

# INSPECTORS OF THE ENVIRONMENTAL INSPECTORATE CONFUSED WITH THE RIGHT TO APPLY DIRECT COERCION

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## ABSTRACT

According to the Law Enforcement Act valid in Estonia, the police are the only general law enforcement institution that has a right to use physical force, special equipment or a weapon. The allowed special equipment are handcuffs, shackles, binding means, service animal, technical barrier, means to force a vehicle to stop, water cannon, etc. Police service weapons are firearms, gas, electric shock weapon, pneumatic and cut-and-thrust weapons.

Pursuant to the Environmental Supervision Act, environmental inspectors (hereinafter inspectors) of the Environmental Inspectorate (EI) can apply direct coercion with the means and in the extent stated in specific laws. From amongst the means of direct coercion, a competent official can only use physical force, handcuffs, a service animal and a firearm. Upon performing their duties stated by the legislator, there may be a situation in which the inspector may need to use more means than so far stated in specific acts of law.

In 2014 there was a need to legalise the police official's self-defence regulation. The same should also apply for other public safety officials, incl. EI inspectors, who can risk their life and health while performing their professional duties.

There is an analysis that shows that the number of means of direct coercion the EI inspectors can currently use is not enough to fulfil the tasks stated by the legislator. There is no regulation for the officials' right for self-defence and their direct coercion related training programme needs amending.

## INTRODUCTION

According to the valid Law Enforcement Act, physical force, special equipment or a weapon may be used by the police in Estonia. Other law enforcement agencies are allowed to use direct coercion in the cases stated in the law (based on Law Enforcement Act (LEA), 2019, § 75 subsections and 2).

The Environmental Inspectorate is a governmental authority under the Ministry of Environment, whose main task is to conduct state supervision and enforce the powers of the state as and in the extent stated in the law (statutes of the Environmental Inspectorate, 2019, §-s 1 clauses 1, 6, 7 p 1). An EI inspector might need to use direct coercion when conducting state supervision according to 26 specific acts of law (see Table 1), applying measures with dual function (see Code of Criminal Procedure (CCO) §-s 140<sup>1</sup>, 140<sup>2</sup> and 217<sup>1</sup>, 2019), and performing procedural acts and acts securing criminal proceedings (CCP 217<sup>2</sup>, 2019).

The application of direct coercion by different law enforcement institutions has not been studied much. In the commented version of the Law Enforcement Act (Laaring, *et al.*, 2017, pp. 219-251) it is focused on the general principles of the application of direct coercion. The studies conducted by Estonian jurists focus on the fundamentals of the application of direct coercion (Laaring 2010, Laaring 2015, Jäätma 2015). Problems related to the application of direct coercion by defence forces have been reflected by S. Kirsimägi (2018) and M. Parts (2018). There is a more detailed approach to the city and rural municipality public order officials' need to apply direct coercion in Ü. Vanaisak's article published in 2018. In the main conclusion of this article, it is stated there is a need to legitimise the respective right, also the conclusion features a list of certain means of direct coercion the law enforcement agency needs in order to fulfil their legal rights (Vanaisak, 2018).

In the explanatory notes to the draft legislation of the LEA, initiated by the Government of the Republic on 16 May 2007, there are a number of agencies stated who besides the police should have a right to apply direct coercion, this list also contains the EI. At the same time, it is found that: "If

a law enforcement agency is lawfully given a right to apply certain special measures and the measure foresees the application of direct coercion, the agency then has a right to apply direct coercion in the framework of the respective measure.” (LEA explanatory notes to draft legislation 49, 2007, pp. 105). The problem is that the laws assigning the EI inspectors a right to apply direct coercion are contradictory and therefore cause unnecessary uncertainty upon performing official duties – according to the principle of legal clarity, a regulation should give its implementer clear directions. For example, in the so called stem act, Environmental Supervision Act, it is stated that an inspector whose duty is to protect standing crop, game and fishery resources, is allowed to carry a service weapon and use a service dog and handcuffs when performing their official duties (EnvSA, 2019, § 15 subsection 1). At the same time, according to the Hunting Act, they have a right to use physical force, but cannot use a service dog (HA, 2019, § 47<sup>3</sup>). According to the Nature Conservation Act and Waste Act, they can only use physical force. According to Product Conformity Act and Liquid Fuel Act, the application of direct coercion has no regulations whatsoever (see Table 1).

On 17 March 2014, the Chancellor of Justice at that time proposed to ministers to legalise the police official’s self-defence regulation, and to analyse what was related to the State Liability Act. The same should also apply for other law enforcement officials who might risk their life and health while performing their duties (Teder 2014, pp. 1). Currently there are no regulations for EI inspectors’ rights to use self-defence while performing their duties.

**TABLE 1. Acts of law that assign EI inspectors the competency of conducting state supervision and allow them to apply measures, use the means of direct coercion and give them the competency of proceeding with misdemeanour matters (compiled by Vanaisak).**

ACT OF LAW	APPLICABLE MEASURES										MEANS OF DIRECT COERCION				COMPETENCY OF PROCEEDING MISDEMEANOUR MATTERS			
	PRECEPT	QUESTIONING AND REQUIRING OF DOCUMENTS	SUMMONS AND COMPELLED ATTENDANCE	ESTABLISHMENT OF IDENTITY	PROHIBITION ON STAY	STOPPING OF VEHICLE	DETENTION OF PERSON	SECURITY CHECK	EXAMINATION OF MOVABLE	ENTRY INTO PREMISES	EXAMINATION OF PREMISES	TAKING INTO STORAGE OF MOVABLE	SELLING OR DESTRUCTION OF MOVABLE TAKEN INTO STORAGE	CONTROL TRANSACTION		PHYSICAL FORCE	SERVICE DOG	HANDCUFFS
1. Environmental Supervision Act (ESA)															X	X	X	
2. Atmospheric Air Protection Act (AAPA)		X	X	X				X	X	X		X	X					X
3. Biocidal Products Act (BPA)		X	X	X				X	X		X							X
4. Building Code (BC)		X	X	X				X	X		X	X						X
5. European Union Common Agricultural Policy Implementation Act (EUCAPIA)		X	X	X				X	X		X	X	X					
6. Contained Use of Genetically Modified Micro-organisms Act (CUGMM/OA)		X	X	X				X	X									X





## 1. RESEARCH METHODS AND CONDUCTING OF THE RESEARCH

### 1.1. THE PURPOSE AND THE METHOD

The aim of the study is to analyse the sufficiency of the means of direct coercion in the acts of law regulating the duties of EI inspectors, but also their right to apply the means of direct coercion in the event of self-defence.

