# Constitutional judgment 3-4-1-8-06

**JUDGMENT**
**OF THE CONSTITUTIONAL REVIEW CHAMBER**
**OF THE SUPREME COURT**

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| **No. of the case** | 3-4-1-8-06 |
| **Date of decision** | 2 November 2006 |
| **Composition of court** | Chairman Märt Rask, members Hannes Kiris, Lea Kivi, Ants Kull, Jüri Põld |
| **Court Case** | Petition of the Tallinn Administrative Court for the declaration of unconstitutionality of §§ 71 and 275 of the Internal Rules of the National Defence League |
| **Basis of proceeding** | Judgment of Tallinn Administrative Court of 22 June 2006 in administrative matter No 3-06-733 |
| **Hearing** | Written proceeding |
| **Decision** | **1. To satisfy the petition of Tallinn Administrative Court.**<br><br>**2. To declare §§ 71 and 275 of the Internal Rules of the National Defence League unconstitutional and invalid as of 5 March 1999.** |

## FACTS AND COURSE OF PROCEEDING

**1.** On 9 March 2006 the Chief of the Tallinn unit of the National Defence League issued directive No 78-P (hereinafter “the Defence League directive”), by which Raigo Sõlg was struck from the academic list of the Tallinn unit for the violation of § 71 (damaging the interests of the National Defence League) and § 275 (impolite behaviour) of the Internal Rules of the National Defence League of 1934 (hereinafter “the Internal Rules”). It is stated in the directive that the violation consisted in publicly inveighing against the Minister of Defence in the Delfi Internet portal on 26 February 2006, figuring as a member of the Defence League.

**2.** On 9 March 2006 R. Sõlg filed an action against the directive with Tallinn Administrative Court, requesting that the Defence League directive be repealed. He requested that the Court not apply §§ 71 and 275 of the Internal Rules, approved by § 6 of Regulation No 128 of the Government of the Republic of 28 April 1992, entitled "The Place of the National Defence League in the National Defence System", because of the conflict thereof with the Constitution.

**3.** By its judgment of 22 June 2006, in administrative matter No 3-06-733, the Tallinn Administrative Court satisfied the action of R. Sõlg and repealed the Defence League directive. The administrative court did not apply §§ 71 and 275 of the Internal Rules, approved by § 6 of the Government of the Republic Regulation of 1992, declared these unconstitutional and initiated the constitutional review proceeding in regard to the referred provisions.

**JUSTIFICATIONS OF THE ADMINISTRATIVE COURT AND THE PARTICIPANTS IN THE PROCEEDING**

**4.** The administrative court was of the opinion that §§ 71 and 275 were not in conformity with § 87(6) of the Constitution due to the lack of legal basis.

On the basis of the Government of the Republic Regulation of 1992 and § 2 of the Constitution of the Republic of Estonia Implementation Act (hereinafter "the CREIA") the Internal Rules were in force until 5 March 1999, when the National Defence League Act (hereinafter "the NDLA") entered into force. Pursuant to § 5(2) of the Act the Government of the Republic was to issue a new Regulation establishing the Internal Rules. Regulation No 15 of 13 January 2000 of the Government of the Republic (hereinafter "the Regulation of the Government of the Republic of 2000"), approving the Statutes of the National Defence League, can not be regarded as establishing the new Internal Rules. Neither can an authority-delegating provision sanction the previously issued acts. Pursuant to § 54 of the Administrative Procedure Act an administrative act is lawful if it is issued by a competent administrative authority pursuant to legislation in force at the moment of the issue and is in accordance with the legislation in force. The National Defence League has issued an unlawful act, which is to be repealed. The administrative act is not made lawful by the fact that the Statutes of the National Defence League contain provisions providing for the same as §§ 71 and 275 of the Internal Rules, as the act was not issued on the basis of the Statutes but on the basis of the Internal Rules.

**5.** The National Defence League is of the opinion that §§ 71 and 275 of the Internal Rules are not in conflict with the Constitution.

