



Strasbourg, 27 February 2013

CDDH(2013)003

**STEERING COMMITTEE FOR HUMAN RIGHTS  
(CDDH)**

---

**DRAFT REPORT**

**on the implementation of the Committee of Ministers' Recommendation  
CM/Rec(2010)4 on the human rights of members of armed forces.**

---

77th meeting

19-22 March 2013

Council of Europe  
AGORA Building

## Reference documents

- Recommendation CM/Rec(2010)4 of the Committee of Minister to Member States on the human rights of members of the armed forces of 24 February 2010;
- Explanatory Memorandum of the Recommendation CM/Rec(2010)4 (CM(2010)4add2 final) of 24 February 2010;
- Questionnaire on the implementation of Recommendation CM/Rec(2010)4 of the Committee of Minister to Member States on the human rights of members of the armed forces (CDDH(2012)015);
- Compilation of Member States' answers to the questionnaire (CDDH(2012)016 final) which is available online at: [http://www.coe.int/t/dghl/standardsetting/hrpolicy/Others\\_issues/Armed\\_Forces/questionnaire\\_en.asp](http://www.coe.int/t/dghl/standardsetting/hrpolicy/Others_issues/Armed_Forces/questionnaire_en.asp);
- Parliamentary Assembly Recommendation 1742 (2006) on Human Rights of Members of the Armed Forces;
- the OSCE Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel.

## Background

1. At its 1147<sup>th</sup> meeting (4-6 July 2012), the Committee of Ministers' Deputies instructed the Secretariat of the Council of Europe to elaborate, under the supervision of the Steering Committee for Human Rights (CDDH), a questionnaire on the implementation of its Recommendation CM/Rec(2010)4 to Member States on the human rights of members of the armed forces, and to transmit the document to Member States and other relevant stakeholders. At its 75<sup>th</sup> meeting (19-22 June 2012), the CDDH agreed to instruct the Secretariat to the draft of a questionnaire, to be subsequently submitted to the CDDH for adoption by written procedure in order to ensure that Member States could submit their replies before the 76<sup>th</sup> meeting of the CDDH in November 2012. On the basis of these decisions, the Secretariat elaborated a questionnaire which has been adopted by written procedure, and to which the competent authorities were invited to reply by 2 November 2012 at the latest.

2. At its 76<sup>th</sup> meeting (27-30 November 2012), the CDDH encouraged those States that had not yet done so, to submit their replies by the extended deadline of 15 December 2012, and provided guidance to the Secretariat on the preparation of a report on the implementation of Recommendation CM/Rec(2010)4, which the CDDH would examine and adopt at its 77<sup>th</sup> meeting in March 2013, with a view to its being transmitted to the Committee of Ministers by 30 June 2013. The Secretariat and the Rapporteur were invited to structure the report by grouping together, if possible, the replies to questions by theme, and to present the results in a neutral and comprehensible manner.

3. The present report is based on the answers provided by 36 Member States. Those States are: Armenia, Andorra, Austria, Belgium, Bosnia and Herzegovina, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Liechtenstein, Lithuania, Luxembourg, Republic of Moldova, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland,

“the Former Yugoslav Republic of Macedonia”, and Ukraine. It should however be noted that three Member States (Andorra, Liechtenstein and Iceland) do not have armed forces and, consequently, did not submit any answers in substance. No replies have been submitted by 11 Member States, including some having important armed forces. Consequently, references to “all States” or “all countries” in the following refer to those 33 States which have submitted their replies and which have a national army.

## **Section I – Impact assessment**

4. This section deals with the general impact assessment of the Recommendation.

5. As to the question of whether an authority had been assigned as responsible for the implementation of the Recommendation, 10 States reported that they had appointed for this task their ministries of defence and its departments, or selected the former in conjunction with other ministries. Three States replied that they had appointed military authorities. Numerous States answered that they had not appointed any specific authority for the implementation, some of them stating as reason that they considered their legal systems to be already consistent with the items addressed by the Recommendation and its Appendix.