First the meaning and aim of the regulations focusing on direct coercion and self-defence are found out, the techniques for the interpretation of law are used, and respective scientific literature is referred to. Secondly, experts in the area are interviewed in order to obtain additional information on the needs of applying direct coercion, on the sufficiency of training and about the related cases in their work. Thirdly, an overview of the training of EI inspectors compared to that of police officers is given. Fourthly, for the ones exercising and implementing the rights, behavioural and decision-making rules for situations that foresee the application of direct coercion are developed, incl. the use of a means of direct coercion in self-defence, for which recommendations for amending legal acts and training programmes are developed.

### 1.2. SAMPLE

The sample of legal provisions consists of the acts of law assigning the EI inspectors the right to apply direct coercion (see Table 1). The paper features acts of law valid on 1 September 2019. The interviewees are the heads of the Environmental Inspectorate bureaus in different counties. They are experts who have work and management experience in the area of environmental protection. The questionnaire consists of 10 questions. Questions 1-4 focus on the background of the respondent – how long he/she has been working as a head of the bureau (state the number of years worked), how many employees does he/she have (state the number), whether he/she has worked in an agency that has a right to exercise

direct coercion (if yes, state the number of years worked there and name of the agency). In question No 5, means of direct coercion are listed, and the respondents are asked to state which means (electric shock weapon, physical force, gas weapon, handcuffs, cut-and-thrust weapon, pneumatic weapon, binding means, means to force a vehicle to stop, service animal, technical barrier, firearm) are seen as necessary to start implementing. The Likert scale is used, whereas the question consists of positive or negative attitudes towards the object, (Fishben & Ajzen, 2015, pp. 87). A 5-point scale ranging from “I see it as very important” to “I don’t see it as important at all” was used. Questions 6-10 were open questions and respondents were asked to explain their answers. The questions were the following:

- Should there be separate regulations for applying direct coercion to defend yourself while on duty (if the official’s life and health are in danger)?
- Is the direct coercion related training for EI inspectors sufficient at the moment?
- Please describe at least one situation in which you have had to apply direct coercion while on duty.

The documents’ review gives an overview of the EI supervisory official’s curriculum currently valid at the Centre for Continuing Education of the Estonian Academy of Security Sciences.

### 1.3. RESEARCH QUESTIONS

In order to meet the objective, the following research questions were formed:

1. Which discords and contradictions are there related to the regulations for the application of direct coercion when comparing what is stated in the Law Enforcement Act and the specific acts of the EI?

2. Which acts of law need to be amended in order to guarantee implementers legal certainty and clarity in situations that call for the application of direct coercion, incl. the use of the means of direct coercion when performing self-defence.
3. Is the current EI supervisory official's curriculum sufficient for acquiring the necessary competence to apply direct coercion?

#### 1.4. RESEARCH TASKS

1. To give an overview of the acts of law according to which the EI inspectors can and could apply direct coercion.
2. To give an overview of the basis and means of the application of direct coercion and to find out the EI inspector's need to obtain a right to use additional means of direct coercion.
3. To interview the EI experts to find out whether there is a need to apply additional means of direct coercion and whether the training has been efficient so far.
4. To find out whether the current EI supervisory officials' training programme contains direct coercion related training in a sufficient amount to guarantee that the inspectors have the respective competency needed for their work.
5. To develop recommendations to amend the respective acts of law and curricula.

## 2. LAW ENFORCEMENT AGENCIES' RIGHT TO APPLY DIRECT COERCION

### 2.1. FUNDAMENTALS FOR THE APPLICATION OF DIRECT COERCION

The Law Enforcement Act (hereinafter LEA) states the general rules for applying direct coercion, the specific laws define the peculiarities of different law enforcement agencies and the means of direct coercion allowed for them, however, the basis for applying direct coercion cannot be extended with specific laws since these can only specify and constrain (explanatory notes of the LEA 49, pp 107).

After the Law Enforcement Act was enforced in 2014, there was a clear system of administrative coercive measures – now there was a regulatory framework for applying direct coercion in addition to penalty payment and substitutive enforcement. The application of direct coercion is justified mostly in urgent threat situations where guaranteeing the fulfilling of an obligation to ascertain and counter a threat or to eliminate a disturbance with administrative coercive measures is impossible or not possible at the right time (explanatory notes to LEA 49, pp. 102, LEA § 76 subsection 1). This is an administrative measure which aims to counter disturbances, prevent their harmful consequences and guarantee the taking of an offender in to custody (Koolmeister, Orion 1998, pp. 382). Direct coercion is applied only to enforce the obligation directly connected with a person – a person is forced to do something, no one is acting instead of them. In the case of obligations not related to persons, penalty payment or substitutive enforcement is used (Laaring 2010, pp. 552, 554).

The application of direct coercion has to be:

- Appropriate and in accordance with the aim / suitable for achieving the aim.
- Unavoidable, requires the smallest possible involvement.