The Internal Rules were legal before Estonia was occupied and the National Defence League was liquidated in 1940, and the Internal Rules were re-enacted, without direct need, in 1991 by the resolution of the Presidium of the Supreme Council of the Republic of Estonia. The Internal Rules are valid at present, because these have not been repealed pursuant to procedure established by law. § 26(2) of the Peace-Time National Defence Act legalised the validity of the Internal Rules of the National Defence League. The National Defence League does not agree to the allegation that under § 6 of the 1992 Regulation of the Government of the Republic or under § 2 of the CREIA the Internal Rules were in force only until the National Defence League Act entered into force on 5 March 1999. The Internal Rules were and still are in force even without § 6 of the null and void Regulation of the Government of the Republic of 1992, and the Internal Rules were not rendered invalid by the enactment of the National Defence League Act. The Internal Rules are now in force in so far as they are not in conflict with the Constitution or the Constitution of the Republic of Estonia Implementation Act and until the rules have not been repealed or brought into conformity with the Constitution. Neither § 5(2) of the National Defence League Act nor any other legal act require that the Government of the Republic approve the new Internal Rules of the national Defence League or issue a Regulation re-enacting the Internal Rules that are still valid. There was no need to enact, in the National Defence League Act, provisions on the further application of the Internal Rules that are still in force until the Government of the Republic issue a new regulation, as the problem had already been solved by § 2 of the CREIA.

**6.** R. Sõlg is of the opinion that the Internal Rules of the National Defence League of 1934 in their entirety are unconstitutional in the formal as well as material sense, and that is why the Tallinn Administrative Court was correct when not applying § 275 of the Internal Rules.

The Constitution requires that public authority not impose sanctions on persons for the violation of prohibitions and obligations arising from unconstitutional acts. Thus, the contested act should have been repealed to the extent pertaining to the violation of the prohibition to behave in an impolite and incorrect manner, even if the rest of the administrative act were lawful.

§§ 71 and 275 of the Internal Rules are relevant norms, the constitutionality of which has to be assessed. In regard to R. Sõlg his constitutional right to legal certainty and legality of exercise of power (§§ 10 and 11 of the Constitution), right to the protection of the state from the arbitrary treatment (§ 13) and the right to be a member of the National Defence League as a non-profit undertaking (§ 48 of the Constitution) have been violated.

After the entering into force of the Constitution the Internal Rules remained in force under § 2 of the CREIA. By the adoption of the National Defence League Act on 8 February 1999 the constitutional legislator established a totally new regulation of the legal status, organisation and activities of the National Defence League. From that moment on the Regulation of the Government of the Republic of 1992 lost the legitimacy under § 2 of the CREIA and the Internal Rules became unconstitutional in the formal as well as in material sense. The pre-constitutional regulation provided that in its activities the National Defence League had to adhere to the Internal Rules approved in 1943, whereas § 5(2) of the NDLA, which was enacted by the Riigikogu, establishes that in its activities the National Defence League shall adhere to the Internal Rules of the National Defence League to be approved by the Government of the Republic.

Up to now the Government of the Republic has failed to fulfil the obligation arising from § 5(2) of the NDLA to establish the new Internal Rules and to repeal the Internal Rules which were in force before the referred Act was enacted. Neither has the Government of the Republic approved, under § 5(2) of the NDLA, the previously valid Internal Rules. Thus, since the entering into force of the Act on 5 March 1999 the Internal Rules have no legal basis.

As § 5(2) of the NDLA unambiguously establishes that in its activities the National Defence League shall adhere to the Internal Rules approved by the Government of the Republic, the application of the pre-constitutional Internal Rules after the enactment of the National Defence League Act constitutes a material infringement of the constitutional principles of legal certainty and legal clarity.

**7.** The Chancellor of Justice is of the opinion that §§ 71 and 275 of the Internal Rules are not relevant norms and not in conflict with the Constitution.

The fact that § 3.27 of the Statutes of the National Defence League contains the same provisions as §§ 71 and 275 of the Internal Rules does not automatically render the administrative act lawful, yet both § 3.27 of the Statutes and § 71 of the Internal Rules of the National Defence League entitle the Chief of a unit of the National Defence League, for the same reasons, to strike a person from the list of the National Defence League by his or her decision. The Statutes and the Internal Rules of the National Defence League form a single legal whole, the spheres of regulation of both are similar. In a situation where the correct legal basis for issuing a legal act exists in the legal order and is known both to the issuer and the addressee of the administrative act and can easily be found, the reference to erroneous legal basis need not inevitably result in the substantial unlawfulness of the administrative act and the repeal thereof. There is not substantive difference between § 3.27 of the Statutes and §§ 71 and 275 of the Internal Rules of the National Defence League. Which of these legal bases is used in a concrete case for issuing an act makes no essential difference for the issuer or the addressee of the administrative act. Thus, the content of the administrative is reviewable and the will of the administrative authority is comprehensible for the court.