6. Regarding specifically the impact assessment of the Recommendation on the human rights of members of the armed forces, several States considered it as being “fully satisfactory”, e.g. by stating that it was felt that the dissemination of the recommendation would further reinforce the awareness of human rights in their armed forces. The great majority of States that submitted their replies stressed that their legal systems were already compliant with the provisions of the Recommendation. Some of those regarded the level of impact as “absent” because they were not asked to take measures to implement the Recommendation; others answered “adequate”, referring to their current legal systems and the protection of human rights outlined in the Recommendation.

7. Pursuant to the adoption of the Recommendation, numerous States indicated specific measures or events, such as: the convening of a board of officers to propose methods by which the recommendations can be communicated to members of the armed forces; the conduction of seminars in different units of the armed forces, educational programmes of the armed forces and military educational institutions (together with the OSCE Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel); or the inclusion of certain measures in a national action plan on human rights. One State reported to have amended its legislation, pursuant to the adoption of the Recommendation, concerning the posting and transfer system of professional members of the armed forces, and the parental leave of those members of the armed forces who are parents of young children.

8. Furthermore, all States declared not to have encountered any obstacles in the implementation of the Recommendation, except one State which underlined certain practical and financial difficulties in improving the “working condition and standard of living of member of armed forces”, albeit it has made commitment to deal with it.

## **Section II – Dissemination and distribution**

9. This section concerns the Recommendation’s dissemination and distribution among members of the armed forces.

10. As to whether any authority had been assigned as responsible for the dissemination of the Recommendation, some countries replied that they had assigned that task to various authorities, ranging from military units and military authorities to departments of the ministry of defence as well as to other (also non-military) authorities responsible for the promotion of human rights. Some States cited events such as special meetings on the introduction of the recommendation on service personnel. Other States reported that the recommendation was used in educational programmes and was giving visibility to the Recommendation via the intranet or electronic noticeboards of their armed forces. Other States stated that they had distributed a great number of written copies to relevant stakeholders within their armed forces.

11. Concerning the distribution of the Recommendation, half of the respondent States referred to addressees of the distribution campaign as authorities at ministerial level or military staff and authorities. While a majority of States replied that they had not yet distributed the recommendation (while some declared their intention to do so in the future), several countries reported to have ensured distribution.

12. For the purpose of dissemination, the States were invited to translate the Recommendation. Seven States replied that they had already provided translations, while several other States made commitments to comply with this invitation.

13. Finally, a great number of States assessed as “adequate” the visibility given to the Recommendation. A similar evaluation was also given by some of those States that had expressly neither disseminated nor distributed the Recommendation.

## **Section III**

### **A- Right to life**

14. The right to life is one of the core rights of the ECHR. The Recommendation CM/Rec(2010)4 asks the States not to expose members of the armed forces to avoidable risks, and stresses the procedural aspects of Article 2 ECHR, namely to grant independent and effective inquiries into suspicious deaths or other alleged violations of the right to life of members of the armed forces. With regard to this requirement, all States reported to have a satisfactory legal framework and to have put in place adequate measures. The great majority of them highlighted that investigations and criminal proceedings, involving serviceperson as either the victim or the accused, prosecuted or offending person, follow the same substantial and procedural rules of those involving civilians, except for one State which expressly reported to grant additional safeguards in proceedings involving members of the armed forces.

15. Moreover, it is important to underline the differences among the States in relation to the type of authorities appointed to assist the competent prosecutor during investigation procedures, which may vary from the police to military authorities.

16. Whilst one State replied that investigations were conducted by military prosecutor within the general system of the prosecutor's office, other States referred to the existence of military prosecutors and courts, capable of holding independent investigations into alleged violations of the right to life of members of the armed forces.

17. All States reported to have put in place measures to encourage the reporting of acts violating the right to life as well as to provide protection for persons reporting such violations. Nevertheless, it should be noted that only half of the responding States provided information and / or examples on this issue. Among these States, there appears to be a major trend that considers the denouncing or reporting of such illicit acts (that potentially include a criminal charge) as an obligation for members of armed forces. Some States, for the very same purpose, have put in place confidential hotlines to contact either the police, the ministry of defence or institutions for the protection of human rights. Other specific measures, such as special protection for victims and witnesses in criminal proceedings, have been referred to by various States.