- Proportionate towards the aim, not more burdensome than the legal right being protected. The means of administrative coercion can be used multiple times, they can be changed if needed and they are used until the desired aim has been reached. Before applying the coercion (except for in urgent matters) the parties involved need to be issued a precept (delivered an administrative act) to fulfil the obligation, a deadline for fulfilling the obligation must be stated, also the other party must be warned for the coercive measure to be used. Enforcement is allowed when the period for challenging the administrative act has passed or it has been issued for immediate execution and the person has not fulfilled their obligation yet (LEA § 74-78, Laaring, *et al.*, 2017, pp. 301).

Direct coercion is applied by the police, other law enforcement agencies are allowed to do so only in the cases stated in specific acts of law (LEA § 75 subsection 1). Initially it was desired to allow only a few law enforcement agencies to apply direct coercion to avoid the possible uncontrollable wilfulness of public authority. Another explanation for that was the lack of special skills, equipment and weapons related training (explanatory notes to LEA 49, pp. 105). However – if a law enforcement agency has a competency to conduct state supervision and an authorisation to apply the measures stated in the LEA, then they also have a right to apply direct coercion to enforce the measures (explanatory notes to LEA 49, pp. 105). The LEA provides 22 special measures for the exercising of which one may apply direct coercion until it is unavoidable to achieve the aim (LEA 2019). There is also an opportunity to apply direct coercion to enforce a general measure – a precept (LEA § 28 subsection 3). Direct coercion cannot be applied to obtain statements, opinions or explanations (LEA § 76 subsection 3), since it is interpreted as torture (Oestmann 2012, pp 52-62).

Means of direct coercion are divided into physical force, special equipment and weapons (LEA § 74). The levels of direct coercion are defined from the most lenient towards harsher dependent on the presumable seriousness of the applicable measure, the regulations have been developed as a system with internal steps, whereas in the case of the most serious means, the bases for applying coercion are significantly narrower (Laaring 2010, pp. 552). There are three procedural steps related to direct coercion (the steps can be avoided only due to the urgent need to counter

an immediate serious threat or eliminate a disturbance (LEA § 76 subsection 2)): first a valid administrative act must be issued to the addressee to obligate them to counter an immediate threat or eliminate a disturbance, then the person is warned and informed of the circumstances of not fulfilling the administrative act and of which means of direct coercion is going to be applied, the third step is the act of applying coercion (Laaring 2010, pp. 552), which means the application of force is first expressed with orders and prohibitions that in the final step are guaranteed with the application of direct coercion (Jätma 2015, pp. 163).

Physical force is applied in order to physically influence a person, animal or object (LEA, 2019), whereas force is directly carried from the applier of which to the object of direct coercion. For example, holding, pushing, taking a person away, blocking an animal attack, knocking down doors and hand-to-hand fighting techniques. Special means are mainly used to increase or direct the influence of physical force. Special means are directly listed in the act of law, but there are countless things that could be used as special equipment, for example, a service car or tools used to open doors. It is impossible to list all means specifically, however, the type of the means can be determined according to their aim (explanatory notes to LEA 49, pp. 103). According to Weapons Act § 3 subsection 1 clause 1, subsection 2, weapons of officials or service weapons are prescribed by law to government authorities exercising public authority for the performance of their duties (Weapons Act, 2019). Service weapons are divided into firearms, gas, cut-and-thrust, pneumatic and electric shock weapons (Minister of the Interior, 2019, § 2). The means of direct coercion can be applied together, they can be changed if needed, but one always has to make sure the application of force is not excessive (Kuurberg 2016, pp. 528).

## 2.2. THE ENVIRONMENTAL INSPECTORATE'S PUBLIC ORDER OFFICIAL'S RIGHT TO APPLY THE MEANS OF DIRECT COERCION TO ENFORCE THE MEASURES OF STATE SUPERVISION

The task of the Environmental Inspectorate is to prevent, find out and counter a threat and eliminate disturbances in the area of environmental protection (statutes of the EI § 6, § 7 subsection 1; EnvSA § 2). The EI conducts supervision over the natural environment and natural resources in all areas, should it be the protection of forests, the earth's crust or fish, or problems related to waste disposal, packaging or external air. In the presence of environmental offences, the EI applies the enforcement powers of the state: issues fines, precepts and demands the environmental damage to be reversed (Environmental Inspectorate 2019). The EI has a right to conduct misdemeanour and criminal procedures in the scope of their competency (statutes of the EI, 2019, § 7 subsections 2 and 2<sup>1</sup>). In 2018 there were 142 precepts issued according to eight acts of law and 996 misdemeanour procedures registered according to 15 different acts of law (Environmental Inspectorate 2019). Everyday environmental supervision is conducted by the heads of county bureaus (15) and inspectors (Environmental Inspectorate, 2019).

According to the electronic State Gazette, the Environmental Inspectorate has been given a competency to conduct state supervision and apply measures according to 26 different laws. Upon conducting state supervision according to all acts of law, the EI has a right to apply the following measures of processing of personal data: questioning and requiring of documents, summons and the establishment of identity as stated in LEA §-s 30-32. The prohibition on stay as stated in LEA § 44 can only be applied according to ChemA and LFA; the stopping of a vehicle (LEA § 45) according to BPA, REGMO, HA, WA, FishA, GPEnvCA, RA, NatCA, APA, ECA, ForA, FSA and WaterA; detention of a person (LEA § 46) according to REGMO, HA, WA, FishA, GPEnvCA, NatCA, ForA, FSA and IEA; security check (LEA § 47) HA, FishA and FA. It has been allowed to apply the following measures related to movables and premises: examination of movables, taking into storage of a movable and the selling or destruction of the latter (KorS § 49-53). The named measures can be applied according to AAPA, EUCAPIA, CUGMMOA, HA, WA,

FMOA, ChemA, RA, NatCA, APA, ForA and PackA. According to BPA, REGMO, EnvMA, ECA, PortA, FSA, LFA, WaterA and PWSSA the EI can also apply the examination of movables, entry into premises and the examination of premises, but cannot take a movable into storage. According to the PCA a control transaction can be carried out.