Should the Supreme Court find that the contested provisions are relevant, the Chancellor of Justice points out that the Internal Rules have not been established under § 5(2) of the NDLA, this norm delegating authority has not been adhered to. Until the delegated authority is exercised the Internal Rules constitute a legal act valid under § 2 of the CREIA.

As the national Defence League Act did not provide for special provisions for bringing the Internal Rules into conformity, it can be presumed that the legislator was of the opinion that the Internal Rules were in substantial conformity with the Act. The Government of the Republic has not re-enacted the Internal Rules on a correct legal basis and thus, to overcome the gap in law, the Internal Rules must be applied until the provision of § 5(2) of the NDLA delegating authority is adhered to.

The aim of § 2 of the Constitution of the Republic of Estonia Implementation Act was not to put an obligation on the state that relevant constitutional state authorities retroactively approve all the legislation currently in force.

The requirement of the existence of a legal basis, established in § 87(6) of the Constitution, can not be extended to the Regulation of the Government of the Republic of 1992 or the norms of the Internal Rules approved thereby. When deciding on the validity of the Internal Rules § 2(1) of the NDLA has to be taken as the basis. §§ 71 and 275 of the Internal Rules are not in substantive conflict with the Constitution or the Constitution of the Republic of Estonia Implementation Act, these norms have not been repealed or replaced. Thus, these amount to norms that are valid under § 2 of the NDLA.

**8.** The Minister of Justice is of the opinion that the contested norms are not relevant and he points out alternatively, as a result of norm control, that the norms are not in conflict with the first sentence of § 48 or § 87(6) of the Constitution.

The obligation to establish the new Internal Rules of the National Defence League, created by entering into force of the National Defence League Act, did not bring about the invalidity of the Internal Rules established in 1934. The fact that the implementing provisions of the National Defence League Act contain no direct reference to the fact that the Internal Rules remain valid, does not exclude the validity of the Internal Rules under § 2 of the CREIA. Thus, there is no conflict with § 87(6) of the Constitution. When reading § 2 of the Constitution of the Republic of Estonia Implementation Act it appears that the prerequisite of the validity of the Internal Rules is that the Rules be a legal act currently in force and valid insofar as it is not in conflict with the Constitution or the Constitution Implementation Act and until it is either repealed or brought into complete conformity with the Constitution.

The fundamental values arising from the rule of law principle must be protected in the most efficient way. The Government of the Republic's failure to enact the Internal Rules can not be justified, yet, at the same time, a situation can not be allowed where the internal procedure of the National Defence league as a military organisation possessing weapons is not regulated. When defending the Internal Rules as a regulation lawfully valid under § 2 of the CREIA also such values guaranteed by the Constitution as legal peace, stability of legal order and legal certainty are being protected. It would serve the public interest the best if the Internal Rules were not declared invalid.

The sphere of protection of the right of association, established in § 48 of the Constitution, embraces the interest of the complainant – a member of the National Defence League – to belong to the legal person in public law, namely to the National Defence League. §§ 71 and 275 of the Internal Rules, enabling to exclude a person from the membership of the National Defence League, infringe upon the fundamental right, included in § 48 of the Constitution, to belong to non-profit undertakings and unions, nevertheless, the referred infringements are proportional and, thus, constitutional.

**9.** The Minister of Defence agrees to the opinions and motivations of the Tallinn Administrative Court. The Internal Rules lack a legal basis and the administrative act has been issued on the basis of an unconstitutional

act. In no way can the Regulation of the Government of the Republic of 2000 be interpreted as leaving the Internal Rules in force. In the interests of legal certainty the Regulation of the Government of the Republic of 1992 should have been declared invalid in its entirety.

**10.** The Commander of the Defence Forces, in his opinion submitted to the Supreme Court, agrees with the opinion of the Tallinn Administrative Court that the Internal Rules enacted by the Regulation of the Government of the Republic of 1992 could formally remain in force until the entering into force of the National Defence League Act. However, the National Defence League Act contained no implementing provisions concerning the Internal Rules. For all that, the administrative court has not analysed the substance of the conflict of §§ 71 and 275 of the Internal Rules with the Constitution. § 3.27 of the Statutes of the National Defence League is a provision of the same substance as §§ 71 and 275 of the Internal Rules. § 2 of the CREIA requires that the constitutionality of an act be reviewed in substance. The main purpose of the Internal Rules is to determine the rights and obligations of the members of the National Defence League in participating in the activities of the National Defence League as a national defence organisation which is militarily organised and possesses weapons. That is why it is important to guarantee the stability of the activities of the National Defence League.