## **B- Torture and other forms of ill-treatment**

18. The prohibition of torture as well as inhuman or degrading treatment or punishment is absolute under Article 3 ECHR, hence the present Recommendation asks the States to take measures to protect members of the armed forces from any acts contrary to that provision. All the States reported to have such measures in place. States, however, reveal different approaches concerning specific measures taken to protect the more vulnerable categories within the armed forces, such as conscripts. Half of the replying States answered in the positive; some communicated that all members of the armed forces are equally protected and all enjoy equal treatment before the law, whereas many States reported in this respect to have abolished conscription.

19. Moreover, all States reported to have in place measures ensuring an independent and effective investigation into alleged or suspected acts of torture or degrading treatment and to encourage the reporting of such acts. While most of the States stressed the implementation of their legal framework (codes, laws and proceedings) that criminalises such illegal acts committed against civilians or, more specifically, against members of the armed forces, some States provided concrete examples of measures to encourage reporting of such acts and protect those who report them. Among those measures were anti-bullying programmes, helplines, the creation of units dealing with complaints, the codification of a duty to report acts conflicting with Article 3 ECHR (e.g. to civil or military ombudsmen), as well as the election of representatives of members of armed forces to be responsible for the working environment and specific commissions for staff liability.

## **C – Forced or Compulsory Labour**

20. This chapter of the questionnaire focuses on whether the military service is compulsory and whether an alternative service of a civil nature is foreseen by the Member States' legal framework. 20 States declared not to have any longer compulsory military service. One State reported that individuals could make a request for "dispensation" from military service based on reason of conscience. In most of these States, elimination of compulsory military service has taken place during the last decade.

21. In 12 States, military service remains compulsory, albeit with different legal frameworks to enable citizens to choose between military service and alternative (civil) service. The regulation of such choice takes very different forms: either it is permitted by the law without any further requirements, or it must be based either on religious and conscience beliefs, or on religious beliefs only. The length of alternative service for conscientious objectors differs inasmuch as the length of military service varies in different States, ranging from 8 months to 42 months. Nevertheless, from the replies collected, none of the States' legal orders appear to be inconsistent with the European Committee on Social Rights' case law which held that the duration of alternative civil service may not exceed in length the corresponding military service more than 18 months.

## **D – Military Discipline**

22. The Recommendation also called for military discipline and disciplinary proceedings ruled by law, thus guaranteeing essential procedural rights where only threats to military defence, safety and security should be disciplinary offences, and whose punishment should be proportionate.

23. As to whether a clear legal framework governing military discipline that is in accordance with the provisions of the Recommendation exists, all States but one replied in the affirmative, indicating the applicable law. Some States also provided a description of their legal instruments, giving examples of how their functioning complied with the Recommendation in this respect.

## **E - Right to Liberty and Security**

24. Member States were also asked to report on members of the armed forces' enjoyment of the right not to be deprived of their liberty in Article 5 ECHR. All States replied to hold a procedure, prescribed by law, dealing with the deprivation of liberty of members of the armed forces, which appears to be the same applied to all civilians. Furthermore, as to the lawfulness of the detention of members of the armed forces under the age of 18 years, 10 States replied in a positive way whilst the others illustrated that only persons over the age of 18 years could be recruited into the armed forces. Amongst the first group, the majority of the States reported that the detention of servicepersons under the age of 18 complies with the conditions set out in paragraph 23 of the appendix to the Recommendation, namely, the detention as a measure of last resort only, for the shortest period possible and as separate from adult detainees. Two States

responded that the detention of minor members of the armed forces was subject to the same conditions as the detention of adult members. One of them however stated that it was its intention to “amend legislation in the near future in this area which will restrict recruitment of individuals to persons who are 18 or older”.

25. All the responding Member States stated there were no limitations or exceptions to the procedural guarantees set out in Paragraphs 24 to 27 of the appendix to the Recommendation.

## **F – Right to a Fair Trial**

26. The Recommendation also ensures the right to a fair trial and the guarantees provided for by Article 6 ECHR in both civil and criminal matters. All responding States gave a positive reply as to whether procedural guarantees in criminal proceedings (in accordance with paragraphs 28, 30 and 31 of the Appendix to the Recommendation) are enjoyed by the members of their armed forces.