Direct coercion can be applied upon applying the measures in the competency of the Environmental Inspectorate, except in the case of questioning, but eight acts of law regulating the work of the EI do not foresee the application of direct coercion at all (BPA, BC, EUCAPIA, FMOA, PackS, PCA, FSA, LFS).

The Environmental Supervision Act (EnvSA) is the stem act of the Environmental Inspectorate and in its § 15 it is stated that an inspector whose duty is to protect standing crop, game and fishery resources, is allowed to carry a service weapon and use a service dog and handcuffs when performing their official duties. Therefore the Hunting Act, Fisheries Market Organisation Act, Fishing Act, Forest Act and Water Act should state the same means of direct coercion, but in the so-called stem law and the named specific laws contain contradictions. In all acts of law (excl. FMOA that lists no rights to apply any means of direct coercion) the application of physical force has been stated as a means of direct coercion, however, physical force has not been stated in the stem law. Logically the HA and FA should reflect the right to use a service dog, the use of handcuffs and a service weapon. The only means of direct coercion allowed according to the WaterA is physical force.

As mentioned above, there are eight laws that do not foresee the application of direct coercion. However, these acts of law (BPA, BC, EUCAPIA, FMOA, PackS, PCA, FSA, LFS) authorise the IE to apply such means of state supervision that may call for the application of direct coercion, e.g. the prohibition of stay (LFS), detention of a person, stopping of a vehicle (FSA). According to almost all of these laws the inspectors have a right to examine a movable, enter premises and examine them, take a movable into storage – all this may also require the application of direct coercion, the use of physical force being the least harsh.

The application of physical force as the only means of direct coercion is allowed according to 14 acts of law and these are AAPA, CUGMMOA,

REGMO, WA, ChemA, GPEnvCA, EnvMa, RA, NatCA, APA, ECA, PortA, FSA, WaterA, PWSSA.

The EI also has the competency of proceeding offences and according to the Code of Criminal Procedure it can also apply such measures with dual functions as the establishment of identity, prohibition on stay and the forcing of a vehicle to stop (CCP §§ 140<sup>1</sup>, 140<sup>2</sup>, 217<sup>1</sup>). The right to apply direct coercion to perform procedural acts and secure criminal proceedings has been stated separately (CCP § 217<sup>2</sup>) and according to EnvSA § 15 the allowed means of direct coercion are handcuffs, a service dog and a service weapon.

If the legislator has foreseen the application of direct coercion as an opportunity to enforce the measure, then the EI inspectors should have a general right to apply direct coercion, specific laws should therefore provide a definite list of the means of direct coercion. An overview of the acts of law show that there are some according to which the application of direct coercion is not allowed at all or the only measure allowed is physical force (see Table 1). There is a significant contradiction between the Environmental Supervision Act (the so called EI stem law) and specific laws – the EnvSA allows the application of a service dog, handcuffs and a service weapon, the list does not feature physical force that has been allowed in 18 specific laws. Also, the EnvSA does not state the type of service weapon that can either be a firearm, gas, cut-and-thrust, pneumatic or electric shock weapon (in the meaning of Weapons Act § 31 section 1 subsections 1-4, § 11 subsections 1-4, 6). Specific laws can be more specific about the application of direct coercion, this has only been done according to the Environmental Supervision Act that allows the application of the means of direct coercion – physical force – only when there is a need to establish identity, examine movables or enter premises. The inconsistency in the acts of law does not provide legal certainty for the EI inspectors when they need to apply direct coercion.

### 3. LEGALISATION OF THE RIGHT OF SELF-DEFENCE FOR ENVIRONMENTAL INSPECTORS WORKING TO PROTECT PUBLIC ORDER

#### 3.1. THE RIGHT TO PERFORM SELF-DEFENCE AND THE APPLICATION OF THE MEANS OF DIRECT COERCION WHEN PERFORMING SELF-DEFENCE

During after work hours, a public order official can rely on criminal law related self-defence like a regular person. Self-defence is divided into necessity (an act to avert a direct or immediate danger to the legal rights of the person or of another person) and act of necessity (the damaging of attacker’s legal rights with the most lenient means in the defender’s hands that has to meet the dangerousness of the attack) (Sootak & Soo, 2014, pp. 145; Penal Code 2019, § 28) and is in conformity with the theory of self-defence according to which the representative of the state powers, just like any other citizen, has a right to defend themselves in terms of self-defence (Sootak 2007, pp. 85; also see Table 2).

Theory	Content and explanation
Public theory	The self-defence defined in criminal law is a general rule and the special rule defined in the specific law shall be applied.
Criminal law related theory	The rights of the representative of state powers to apply legitimate self-defence arise from criminal law and they cannot be narrowed down with specific laws.
Personal protection theory	The representative of state powers, just like any other citizen, has a right to defend themselves in terms of self-defence.
Theory of separation	The criminal law related justifications and the authorisations arising from specific laws fall under different law branches and therefore do not legally depend on each other.