**CONTESTED PROVISIONS'**

**11.** The Internal Rules enacted by Directive No 86 of the Chief of the National Defence League of 14 December 1934 and approved by Regulation 128 of the Government of the Republic of 28 April 1992, entitled "The Place of the Defence League in the National Defence System", establishes the following:

"§ 71. The members of the National Defence League who err against the Statutes, the Internal Rules and other regulations of the National Defence League, do not properly fulfil the duties imposed on them or who damage the interests of the National Defence League with their activities, shall be punished under disciplinary procedure or shall be excluded from the National Defence League.

The exclusion is effected by:

-- striking from the list or
-- expulsion.

The right of exclusion from the National Defence League is vested in the Chief of a unit of the National Defence League and in the leadership of the armed unit to which the member of the National Defence League, liable to punishment, belongs.

The motivated decision of the leadership on exclusion from the National Defence League is submitted to the Chief of the National Defence League unit for approval.

The submission shall indicate whether the exclusion is effected by striking from the list or by expulsion.
[…]

§ 275. For failure to obey orders, for erring against the basic principles, discipline and Internal Rules of the National Defence League, for slack performance of duties, for impolite or improper performance and conduct the members of the National Defence League shall be punished under disciplinary procedure on the grounds established in these Internal Rules."

**OPINION OF THE CHAMBER**

**12.** In the first part of the judgment the Constitutional Review Chamber shall answer the question whether §§ 71 and 275 of the Internal Rules, enacted by Directive No 86 of the Chief of the National Defence League of 14 December 1934, are relevant. In the second part of the judgment the Chamber shall analyse whether the Internal Rules are valid. In the third part the Chamber shall consider the regulation of the freedom of association and expression with reference to the National Defence League.

**I.**

**13.** Pursuant to the directive appealed against in the administrative court R. Sõlg was excluded from the National Defence League and struck from the list for the violation of § 71 (damaging the interests of the National Defence League) and § 275 (impolite behaviour) of the Internal Rules, which, according to the directive, consisted in publicly inveighing against the Minister of Defence in the Delfi Internet portal on 26 February 2006.

**14.** The Tallinn Administrative Court, R. Sõlg, the Minister of Defence, the Commander of the Defence Forces and the National Defence League argue that norms pertinent to the adjudication of the case of R. Sõlg are §§ 71 and 275 of the Internal Rules, under which R. Sõlg was excluded from the National Defence League and struck from its list of members. The Chancellor of Justice, however, is of the opinion that these provisions are irrelevant because there is no substantive difference between §§ 71 and 275 of the Internal Rules and of § 3.27 of the Statutes of the National Defence League. The Minister of Justice is of an analogous opinion.

**15.** § 3.27 of the Statutes of the National Defence League, approved by regulation No 15 of the Government of the Republic of 13 January 2000, referred to by the Chancellor of Justice and the Minister of Justice, establishes the following:

"A member of the National Defence League who violates the Statutes or the Internal Rules of the National Defence League, fails to fulfil duties imposed on him or her or damages the interests of the National Defence League with his or her activities, shall be held liable to the extent and pursuant to the procedure established for the members of the National Defence League in the Internal Rules or he or she shall be excluded from the National Defence League. Exclusion shall be decided by the leadership of the armed unit entitled to accept members to the National Defence League or the Chief of a unit. The decision of leadership shall be submitted to the Chief of a unit for approval. The decision shall set out whether exclusion is effected by striking from the list or by expulsion."

**16.** Irrespective of the differences of wording the substantive contents of § 71 of the Internal Rules and § 3.27 of the Statutes are, in fact, similar. Nevertheless, this is not the basis for concluding whether §§ 71 and 275 of the Internal Rules are or are not relevant.

**17.** The assessment of relevance of norms can not be confined solely to the statement that an administrative authority has referred to contested norms in its decision concerning a person. Proceeding from the earlier jurisprudence of the Supreme Court only those norms can be regarded relevant that are decisive for the outcome of the case (see judgment of the general assembly of the Supreme Court of 22 December 2000, in matter No 3-4-1-10-00 -- RT III 2001,1, 1, § 10). Decisive importance for the outcome of a case can be attributed to the norms on the basis of which an administrative matter should have been adjudicated pursuant to law. Proceeding from the principle of self-restraint the Court can not analyse the constitutionality of norms applied to a complainant accidentally or without basis (see judgment of the Constitutional Review Chamber of 20 March 2006, in matter No 3-4-1-33-05 – RT III 2006, 10, 89, § 18). A norm which actually regulates a disputed relations or situation, applied in regard to a person, should be regarded as relevant.