27. As to the existence of a clear legal framework in each State, setting out limitations and exclusions to the right to have access to a tribunal for the determination of service personnel’s civil rights and obligations, 7 responding States highlighted the specific treatment granted to service personnel in comparison to that reserved for civilians. The majority of States, however, stressed the equal treatment between civilians and servicepersons in this respect.

28. 22 States reported not to have military courts in their legal system. 2 States reported to have a hybrid system, while 9 communicated that their legal system included the jurisdiction of military courts but also assured respect of, in the proceedings pending before them, all safeguards and guarantees set out in paragraphs 33 and 34 of the Appendix to the Recommendation. The latter group of States also emphasised that there are no differences in the organisation and operation of military courts in comparison with civil courts, and that military courts are separate and independent from the chain of command.

## **G – Right to respect for private and family life, home and correspondence**

29. Concerning the respect of the rights set out in Article 8 ECHR, which are recalled in paragraphs 35 – 39 of the Appendix to the Recommendation, with due attention to the particular needs of servicepersons and their family, States were first asked to report whether they have in place measures to ensure that conscripts and professional servicepersons are stationed near to their family and home and that, for the latter category, their being posted away from home does not constitute a disciplinary measure.

30. As more than half of the responding States have suspended or abolished compulsory military service, they did not answer the question with regard to the situation of conscripts. Concerning professional members of the armed forces, 19 States affirmed that deployment could not be used as a disciplinary sanction.

31. The question as to whether States had put in place measures to ensure that their service personnel stationed abroad had sufficient contact with families, some States mentioned their practice of freely distributing telephone cards and facilitating access to all technologies enabling communication with family members.

32. Concerning assistance programmes for those accompanying members of armed forces posited abroad, the majority of States reported to have in their legal framework rules permitting visits and compensation for travel and accommodation costs provided to family members of service personnel stationed abroad.

33. All of the States replied that service personnel enjoy parental leave, a reportedly adequate health and education system for their children, in a more beneficial manner or at least equivalent to the one enjoyed by civilians. The support and the extent of the welfare legislation vary according to different national experiences. The legal framework of some States reveals different treatment on the basis of gender for the enjoyment of maternal and/or paternal leave. An example of good practice is the one State's initiative of disseminating amongst service personnel a "manual on the compatibility of family life and military service".

#### **H – Freedom of thought, conscience and religion**

34. Many States reported that these rights are enjoyed by servicepersons as "civilians in uniform", thus they are defined and protected to a certain extent by laws that are also applicable to civilians, though with some limitations. On the contrary, a few of the States expressly have laws and regulations only applicable to members of the armed forces. Concerning this section's questions dealing with the enjoyment of the rights set out in Article 9 ECHR, States were asked to report whether there were in place any measures to allow members of the armed forces to comply, as much as possible, with their religious obligations. In all States' legal systems there is at least one legal basis for the enjoyment of the rights at issue, but not all of them reported to have in force the above mentioned measures. Despite this, the great majority gave positive feedback. Among the examples provided on this issue are: granting pastoral care and the assistance of military chaplains (for each religion, at least on request), prayer time, holiday leaves for religious reasons and supply of food that is consistent as much as possible with the various religious obligations. One States cited elaborated rules from a national directive on the adjustment of religious exercise in the armed forces which deals in detail with each of the major religions. Finally, the exercise of the above mentioned freedoms, in accordance with Article 9 ECHR and Section H of the Appendix to the Recommendation, can be limited or conditioned according to military life and needs of the service.

35. The collected replies also showed that, in those States which still retain compulsory conscription, conscripts have the right to apply for an alternative service of civilian nature as conscientious objectors. Furthermore, States generally reported that conscientious objectors are not exposed to any kind of sanctions, disciplinary measures or judicial prosecution, with the following two exceptions: one State reported that those who are not admitted to civil service, and who at the same time refuse to join military service, are potentially subject to imprisonment of up to 18 months or, alternatively, to a fine; another State specified that sanctions may be imposed



on persons subject to conscription, who - out of religious or conscientious beliefs - reject both compulsory military service and alternative service.

36. As to the possibility given to service personnel to leave the armed forces for reasons of conscience, only few States reported to have expressly recognised this in their national law as a possible reason to resign. Others reported that this represented an unknown reason to resign and that no particular regulation exists in this respect.