**TABLE 2. Self-defence in different theories (Soo & Tarros 2015, pp. 712; Teder 2014, pp. 8-9; Sootak 2007, pp. 85; Kühl 2002, pp. 112-113; compiled by Vanaisak).**

On 17 March 2014, Indrek Teder, the Chancellor of Justice, proposed to ministers to legalise the police official's self-defence regulation and to analyse what was related to the State Liability Act. The same should also apply for other law enforcement officials who might risk with their life and health when fulfilling their duties (Teder 2014, pp. 1). Public authorities also have the constitutional right to defend the state and to live (Constitution of the Republic of Estonia § 13, 16; Teder 2014, pp. 4). The analysis also has a connection with the EI inspectors, who may, while carrying out their duties, face a situation in which they are attacked. In a situation where the attack is caused by the official's official activity, not a person. For example, upon detaining a person, the suppression of a person's resistance transforms into the blocking of an attack against an official (Teder 2014, pp. 8, 9). It is important that while fulfilling one's duties, one first has to rely on the regulations for the application of direct coercion as stated in the LEA. In situations which do not allow the application of direct coercion, but in which it is inevitable to protect the official's own life and health, the officials can rely on the penal law related regulation for self-defence (Teder 2014, pp. 16). According to the principle of legal clarity, a legal provision should provide officials' with clear instructions and certainty they act adequately (Teder 2014, pp. 3; commented version of the Constitution of the Republic of Estonia § 12, subsection 16). For example, assistant police officers have state guarantees if violence is used with regard to them in connection with the performance of their duty and they have been injured, what is more, it has been clearly stated that they can use a firearm or an electric shock weapon for self-defence (Assistant Police Officer Act 2019, § 35, 38). While on duty, a prison service official may use self-defence equipment and physical force to ensure their own safety (Imprisonment Act 2019, § 71 subsection 2). The current Environmental Supervision Act does not have such regulations.

#### 4. HEADS OF THE COUNTY BUREAUS OF THE ENVIRONMENTAL INSPECTORATE ON THE CASES OF APPLYING DIRECT COERCION

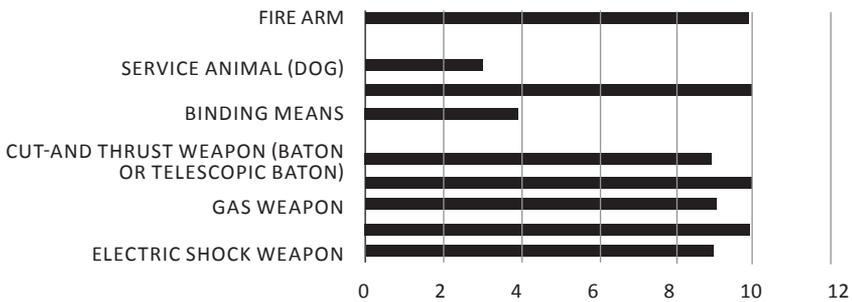
The data collection method used was a survey (questionnaire), which was conducted between 2 and 5 September in the Estonian Academy of Security Sciences Lime Survey environment, where the data of the named study can be found and checked. The questionnaire was sent to 15 heads of the EI county bureaus, 10 fully filled out forms were received (2 were unfinished). On one hand it was convenience sampling since the persons involved were easily accessible (Lagerspetz 2017, pp. 173); on the other hand, they are experts with a task to manage the EI county bureaus. The heads of bureaus who could be reached by telephone were firstly asked for their consent for participation and they were briefly introduced to the content and aim of the survey - the survey was anonymous. All together there were ten questions, the first four of which focused on the experience gained from managing the bureau, the number of employees and their previous experience of working in an organisation that has a right to apply direct coercion. The rest of the questions were connected with the importance of the application of different means of direct coercion, the need to regulate them if they are used in self-defence and the sufficiency of the training. Open questions allow the recipients to explain their answers and provide examples.

The background of the heads of the bureaus was the following: the greatest number of years of being a head of an EI bureau was 20 and the smallest was one. Three of the heads who were less experienced in being a head of a bureau had previously worked 12-23 years in the police or border guard field, therefore in an organisation that has a right to apply direct coercion. The average number of years working as a head of a bureau was 7.6 years. There are approximately seven people working under the heads, the smallest number of employees was four and the largest 11.

The respondents were presented with a list of the means of direct coercion and asked to indicate the importance of them. The levels were indicated on the Likert scale (Armstrong 2006) that ranged from “very important” to “not necessary at all”. At the moment the inspectors can

apply such means of direct coercion as physical force, handcuffs, service animal (dog) and a firearm. Current acts of law do not allow inspectors the use of binding means, technical barriers, means to force a vehicle to stop, gas weapons, pneumatic weapons, cut-and-thrust weapons (e.g. baton or telescopic baton) and electric shock weapon; however, according to the characteristics of the measures, it could be necessary to use them while on duty.

According to the survey, there seems to be the greatest need to use physical force, handcuffs and a firearm. Currently the application of these means is allowed according to some acts of law (see Drawing 1). Surprisingly the using of a service dog is not seen as very necessary, the answers might reflect the fact that at the moment the EI does not have any dogs. None of the acts of law allow the application of the means of forcing a vehicle to stop, but according to the respondents, the need for that is the greatest. This is followed by the need to use an electric shock weapon, binding means and a cut-and thrust weapon. Having a right to apply a technical barrier or a pneumatic weapon is not seen as important. The need to make the choice of the applicable means of direct coercion more versatile is mainly seen by the heads of bureaus with a longer working experience (10 years or more) and those respondents who have been heads for a shorter period, but have previously worked at the PBGB for 15-23 years.



**DRAWING 1.** The importance of direct coercion according to the heads of different bureaus, the lower scale indicates the importance of the application of the means. 10 refers to “extremely important” and 0 to “not important at all” (compiled by the author).

Eight officials of the ten found that the application of direct coercion to perform self-defence while on duty (when the official's life and health can be in threat) has to be regulated more. Two respondents did not see the additional regulation as necessary (See Table 3).

