öövel, declaring his refusal to publish the Minister's directive and to order the Defence Forces, the Defence League and the educational institutions of the Defence Forces to comply with it. On the 14th of July Kert issued a new directive ordering the establishment of a military school, a higher military school and a staff college within the training centre of the National Defence College. In turn, Öövel issued a directive on the 31st of July revoking the directive

<sup>38</sup> Directive no 108 of the Minister of Defence of the Republic of Estonia, 30 June 1997, KMA 7, 9–10.

of the Commander of the Defence Forces of the 14th of July, indicating that it was incompatible with both the Education Act and the Vocational Educational Institutions Act.<sup>39</sup>

To solve this situation, it was suggested that one of the men should resign. According to the expert panel on the Constitution, the resignation would not have solved the situation and the methods of resolving the conflict between the Commander of the Defence Forces and the Minister of Defence were inadequate due to the deficiencies of the legal regulation.<sup>40</sup> Eerik-Juhan Truuväli, the Chancellor of Justice, had to admit that he failed to see how vertical subordination could be created between the institutions of the Minister of Defence and the Commander of the Defence Forces. Yet he also acknowledged that the Commander of the Defence Forces could not issue a directive which the Minister of Defence did not agree with.<sup>41</sup>

It is true that the interpretation of the formal relationship between the Commander of the Defence Forces and the Minister of Defence was greatly influenced by the personal compatibility and relations between the persons. For example, Hain Rebas,<sup>42</sup> a reserve officer of Swedish Army and a professor of history at the University of Kiel who was the Minister of Defence in the government of Mart Laar, and Ants Laaneots, a former officer of the Soviet Army who, being the Chief of Staff of the Defence Forces, fulfilled the tasks of the Commander of the Defence Forces, quickly found a common language with each other.<sup>43</sup> However, the period during which they worked together was relatively short.

As the Parliament had the authority to appoint and release the Commander of the Defence Forces, the appointment and release became a

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<sup>39</sup> Aivar Jarne, "Käskkirjade lahing Ööveli ja Kerdi vahel," *Postimees*, 24.9.1997.

<sup>40</sup> Final report.

<sup>41</sup> Toomas Mattson, "Õiguskantsler mõnab pädevusvastuolusid," *Postimees*, 26.9.1997.

<sup>42</sup> Hain Rebas was the Minister of Defence in the Government of Mart Laar from 21 October 1992 to 5 August 1993.

<sup>43</sup> Hain Rebas, "Meenutus Laari esimesest valitsusest: riigikaitse korralik läbikukkumine," *Delfi*, 21.10.2012, <http://www.delfi.ee/news/paevauudised/arvamus/hain-rebase-meenutus-laari-esimesest-valitsusest-eesi-riigikaitse-korralik-labikukkumine.d?id=65143122> (accessed 2.4.2014).

subject of internal political struggle. The release of General Aleksander Einseln from the post of the Commander of the Defence Forces in 1995 was justified, *inter alia*, by his political statements. During the discussion of the relevant draft Act on the 19th of December, his release was also referred to as “political lynching”.<sup>44</sup>

The voting on the draft Act on the release of Lieutenant General Johannes Kert from the post of the Commander of the Defence Forces in the Parliament on the 28th of August 2000 turned into a political vote. Even President Lennart Meri made a political statement in the Parliament, pointing to the need to depoliticise the post of the Commander of the Defence Forces and to Kert’s behaviour that allegedly had not been consistent with the principles of civilian control among the reasons for releasing Kert from the post. Indeed, Meri viewed the vote on the release from the post as a question of civilian control.<sup>45</sup> Interestingly, the final outcome of the vote and Kert’s release was determined by a supposedly accidental vote in favour by Tõnu Kauba, a member of the Centre Party faction, who had allegedly played with the voting button and thus voted differently from the rest of the faction (and got later expelled from the faction). In a way, it was a vote of confidence for the Government and the Minister of Defence which, in the case of Kert staying in office, would most likely have led to the resignation of Jüri Luik, the Minister of Defence.

## Summary

The wording of the ‘National Defence’ chapter of the Constitution resulted from the shortage of know-how and the prevailing political situation and began to influence the development of national defence due to

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<sup>44</sup> Verbatim report of the 2nd Session of the 8th Parliament, 19 December 1995, <http://www.riigikogu.ee/?op=steno&stcommand=stenoqramm&date=819360000&pkpkaupa=1&paevakord=1900002852> (accessed 24.10.2013).

<sup>45</sup> Verbatim report of the Extraordinary Session of the 8th Parliament, 28 August 2000, <http://www.riigikogu.ee/?op=steno&stcommand=stenoqramm&date=967468680#pk2000006887> (accessed 1.11.2013).

the conflict thus programmed into the interactions between two leading institutions. The conflict of authority that had arisen from the wording of the Constitution and its interpretations affected the development of national defence directly, in specific controversial issues, as well as in a more general and indirect manner. The confusion in the distribution of authority and the different interpretations of the relationship of subordination created a negative background for the development of the national defence. This conflict of authority could probably have been mitigated in its initial phase, had there been sufficient personal communication and a will to interpret the Constitution differently. Through a variety of instruments and “testing of the limits”, the problem was mitigated and sorted out clearly enough to ensure that the conflict would not be an obstacle to the credible explanation of the governance of our national defence in the accession negotiations with NATO. An important role was played by the gradual development and entrenchment of understanding of the principles of democratic governance of national defence in Estonia, which contributed to the search for solutions.

What historian Ago Pajur wrote about the national defence policy of the first period of independence can also be applied to the more recent history of national defence: “The concept of national defence determines both the general attitudes of society towards the necessity and importance of protecting statehood and the specific areas and directions of action of authorities in charge of security policy and national defence. The genesis of national defence policy thinking is closely linked to the preparation and adoption of decisions of fundamental significance to national defence – on the one hand, the adoption of such decisions depends on the level of development of political thinking, but on the other hand these decisions serve as the basis for the organisation of national defence in practice.”<sup>46</sup> The ‘National Defence’ chapter of the Constitution can thus be interpreted as a significant part of the concept of national defence, which placed the authorities organising national defence in a difficult situation due to the unclear governance model.

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<sup>46</sup> Ago Pajur, *Eesti riigikaitsepoliitika aastail 1918–1934* (Tartu: Eesti Ajalooarhiiv 1999), 9.

While in 1997 the expert panel on the Constitution had recommended deleting the provision that appointed the President as the supreme commander of national defence, the amendment that entered into force in 2011 only omitted the third paragraph of the section, which discussed the status of the Commander and Commander-in-Chief of the Defence Forces and the procedure for appointing them to office and releasing from office.<sup>47</sup> The function of governing national defence was unambiguously assigned to the Government of the Republic and thus subordinated to executive power, which is consistent with the constitutional order of Estonia.

In the context of the governance and recent history of national defence, it was a small “end of history” – a tense phase clearly came to its end. The verse added to a well-known folk song during the years of Soviet occupation, “*I would like to be at home when Päts is the President, Laidoner commands the army and kroon is the national currency*”, marked nostalgia for the way of life and the organisation of the state in the Republic of Estonia before World War II. It could now be stated that while after the restoration of independence it was relatively quickly realised that the role of the Head of State has fundamentally changed compared to the pre-war period, the final breakdown of the paradigm of national defence thinking “Laidoner commands the army” and the amendment of the Constitution took nearly two decades and materialised only after the kroon was no longer the national currency, with Estonia joining the euro zone on the 1st of January 2011.

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<sup>47</sup> “Act Amending the Constitution of the Republic of Estonia,” RT I, 27.4.2011, 1.

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