37. Many States stated that this might serve as a possible reason for resignation as a “personal reason” which constitutes a legitimate reason to resign. Some States also underlined that timing and procedure to leave the armed forces are different according to the type of contract which concretely bind service personnel to the armed forces.

38. In relation to measures to ensure that conscripts and professional service personnel are informed about the right to leave the armed forces because of conscience issues and the right to be granted with the conscientious objector status, States did not give univocal replies, even if a majority of positive answers can be noted.

## **I – Freedom of expression**

39. The right to freedom of expression, including the freedom to hold opinions and to receive and impart information and ideas, set out in Article 10 ECHR, also applies to servicepersons. Freedom of expression may however be subjected to restrictions and formalities under Article 10(2) and in accordance with the conditions set out therein.

40. In the light of the countries’ existing legal frameworks providing for formalities, conditions and restrictions to the right of freedom of expression of members of armed forces, several States reported that their members of armed forces do not face any (particular) restriction in the enjoyment of the right at hand.

41. Other States gave examples of possible restrictions, justified by military discipline and confidentiality reasons. In most cases, the freedom of expression of servicepersons does not allow them to divulge information known because of their service (either classified or not, according to country) for reasons of secrecy and national security. Furthermore, many States reported to restrict their service personnel’s freedom of expression as to holding political opinions, recalling political neutrality, during or outside service.

## **J – Right to access to relevant information**

42. Concerning the right to have access to relevant information as set out in the Recommendation, a crucial right is the potential recruits’ right to be provided with full and detailed information about all aspects of recruitment in the armed forces and commitments involved in enlisting in the armed forces. All countries reported to have in place measures necessary to grant the above mentioned information. States replied that members of the armed forces also have access to their personal data, including medical records and information

regarding their exposure to situations potentially hazardous to their health. The great majority of States reported that this right cannot be restricted, while a small number of them identified reasons including national security and third persons' data protection as possible reasons for the limitation of this right.

### **K – Freedom of peaceful assembly and association**

43. The freedom to join established trade unions is granted in 21 of the responding States. Among the others, the majority grants the right to join associations other than trade unions. On the other hand, joining political parties is forbidden for members of the armed forces in 20 of the replying States. Among those States, in line with paragraph 54 of the Recommendation which suggests the review of continued justification for such restrictions, two States reported that they plan discussions at national level to review their legislation in order to lift the existing prohibition for service personnel to join political parties.

### **L – Right to vote and to stand for election**

44. Not all the States explicitly reported whether members of armed forces have the right to vote. All States responding to this issue stated that there are not restrictions on the active electoral right. Whether service personnel are allowed to stand for election is a more controversial issue. This right is restricted or simply excluded in the legal framework of 19 of the respondent countries. The main justification for this relates to the neutrality of the armed forces as a whole. Some States set out a general ban to service personnel standing for election; others prohibit standing for principal posts (such as president or members of national parliament or the European Parliament). Others pointed to an incompatibility in their legal system of being at the same time an active serviceperson and being elected to a public position. Therefore, once elected, a member of the armed forces has to resign definitively or he/she is temporarily exempted from the service.

### **M – Right to marry**

45. In all respondent States, members of the armed forces have the right to marry and to form civil partnerships in the same terms as civilians.

### **N – Right to protection of property**

46. As to the right to the peaceful enjoyment of someone's own possessions, as stated in Article 1 of the Protocol No. 1 ECHR, States were asked to report whether there are measures in place to ensure that property of the members of the armed forces, if retained upon joining the armed forces, is returned at the end of military service. Among the replying countries, apparently none of them needed to take any measure because their legal frameworks do not prescribe that property is retained upon joining the armed forces, consequently States answered in a positive

way or declared the question not applicable. Only three States answered in the negative but, due to a lack of any comments, it remains somewhat unclear what their legislation actually stipulates.

### **O – Accommodation**

47. Nearly all of the States stated to have measures ensuring adequate accommodation for members of the armed forces and their families, both on national territory and abroad, such as compensation for leases and other financial support measures.

48. As to the existence of separate dormitories for men and women in the barracks, the great part of States replied in a positive manner. Three States reported not to have a national accommodation system in the barracks, while a further three States answered the questions in the negative, some of them underlining that, according to the practical circumstances, separate dormitories could be provided.