**TABLE 3. Respondents answers and examples for the question “Should there be separate regulations for applying direct coercion to defend yourself while on duty (if the official's life and health are in danger)?” (compiled by Vanaisak, 2019).**

Unnecessary	Necessary	
<p>“If an official has a right to wear a weapon, they therefore have a right to use it and of course they can perform self-defence. Why wear a piece of equipment if you cannot do anything with it.”</p>	<p>“There has to be a regulation, but it cannot be too complicated nor clumsy and finally lead to a situation in which an inspector does not understand where and when they can apply direct coercion .”</p>	<p>“Since the application of direct coercion is always connected with the limiting of the other person’s freedoms, it is necessary to have a proper regulation so the official would know exactly in what extent they could apply it. In addition to that, it provides certainty for the person that no one is exceeding the limits of direct coercion.”</p>
<p>“Self-defence is regulated and it is allowed for everybody.”</p>	<p>“I think that since there are many inspectors, they all have different life experience, education and mental preparation, it would be good if there was a regulation for the application of direct coercion in order to have a more uniform understanding and code of conduct”.</p>	<p>“I think that even if an official’s life and health are in threat, they must precisely know the extent to which they can apply direct coercion and as many such situations should be played through at trainings.”</p>
<p>“Self-defence is also already regulated in the Penal Code, and while on duty self-defence cannot be regulated in any other way.”</p>	<p>“If an official’s life is in threat and there is an opportunity to use a weapon, it has to be regulated with a law.”</p>	<p>“A more detailed description would be necessary so the officials would think the topic through for themselves beforehand.”</p>
<p>“In my opinion, when being on duty it is not self-defence, but blocking of an attack, and then there are already other acts of law that regulate that.”</p>	<p>“Since our opponents usually have many arguments to demonstrate how they were wrongly treated, it is good if there was at least some kind of regulation for the officials’ behaviour.”</p>	<p>“In order to avoid situations in which the application of direct coercion is unreasonable, at the same time the regulation cannot be too limiting and ambiguous.”</p>

Nine respondents found the training to apply direct coercion insufficient, only one saw it as sufficient. Mostly the need to apply direct coercion is seen in the areas of fishing, hunting and forestry where the damages are great, and the offenders do not obey and are aggressive towards the inspectors and try to escape. There have also been problems with waste management and fuel sellers. There has been a need to apply direct coercion while entering premises or stopping vehicles. The respondents could provide comments. All respondents emphasized the importance of training. The heads of bureaus indicated that the need to apply direct coercion does not arise often, but the training has to be sufficient should such situations arise (See Table 4).

**TABLE 4. Respondents answers and examples to the question “Please describe at least one situation in which you have had to apply direct coercion while on duty.” (compiled by Vanaisak, 2019).**

<p>“Since last year, different real life situations inspectors might encounter have been played through at trainings. At the same time, there is nothing about behaviour in the case of dangerous attacks and inspectors cannot handle them. There has been a lot of theory, but almost no practice. In addition to that, there are situations in which inspectors have trouble with assertiveness and give up on solving situations since they have no experience. For example, last year there was a situation in which a person refused to allow himself to be identified while he was at a river where salmon live and where illegal fishing takes place, but the inspectors gave up on solving the situation.”</p>	<p>“The most typical situations are related to getting away in a car, in which the EI has no capacity to force the vehicle to stop. Currently, we use a reflective circle to stop cars and some bureaus have the so-called “carrot” you can put on a torch, but if a driver does not react to them we cannot do anything. I have experienced myself at least twice when at night-time drivers have ignored the EI’s signal to stop and just driven away. Such cases are related to possible cases of illegal fishing or hunting.”</p>
<p>“I have chased a fisherman running to escape. There was no dust-up, but I needed to be prepared for that.”</p>	<p>“When spotting an inspector, a fisherman starts tampering with documents (proof) and does not react to the order to stop their activity.”</p>

<p>“Recently on Peipsi Lake there was a situation in which fishermen who’d had too much alcohol had become aggressive and threw the EI’s electronic scale overboard, and physically attacked the inspectors who wanted to stop them. There is another case from the Peipsi area that comes to my mind – inspectors found an illegal fish trap in the lake and placed it on the quay at the port. The owner of the trap wanted to take it away secretly. This situation finished with hand-to-hand fighting and a warning shot was made from the service weapon, which helped to solve the situation.”</p>	<p>“During a hunting raid in the fishing season while looking at crayfish in cars I needed to use force.”</p>
<p>“As a rule, the most aggressive people we check are fishermen and hunters, but also waste operators. Luckily talking usually helps, put in order to open cars, show things, check the catch and tools we have had to apply direct coercion, physical force, etc.”</p>	

The respondents could add something more and provide comments (See Table 5).

**TABLE 5. Free answers from respondents on the topic (compiled by Vanaisak, 2019).**

<p>“The EI officials need to be explained the difference between direct coercion and self-defence. The younger generation seems to be a little aggressive for my taste. Especially in the situation where training is insufficient.”</p>	<p>“If you need to identify a person and they do not cooperate – which means to choose? We call the police.”</p>	<p>“In my opinion, the current situation in which the EI has a right to apply physical force, but in most cases handcuffs and a service weapon are not allowed, is not reasonable. It is not logical when an inspector detains a person who e.g. wants to fight or escape, then the inspector has to remain there physically holding the person (e.g. there have been cases where a person carrying waste to the woods has wanted to run away. Basically it is a simple offence, but so much hassle around it)”.</p>
<p>“In terms of any kind of coercion and means, it is important that the person against whom it is applied knows it, sees it and believes it. As a rule, you then do not need to apply it. Warning is enough. If the warning, activity and means are realistic, then usually the person does the required activity voluntarily to avoid the inspector applying coercion or means against them.”</p>	<p>“The application of direct coercion in environmental supervision has been thought through insufficiently. Since in small bureaus the inspectors need to be relatively universal, they need to know according to which law they act in a certain situation. Therefore, it should be regulated quite uniformly. Inspectors should be trained so they would not exceed the limits of applying direct coercion (would not use a means that is not proportional).”</p>	

The answers and examples provided by the respondents illustrate the need to harmonise the EI's means of direct coercion brought in different acts of law, and to have more specific regulations for the application of direct coercion in self-defence. The current regulations are contradictory and insufficient, there are discords that create confusion, and therefore some situations may remain unsolved.