**18.** Pursuant to § 5(1) of the National Defence League Act the National Defence League shall have its Statutes, by which the internal procedure of the National Defence League shall be specified. Pursuant to subsection 2 of the same section the National Defence League shall have the Internal Rules, establishing the relations between the active members of the national Defence League and the codes of conduct of the Defence Forces, rules of conduct and the internal operations procedure.

**19.** § 31(6) of the National Defence League Act provides as follows:

"A member of the National Defence League who violates the Statutes or the Internal Rules of the national Defence League, fails to fulfil duties imposed on him or her or damages the interests of the national Defence

League with his or her activities, shall be held liable to the extent and pursuant to the procedure established for the members of the National Defence League in the Internal Rules or he or she shall be excluded from the National Defence League pursuant to the procedure established in the Statutes."

**20.** According to this provision a member of the National Defence League who has violated the obligations can be excluded from the National Defence League on the basis of the Statutes and not on the basis of the Internal Rules. As the Internal Rules can not, according to § 31(3) of the NDLA, serve as a basis for exclusion from the National Defence League, in this constitutional review matter § 71 of the Internal Rules can not be a relevant norm establishing the basis for exclusion from the National Defence League. What could be relevant as a legal basis for exclusion from the National Defence League is § 3.27 of the Statutes, which was not applied in regard to R. Sõlg and the constitutionality of which has not been questioned either by the administrative court or the participants in the proceeding.

**21.** Pursuant to § 5(2) of the NDLA the imposition of duties on members of the National Defence League shall be regulated by the Internal Rules. § 71 of the Internal Rules, providing for the exclusion from the National Defence League for damaging the interest of the National Defence League gives rise to the duty not to damage these interests. As R. Sõlg was excluded from the National Defence League and struck from the list of its members for having damaged the National Defence League, § 71 is a norm relevant to the extent that it gives rise to the referred duty. Also, § 275 of the Internal Rules, applied to R. Sõlg, is a relevant norm, giving rise to the duty of a member of the National Defence League to behave in a polite and proper manner.

**II.**

**22.** The Internal Rules under dispute were enacted by Directive No 86 of the Chief of the National Defence League of 14 December 1934. The Government of the Republic approved the Internal Rules of 1934 by § 6 of its Regulation No 128 of 28 April 1992, entitled "The Place of the National Defence League in the National Defence System" and the Internal Rules were again started to be implemented. § 5(2) of the National Defence League Act, which entered into force on 5 March 1999, establishes that the Government of the Republic shall establish the Internal Rules of the National Defence League. Up to now the Internal Rules referred to in the National Defence League Act have not been enacted and the Internal Rules approved in 1934 were applied in regard to R. Sõlg.

**23.** The administrative Court, R. Sõlg and the Minister of Defence share the opinion that on the basis of § 2 of the CREIA the Internal Rules were in force until 5 March 1999, when the National Defence League Act entered into force, pursuant to § 5(2) of which the Government of the Republic should have issued a new Regulation establishing the Internal Rules. Up to now the new Internal Rules have not been enacted and that is why the administrative court declared §§ 71 and 275 of the Internal Rules unconstitutional. The Chancellor of Justice, the Minister of Justice and the National Defence League do not consent to this conclusion of the administrative court and argue that the Internal Rules of 1934 are still valid under § 2 of the CREIA.

**24.** § 2 of the Constitution of the Republic of Estonia Implementation Act establishes the following:

"Legislation currently in force in the Republic of Estonia shall be valid after the entry into force of the Constitution in so far as it is not in conflict with the Constitution or the Constitution Implementation Act and until it is either repealed or brought into complete conformity with the Constitution.

Disputes regarding the conformity of legislation with the Constitution or the Constitution Implementation Act shall be decided by the Supreme Court."

**25.** The Chamber points out that this provision of the transition period can not give rise to the conclusion that a Regulation issued before the entry into force of the Constitution shall remain in force even when a new Act, providing for the issue of a Regulation on the basis of the Act, has entered into force after the entry into

force of the Constitution.

**26.** In regard to Acts passed after the entry into force of the Constitution the relation between an Act and a Regulation is regulated by § 87(6) of the Constitution, pursuant to which the Government of the Republic shall issue Regulations on the basis of and for the implementation of law.