### **P – Remuneration and pension**

49. Most countries reported to have in place measures (some with specific legislation) to ensure that men and women in the armed forces are entitled to equal pay for equal work or work of equal value.

50. As to whether professional members of the armed forces receive remuneration, in order to provide them with a decent standard of living and an adequate retirement pension, most countries applied in the affirmative, with the exception of two States which both replied in the negative and another State replying that “not everyone can receive an adequate retirement pension”.

### **Q – Right to dignity, health protection and security at work**

51. In relation to members of the armed forces’ right to dignity, all States communicated to have legislation punishing sexual harassment in their criminal law. Behaviour affecting workers’ dignity may also constitute a disciplinary offence in many countries. General laws and regulations concerning workers’ protection of dignity also apply to service personnel in many countries while some of the replies show specific legislation for members of the armed forces. Some States provided examples of measures taken to prevent and combat sexual harassment and violence in the military environment, such as administrative bodies collecting complaints independent from criminal prosecution procedures, publications and educational campaigns, or telephone hotlines for advice.

52. In terms of healthcare, all of the States unanimously reported to provide free-of-charge medical care to service personnel during and as a result of military operations. In addition, some of them stated that they offer periodical medical care to all members of the armed forces and reductions to purchase medication.

53. States were also asked to elaborate on existing compensation, allowance schemes and measures available for service personnel injured in service. Injured members of the armed forces and those who had to leave the armed forces because of injury or illness resulting from the exercise of military duties receive compensation or disability pensions in all respondent countries. Similar measures are taken when servicepersons die in service and the beneficiaries are their family members or relatives. In order to ensure effective granting of the above mentioned compensation, most of the countries reported to insure their service personnel.

## **R – Nutrition**

54. Section “R” of the Appendix to the Recommendation encourages States to take into account, to the greatest extent possible, individual needs such as age, health, religion and personal ethics when members of the armed forces are provided with meals.

55. Nearly all countries reported to have in place measures to ensure that service personnel enjoy the right to decent and sufficient nutrition in accordance with what is set out in the Recommendation. Some quoted specific regulations from existing national guidelines in this respect, which would include alternative diets even during military exercises. Two States however explicitly declared not to take into consideration the dietary needs of paragraph 75 of the Appendix to the Recommendation. Furthermore, all the Countries reported that clean drinking water is available to the members of the armed forces at all times.

56. Among those countries reporting to provide meals to service personnel compliant with international dietary standards, one State indicated that it also disseminated specific guidelines on nutrition and food for the members of armed forces.

## **S – Non discrimination**

57. The Recommendation also asks States to permit members of the armed forces to enjoy the human rights and fundamental freedoms set out in the ECHR and in the Revised Social Charter, without discrimination on any grounds. Differential treatment in analogous situations should be justified as to whether they pursue legitimate aims, and the measures taken should be proportionate to these aims.

58. Almost all countries reported to have a general legal framework guaranteeing the enjoyment of human rights and fundamental freedoms in a non-discriminatory way for all citizens (including military personnel) and / or specifically for service personnel. The prohibition of discrimination is mainly set forth in constitutions, primarily general laws, employment legal acts, military statutes and *ad hoc* equality acts. The collected answers showed a particular emphasis on gender-based equality acts.

59. Furthermore, a great part of the responding countries reported not to set any limitations on the access of women to the armed forces or to particular types of occupation within the armed

forces. Several countries where conscription is compulsorily communicated that women are not obliged to serve in the armed forces but they can voluntarily join the armed forces and start a career, without any limitations, if they wish to do so. One country, which has suspended compulsory conscription, reported that, in case of emergency, only men's conscription may be mandatory. A further two States reported that women were prevented to take part in some areas such as, for example, special armed forces and submarine services. Finally, all countries reported not to discriminate on the ground of sexual orientation to prevent somebody from acceding to the armed forces or to discharge him or her.

