

Comparative advantages and disadvantages of internal and external complaint mechanisms

Dr. Zdenka Čebašek-Travnik, MD, Human Rights Ombudsman, Slovenia

External institutions that control whether human rights and fundamental freedoms are respected within the Slovenian Armed Forces have different powers and roles.

External control of respect for human rights and fundamental freedoms in the area governed by **labour regulations** is carried out by labour courts, which have powers to issue binding decisions. Other bodies that exercise external control may be grouped into those that have specific powers to make decisions and take action, and those that can give their opinions on matters and make non-binding proposals and recommendations.

In addition to the general powers laid down in the Constitution of the Republic of Slovenia and the Human Rights Ombudsman Act, the **Human Rights Ombudsman** of the Republic of Slovenia has other powers, with the explicit basis for work in this area provided in the Defence Act, paragraph 1, Article 52, which stipulates that "a military person may initiate a commencement of a procedure with the Human Rights Ombudsman if he/she believes his/her rights and fundamental freedoms have been limited or violated during military service."

The **Commission** of the National Assembly of the Republic of Slovenia **for Petitions, Human Rights and Equal Opportunities** may discuss complaints relating to individual matters, including complaints made by members of the Slovenian Armed Forces. The commission may act as a facilitator in procedures involving other competent bodies, and may discuss complaints, requests and initiatives of general interest. When these pertain to human rights and fundamental freedoms, the commission may provide initiatives and make recommendations to various bodies.

The **Committee on Defence** of the National Assembly of the Republic of Slovenia discusses draft laws, other acts, and issues pertaining to defence and other issues dealt with by the competent ministry – the Ministry of Defence. As part of its work, the committee exercises control in the area of defence; this may also include addressing issues related to respect for human rights and fundamental freedoms.

The **President of the Republic** of Slovenia as the commander-in-chief of the defence forces also has certain powers of control of respect for human rights and fundamental freedoms.

The **Advocate of the Principle of Equality** may deal with complaints regarding discrimination in the armed forces.

Within their areas of work, a number of **inspection services**, notably the labour inspection service and the civil-servants system inspection service, also have certain powers of control of respect for the rights of employees in the armed forces. However, problems have often been encountered regarding the work of these two services, since both claim that they are not competent to deal with issues pertaining to members of the armed forces because they perceive these issues to be within the competence of defence inspection institutions. The Human Rights Ombudsman considers this standpoint to be unjustified.

Internal control of respect for the rights of members of the armed forces is carried out by the **Defence Inspectorate** of the Republic of Slovenia and through the established channels of objections in the chain of command; supervision is also provided by the military police.

In practice, external complaint mechanisms available to members of the armed forces (with the exception of courts and, in part, inspection services) have no competence to directly decide on the rights and obligations of individuals. They can only give their opinion on matters raised and make different proposals and recommendations to redress violations. Their main asset is their authority and the indirect influence they have on decision-making bodies and on legislation governing particular areas.

External complaint mechanisms, however, offer certain advantages, including greater independence and impartiality; they are not burdened with specific problems and have a broader knowledge of the issues facing members of the armed forces, which go well beyond the armed forces themselves. All this can contribute to providing a clearer picture of relevant issues. External bodies may have more expertise and specialised knowledge to deal with certain issues, and are more sensitive to different nuances connected to violations.

Internal complaint mechanisms, on the other hand, have a much better insight into the military hierarchy and existing military structures, and have more detailed knowledge of the operation of the armed forces in different areas, where, besides formal rules, it is important to be familiar with the informal rules that apply in a certain environment.

As a rule, persons who ensure the functioning of internal complaint mechanisms have considerably better access to informal information of various types, which allows them to obtain a clearer picture when dealing with complaints. Internal complaint mechanisms, however, do also have certain disadvantages. Those who ensure the functioning of internal complaint mechanisms may be closely connected to other members of the armed forces, which may present a threat to the independent and impartial work of complaint mechanisms. Internal mechanisms are less sensitive to some subtle phenomena, which may be considered acceptable conduct within the armed forces from the viewpoint of military persons, while the same conduct may be assessed by external control institutions as unnecessary and unjustified interference with the rights of individuals.

Because of the specific features of the defence area, there is a tendency towards excluding the armed forces from the system of protection of the rights of individuals that applies to other groups of employees and citizens. This exclusion is necessary in many respects, but is sometimes motivated by the desire of those in positions of management within armed forces to achieve simpler management of processes. A comparison may be drawn between these desires and those of all other employers seeking to obtain legislation to reduce the level of safeguarding of the rights of employees, thus allowing them enough leeway to make decisions. Justifying these tendencies by referring to the specific features of the armed forces may be dangerous, as it allows those in military command greater arbitrariness and thus causes their subordinates to fear that they may lose their employment without justifiable reason and encounter problems on their career path that are not related to their expertise and the quality of their work. We believe that there are greater possibilities for detecting and drawing attention to unjustified restrictions of the rights of individuals of this type when using external complaint mechanisms rather than internal structures, which are more closely tied to the entire system of the armed forces.