## 5. OBTAINING OF THE COMPETENCY TO APPLY DIRECT COERCION ACCORDING TO THE CURRENT CURRICULUM FOR EI OFFICIALS

Upon defining the need for training, it relies on the employee's duties and on the skills they need to perform their duties safely and efficiently (Heller, 2003, pp. 181). The Environmental Inspectorate trains new officials at the Estonian Academy of Security Sciences. There is a special supervisory official's training programme, after the completion of which the trainees acquire the knowledge and skills necessary to carry out the duties of a supervisory official (Estonian Academy of Security Sciences, 2019). The training has been divided into six modules, each 99 academic hours. Karm indicates the need of relating theoretical training with practical, and emphasises that learners can use the matters learned in theoretical subjects when solving practical cases (Karm 2013, pp. 71). Self-defence related training and instructions to use special equipment and a service weapon are largely in a practical format, it lasts 21 academic hours and the assessment criteria have been brought as activities (see Table 3).

According to the current acts of law, the EI inspectors have a right to apply physical force, handcuffs and a service weapon while on duty (see Table 1). Learning outcomes of the curriculum and the learning content support the using of physical force, handcuffs and a firearm, but there is nothing about using a service dog as a special equipment. When compared to the curriculum of police officers, the volume of the basic training for EI officials is little. The volume of the police officer's curriculum's module for the application of direct coercion and security tactics is 9 ECVET, which is 234 academic hours (Estonian Academy of Security Sciences 2019). In addition to that, there is the training for the legal bases for the application of direct coercion and the providing of first aid in the volume of approximately 30 hours. The current volume of the direct coercion related training for EI inspectors only allows for giving an overview of the matter and the lecturer can demonstrate some techniques, which can be practiced, but no skills are created nor consolidated in such a short time. In dangerous situations, where there might be a need to apply direct coercion, the EI inspectors have to make decisions that are

based on reflex movements (Birzer, 2003, pp. 29-42). In order to consolidate reflex skills the so-called repetition method is used. The repetition method is based on repeating one and the same movement, therefore, to acquire a basic skill, the student has to repeat one and the same movement continuously to stay cool and polish the motor program of their muscles (Kiveste 2012, pp. 17).

If the choice of the means of direct coercion applicable by the EI inspectors were made more versatile, and the right to use the means for forcing a vehicle to stop, cut-and thrust weapon, baton or a telescopic baton and a gas or an electric shock weapon were added, then the training volume should definitely be increased.

**TABLE 6. Extract from the EI supervisory official’s training programme, Module: self-defence, the application of special equipment and a service weapon.**

Learning outcome	Learning content	Assessment method	Assessment criteria
<ul style="list-style-type: none"> <li>- Knows the fundamentals of security tactics and the legal limits of applying physical force.</li> <li>- Implements the techniques of applying physical force and the most basic types of strikes.</li> <li>- Can apply handcuffs and handle a service weapon.</li> </ul>	<p>Theoretical part:</p> <ul style="list-style-type: none"> <li>- Basics of security tactics – distances, hands, positions.</li> <li>- Legal limits of applying force as a supervisory official.</li> </ul> <p>Practical exercises:</p> <ul style="list-style-type: none"> <li>- Falls, coming up, protection on the ground, movements while standing up, strikes with hands and feet, and the protection of them.</li> <li>- Moving away from the attack line.</li> <li>- Detention techniques – alone and in pairs.</li> <li>- Introduction of handcuffs, theory and practice.</li> <li>- The using of handcuffs. Exercises alone and in pairs.</li> <li>- Ways of holding the service weapon, positions, grabbing the holster.</li> <li>- Moving with the service weapon and detention.</li> </ul>	<p>The trainee demonstrates to the trainer their skill of performing self-defence and the using of special equipment.</p>	<p>The trainee can explain their choice of applicable self-defence techniques and special equipment and can use them according to the given situation.</p>

## 6. FINDINGS AND PROPOSALS

The analysis shows that the amount of the means of direct coercion allowed for environmental inspectors is insufficient to fulfil the duties stated by the legislator, also the list of the means of direct coercion in different acts of law is inconsistent and does not have a system, and therefore causes uncertainty upon fulfilling the duties. Answers to the survey indicate that inspectors have had problems with assertiveness and have given up on solving situations since they have not had knowledge of the application of the means of direct coercion. Laaring (2010, pp. 552) brings out that the scale of direct coercion has been developed from the most lenient towards harsher means, but there is no hierarchy in the means authorised for the EI. As a result there are acts of law according to which they can use either physical force or a service weapon, but there is no right to apply the intermediate and more lenient ones such as handcuffs, cut-and thrust or gas weapons. Several laws refer only to the application of physical force and no other means, which could be used if the application of physical force has no effect, have been listed.

Officials' right to perform self-defence upon performing public duties has also not been regulated. According to the survey it is very important.

The curriculum needs to be amended in order to teach the legal bases for the application of direct coercion, and to carry out practical tasks and provide first aid. The respondents brought out that there is a lot of theory, but when playing through incidents, they struggle due to limited training.

The Environmental Supervision Act as the EI stem act should list which means of direct coercion the EI inspectors could apply, both when conducting state supervision procedures and offence procedures, therefore it is important to add all the aforementioned means of direct coercion into the act of law. EnvSA § 15 should thus be amended as follows:

- While performing their duties, a state environmental inspector is allowed to apply the following means of direct coercion: physical

force, handcuffs, a service dog, a means to force a vehicle to stop, a cut-and-thrust, gas and electric shock weapon and a firearm.

- An environmental inspector is allowed to apply the aforementioned means of direct coercion only in extreme events when all other measures have been exhausted.
- An official whose life and health might be in threat while performing their duties may apply the means of direct coercion while performing self-defence, however they must not exceed the limits of self-defence.