## **T – Persons under the age of 18 enlisted in the armed forces**

60. 23 States which have submitted their replies to the questionnaire reported not to allow voluntary recruitment into the armed forces of persons under the age of 18 years. Some of the States allowing it explicitly reported that their recruitment to the armed forces only derives from their military higher education and training. In all cases where such a juvenile voluntary recruitment is legal, all States assured that full information about the duties involved is given to the recruits and to their parents or legal guardians, and informed consents from both are required. Moreover, all States but one communicated to have in place special measures to protect the physical and psychological welfare of these vulnerable categories of persons. Finally, all States reported that, where persons under the age of 18 are admitted into the armed forces, juvenile servicepersons cannot take part in hostilities.

## **U – Training**

61. Being fully aware of the important role played by training programmes dealing with human rights in ensuring that armed forces uphold and respect human rights in their relationships with civilians and within military life itself, almost all of the States reported to have in place at least general training activities aimed at increasing the knowledge of human rights by members of the armed forces. These activities mainly consist in educational programmes dealing with human rights law and humanitarian law in the framework of the training programmes during military education or service. Among the States indicating such measures, some described the existence of distinct in-depth training courses for different ranks of personnel. Moreover, more specific educational programmes and workshops are addressed to members of the armed forces serving in active missions at national level and abroad in (potential) armed conflicts.

62. With regard to this issue and the in-depth analysis of the training activities, where provided, 26 States stated that they assured that the curricula of their training programmes include topics such as international human rights law (in particular the human rights of the members of the armed forces and the prevention of ill-treatment and discrimination) and 28 States did so with regard to international humanitarian law, including the service personnel's "duty to object to a manifestly unlawful order amounting to genocide, a war crime, a crime against humanity or torture" (see paragraph 84 of the Appendix to the Recommendation).

63. While few States stated that courses for their service personnel that explicitly deal with human rights of members of the armed forces were not part of the training programmes, some States reported that they either did not provide international human rights law or specific education on the prevention of ill-treatment and discrimination in their training programmes. One State replied that its measures fostering the acquisition of such knowledge are not of such high priority.

## **V – Allegation of human rights violations**

64. The final section of the Appendix to the Recommendation recommends that Member States permit members of the armed forces to lodge a complaint with an independent body alleging a violation of their human rights that relates to, in particular, harassment and bullying in their working environment.

65. All countries stated to grant the right to bring allegations on the grounds of violations of human rights of members of the armed forces. According to the legislation of several Member States, different authorities were appointed to deal with this task. Among the submitted solutions, 11 States reported to transfer such disputes to an ombudsman, an institution which is either of civil or military nature. Furthermore, 16 countries stated that dealing with such violations falls within the competence of the courts and, in cases where the violation entails a criminal offence, military or current criminal proceedings must be initiated. Others further indicated that authorities competent to deal with such complaints are parliamentary commissions (4 States) and services, units and inspectorates at ministerial level (in 5 States). Some States specified that disciplinary complaints still remains a valid avenue to allege a violation within the armed forces.

## **Section IV – Follow up**

66. This section's first question asks for proposals of measures States consider to be instrumental to ensure that principles set out in the Recommendation and its Appendix are complied with in national legislation and practices. According to the submitted replies, 23 States either considered their legal system and their practices already consistent with the Recommendation's principles, or they did not answer.

67. The other States suggested the fostering of the dissemination of the Recommendation since they consider information about human rights of members of the armed forces a key factor to enhance their protection and to adopt the necessary changes in their legislation and practices to achieve a more adequate level of compliance with the Recommendation's clauses.

68. As to the appropriateness of a further periodical examination of the implementation of this Recommendation by the Council of Europe, 18 countries did not submit any reply and 3 considered it not to be necessary, whereas the remaining 13 States considered future and continuous assessment to be an essential task. It was suggested to focus in this respect on those specific issues and those countries which the questionnaire and the follow up indicate to have shortcomings in the implementation of the Recommendation.

## **Concluding remarks**

69. The present report aimed at highlighting, in the context of the Recommendation, the basic trends in the area of human rights of member of the armed forces in Council of Europe Member States derived from the answers by the 33 States which submitted their replies and which do have armed forces. While some of the answers discussed throughout this report are self-explanatory, several aspects deserve some further reflection and are discussed in the following, especially in view of enhancing the implementation of the Recommendation for the future.