The Constitutional Review Chamber has interpreted § 87(6) of the Constitution to the effect that the state authority has a duty not only to guarantee that Regulations are in conformity with the Constitution and the law at the time of their issue but also to see to it that a Regulation be in conformity with subsequent new Acts. Conformity of a Regulation to new Acts also means that if a new Act establishes an authority-delegating norm, a new Regulation must be issues on the basis of the norm delegating authority. The Regulation issued under the previously valid law must be repealed. An authority-delegating norm in a new Act, analogous to that of the previously valid Act, does not enact a Regulation issued under an old Act for the period of validity of the new Act. A Regulation issued under a previously valid Act can be implemented during the validity of a new Act only if the implementing provisions of the new Act specifically provide for this (see judgment of the Constitutional Review Chamber of 6 October 1997, in matter No 3-4-1-2-97 – RT I 1997, 74, 1267; judgment of the Constitutional Review Chamber of 12 May 2000, in matter No 3-4-1-5-00 – RT III, 2000, 13, 140, § 30). The opinion that a Regulation issued before a new Act entered into force will automatically remain in force after the entry into force of the new Act is in conflict with the principle of separate powers, arising from § 4 of the Constitution, and the principle of a democratic state based on the rule of law, established in § 10 of the Constitution.

**27.** § 42 of the National Defence League Act establishes the following:

“The Government of the Republic shall bring the Statutes of the National Defence League into conformity with the National Defence League Act within six months as of the entry into force of the Act.”

Thus, the legislator sanctioned temporary implementation of the former Statutes of the National Defence League. The Internal Rules dating back to 1934 have not been sanctioned by the legislator. Thus, the referred Internal Rules can not be regarded constitutional as of 5 March 1999, when the National Defence League Act entered into force.

**28.** On 13 January 2000, on the basis of §§ 5(1) and 9(1) of the NDLA, the Government of the Republic issued Regulation No 15, entitled “Approval of the Statutes of the National Defence League”, § 2 of which provides for the following:

“To repeal §§ 1 to 5 of Government of the Republic Regulation No 128 of 28 April 1992, entitled “The Place of the National Defence League in the National Defence System” (RT 1992, 18, 261) and to amend § 6 by omitting the words “the Statutes of the National Defence League approved in 1931.””

The new Statutes of the National Defence League were approved by § 1 of the same Regulation.

Thus, § 6 of the Government of the Republic Regulation No 128 of 28 April 128 remained formally in force in so far as in 1992 the Internal Rules of 1934 were approved and it was decided to implement the rules.

**29.** As the Internal Rules of 1934 had already lost validity upon entry into force of the National Defence League Act on 5 March 1999, the partial remaining in force of § 5 of the Government of the Republic regulation No 128 of 28 April 1992 could not mean that the Government of the Republic had, under the new National Defence League Act, issued a Regulation by which it was decided to re-implement the Internal Rules of 1934 after the entry into force of the referred Act. Furthermore, Regulation No 15 of the Government of the Republic of 13 January 2000 does not refer to § 5(2) of the NDLA, which is the basis for approval of the Internal Rules of the National Defence League.

Thus, the meaning of § 2 of the Government of the Republic Regulation No 15 of 13 January 2000 was confined to leaving formally in force § 6 of Regulation No 128 of the Government of the Republic of 28

April 1992 in so far as it was decided to implement the Internal Rules of 1934.

**30.** On the basis of the aforesaid the Chamber finds that since 5 March 1999 the relevant provisions (§§ 71 and 275) of the Internal Rules approved by Directive No 86 of the Chief of the National Defence League of 14 December 1934 are in conflict with § 87(6) of the Constitution and have to be declared invalid.

## III.

**31.** Proceeding from § 2 of the National Defence League Act the National Defence League is a part of the Defence Forces and also a voluntary national defence organisation. Thus, both § 126(2) and § 48 of the Constitution, establishing the freedom of association, are applicable to the National Defence League. The Chamber points out that bearing in mind the objectives of the National Defence League the freedom of association may be more limited in regard to the National Defence League when compared to ordinary associations. As the National Defence League is a person in public law, operating on the basis of law, the limitations on the freedom of association, including exclusion from associations, must be provided by law. Also, pursuant to § 45 of the Constitution, the restrictions on the freedom of expression of members of the National Defence League should be established by law.

Märt Rask, Hannes Kiris, Lea Kivi, Ants Kull, Jüri Põld

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