According to the principle of legal clarity, a legal regulation must provide an official with clear instructions and assurance to act. While performing their duties, an EI inspector cannot constantly analyse which means of direct coercion, according to which law they can apply to enforce the measure or to secure offence proceedings. According to this principle it is important that the means of direct coercion brought in the EnvSA could also be applied according to all other acts of law (see Table 4). At the same time, some distinctness is necessary. For example, probably it is not reasonable to use a service dog to enforce a measure based on the Building Code, Ports Act, Water Act, Public Water Supply and Sewerage Act. Therefore, an additional marking with a different colour and a question mark have been used in the table (see Table 4).

All respondents brought out the need to amend the direct coercion related specific training and practical training. The suggestions to make the training more efficient are the following:

- It is important to increase the volume of practical training in the current curriculum. Instead of 21 academic hours it should be at least 50 academic hours, then the material is consolidated and motor skills appear.
- A prerequisite for taking the electric shock weapon related training is the passing of a basic training focusing on the application of direct coercion. The volume of the electric shock weapon basic training is 16 academic hours, 6 of which focus on the legal bases for using the electric shock weapon and 10 are meant for practical exercises in simulated situations (similarly to the valid police officers' curricula).

TABLE 7. Proposals to add the means of direct coercion into specific acts of law (compiled by the author).

	MEANS OF DIRECT COERCION								
	PHYSICAL FORCE	SERVICE ANIMAL (DOG)	HANDCUFFS	SERVICE WEAPON (FIREARM)	BINDING MEANS	A VEHICLE TO FORCE	A CUT-AND-THRUST WEAPON (BATON, TELESCOPIC BATON)	GAS WEAPON	ELECTRIC SHOCK WEAPON
1. Environmental Supervision Act (ESA)	X	X	X	X		X	X	X	X
2. Atmospheric Air Protection Act (AAPA)	X	X?	X	X		X	X	X	X
3. Biocidal Products Act (BPA)	X	X?	X	X		X	X	X	X
4. Building Code (BC)	X	X?	X	X		X	X	X	X
5. European Union Common Agricultural Policy Implementation Act (EUCAPIA)	X	X?	X	X		X	X	X	X
6. Contained Use of Genetically Modified Micro-organisms Act (CUGMMDA)	X	X?	X	X		X	X	X	X
7. Release into Environment of Genetically Modified Organisms Act (REGMO)	X	X?	X	X		X	X	X	X
8. Hunting Act (HA)	X	X	X	X		X	X	X	X
9. Waste Act (WA)	X	X	X	X		X	X	X	X
10. Fisheries Market Organisation Act (FMOA)	X	X?	X	X		X	X	X	X
11. Fishing Act (FishA)	X		X	X		X	X	X	X
12. Chemicals Act (ChemA)	X	X	X	X		X	X	X	X
13. General Part of the Environmental Code Act (GPEvCA)	X	X	X	X		X	X	X	X
14. Environmental Monitoring Act (EnvMA)	X	X	X	X		X	X	X	X
15. Radiation Act (RA)	X	X	X	X		X	X	X	X
16. Nature Conservation Act (NatCA)	X	X	X	X		X	X	X	X



- If acts of law are added the right to apply additional means of direct coercion, then the training needs to change too. Proposals to amend the curricula arise from the police officer’s basic curriculum and are the following (there is no firearm-related training):

**TABLE 8: PROPOSALS TO AMEND THE DIRECT COERCION RELATED TRAINING PROGRAMME (COMPILED BY THE AUTHOR).**

Learning outcome	Assessment criteria	Volume
<ul style="list-style-type: none"> <li>- Individually and as a member of a team handles and uses a cut-and-thrust weapon, gas weapon and special equipment, and implements the techniques of self-defence and detention lawfully, safely and efficiently.</li> <li>- Provides emergency medical care.</li> </ul>	<p>In the event of an attack, moves away from the attack line, falls safely.</p> <p>Releases themselves from different grasps by using the areas sensitive to pain.</p> <p>Upon blocking a physical attack uses different strikes with the hands and feet;</p> <p>Alone or as a member of a team, safely applies the means of detaining a person that are suitable for the situation and can prevent damaging of one’s health and the risk of suffocation upon detaining a person.</p> <p>Upon blocking an attack, uses the special equipment, cut-and-thrust or gas weapon (whichever is suitable for the situation) and provides first aid after using a gas or cut-and-thrust weapon.</p> <p>Individually or as a member of a team applies handcuffs and binding means upon implementing direct coercion, conducts security check.</p> <p>Forces a vehicle to stop with the respective means by following the principles of security tactics.</p> <p>Upon taking a person out from a vehicle and detaining them, follows the principles of security tactics and applies physical force suitable for the situation and places the person into a vehicle.</p>	<p>80 academic hours of practical learning.</p>

EI should deploy continuous trainings in the organisation and systematically test the inspectors’ skills to apply the means of direct coercion. Here the PBGB’s training programme that includes activities in the event of a sudden attack (TORK), should be taken as an example.

## CONCLUSIONS AND RECOMMENDATIONS

It is important to amend the acts of law regulating the work of the EI. The named changes help the environmental inspectors choose the suitable means of direct coercion to protect public order and provide the officials with a legally clear bases to perform self-defence in situations in which their life and health might be in danger while performing their duties. It is also important to enhance training, both when the volumes of basic and continuing training are concerned, and in the terms of regularity and practicality.

There are unreasonably few practitioners involved in the development of the acts of law regulating the work of the EI inspectors. So far there has been a rigid opinion that the EI inspectors should not have any right to apply the means of direct coercion, therefore the choice of the means of direct coercion in different acts of law is chaotic and contradictory (Vaidla 2019). A survey conducted among the heads of the EI county bureaus proves that practitioners can convincingly support the inspectors' need to apply direct coercion. Therefore, it is recommended to conduct a survey among the environmental inspectors of the EI to obtain an overview of the need to amend the list of the applicable measures.

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