70. A frequent reply by some States was that they had not appointed any specific authority for the implementation of the Recommendation, some of them because they considered their legal systems to be already consistent with the items addressed by the Recommendation. However, such reply could be regarded as somewhat circular, given that it is probably such an authority which has the competences and expertise to put it in the best position to assess the implementation of the Recommendation. It is suggested that those countries ensure that the implementation of the Recommendation is monitored, for example, by their ministries of defence or other relevant national bodies. This would be in accordance with the replies by most of the other countries to that question.

71. Despite a majority of Member States having had declared not to have taken any specific measures to strengthen the protection of human rights of members of the armed forces pursuant to the adoption of the Recommendation because they considered that their national law in force adequately addressed the issue, it should be highlighted that there have been several examples mentioned throughout the report of how the Recommendation had encouraged States to change their law and put into practice new measures., e.g. through amending their legislation or providing human rights training programs. In this respect, the report is also designed to encourage all Member States of the Council of Europe having armed forces to reflect on positive measures which other States have already taken in the course of the follow-up to the present Recommendation.

72. The questionnaire revealed that several countries have ensured distribution of the recommendation, while it appears that the majority of States have answered this question in the negative. Therefore, this report might also be an appropriate occasion to invite those States to reconsider the Committee of Ministers' Recommendation with a view to ensuring "a wide dissemination of this recommendation among competent civil and military authorities and members of the armed forces".

73. As regards some specific issues, there does not appear to be any problematic area that seems to occur as a structural problem in several States. Nevertheless, it can be inferred from the replies that certain rights are not yet provided for by national law or practice in some Member States of the Council of Europe, such as the freedom to join established trade unions, even though the Recommendation recognises existing restrictions under Article 11, paragraph 2 ECHR. In accordance with Paragraph 54 of the Recommendation which suggests that "the continued justification for such restriction should be reviewed and unnecessary and

disproportionate restrictions on the right to assembly and associations should be lifted”, few States replied that they had undergone such a review. Those States which do not provide for that right and which have not yet reconsidered, in the light of the Recommendation, their national law in this respect, should be encouraged to do so.

74. The report reveals a number of issues which certain States might want to consider in the light of the answers provided by the majority of States which have submitted replies. This, for example, may concern: special measures to protect the physical and psychological welfare of vulnerable categories of persons; the recruitment of minors and their detention under the same conditions as adult military personnel; the recognition of the possibility to resign for reasons of religion or conscience; the full banning of service personnel from elections (instead of giving the possibility to resign or having service suspended during the term of office); the granting of adequate pensions to members of the armed forces; the taking into consideration of special dietary needs; or the inclusion of specific human rights issues for service personnel in their educational training. Other measures which some States have specified could serve as inspiration to others, e.g. the establishments of helplines or anti-bullying programmes, or the introduction of specific regulations on the wearing of religious symbols during military service. States might also wish to note the various differences amongst their legal systems in periods in which their alternative service exceeds their military service, which may amount to a period of up to 18 months. Finally, it should be noted that two thirds of the States which sent replies and which do have armed forces still retain military courts in their judicial system.

75. Notwithstanding that the information provided by Member States shows at large a positive picture of the situation of women in the armed forces, more attention should be given to this issue in the future, including to the right to health protection and security work, as well as to measures preventing or combating violence against women and proper investigation of such offences.

76. It is worth noting that different types of military service exist in Member States, e.g. conscription and contract service. Accordingly, the volume of rights of their members might differ. Despite the information communicated that all members of the armed forces are equally protected and all enjoy equal treatment before the law, particular attention should be given in the future to particular vulnerable categories of members of the armed forces.

77. It is suggested to invite the Committee of Ministers to take note of this report. Given that several States replied that specific issues in the Recommendation are currently under review or that they are in the process of legislative change with regard to certain issues addressed in the Recommendation, the Committee of Ministers should be invited to consider a further follow-up (e.g. through a shorter and more focused questionnaire on particular issues, e.g. those addressed in the conclusions of this report in paragraphs 70-76). Finally, the feasibility of cooperation programmes targeting the specific needs of certain States (or in more general context) could be considered, with a view for example to reinforce the awareness of the ECHR and the case-law of the European Court of Human Rights as well as other human rights instruments in the context of human rights of members of the armed forces.