



Strasbourg, 15 June 2007

GT-DEV-FA(2007)005

STEERING COMMITTEE FOR HUMAN RIGHTS  
(CDDH)

**COMMITTEE OF EXPERTS FOR  
THE DEVELOPMENT OF HUMAN RIGHTS  
(DH-DEV)**

DH-DEV GROUP ON HUMAN RIGHTS  
OF MEMBERS OF THE ARMED FORCES

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**Meeting Report**

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**1st meeting**

Strasbourg, Thursday 14 June – Friday 15 June 2007

Council of Europe

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**Item 1:           Opening of the meeting and adoption of the agenda**

1.       The DH-DEV Group on Human Rights of the Armed Forces held its 1<sup>st</sup> meeting in Strasbourg (Room 5) on 14-15 June 2007, with Ms Camilla BUSCK-NIELSEN (Finland) in the Chair. The list of participants can be found in Appendix I. The agenda as adopted and the references to the working documents appear in Appendix II. Before starting its work, Mr Jan KLEIJSSSEN, Director of the Directorate of Standard Setting, gave an introductory welcome to the group.

**Item 2:           Discussion on the content of the Committee of Ministers recommendation to be drafted**

2.       The Group discussed the scope and content of the recommendation. In this context, the question was raised whether it should cover times of war as well as of peace. The question of the applicability of human rights and international humanitarian law in situations of armed conflict was also raised. It was observed that not only situations of armed conflict but also peacekeeping operations may require special restrictions. A majority of members were of the opinion that the recommendation should be drafted under the assumption that they apply in peacetime. Special situations may be dealt with in separate provisions. Another option would be to assume that the rights apply in principle unless a state makes an explicit derogation under article 15 ECHR. The Group decided to revert to this issue at their next meeting.

3.       Regarding the scope and content of the recommendation, the Group agreed on the following points:

- a) the recommendation should contain a preamble starting off with references to the various relevant texts and standards (e.g. the aim of the Council of Europe, the Convention for the Protection of Human Rights and Fundamental Freedoms, the Revised European Social Charter; the relevant recommendations of the Committee of Ministers and the Parliamentary Assembly, the CPT standards) followed by a mention of some overarching principles;
- b) the recommendation should contain an appendix setting out in more detail the rights and principles to be implemented in domestic law and practice, referring specifically to issues of practical relevance to members of the armed forces;
- c) the appendix could be structured in different sections: general principles, the applicable rights (civil and political as well as social and economic rights) and other matters (e.g. practical measures designed to ensure the effective implementation of the rights such as awareness-raising, training or the setting up of special bodies responsible for promoting the human rights of members of the armed forces);
- d) the recommendation should be accompanied by an explanatory memorandum giving further information on the standards, in particular the relevant case-law of the European Court of Human Rights, and best practices;
- e) the recommendation should in principle address all categories of armed forces personnel (career members, conscripts, volunteers), making distinctions for each of the rights where appropriate;

f) the recommendation should not address the issue of conscientious objection to compulsory military service already covered by Committee of Ministers' recommendation no. R(87) 8 (which should however be mentioned in the preamble).

4. The Group examined each of the rights mentioned in paragraph 10 of the Parliamentary Assembly's recommendation 1742 separately in order to identify for each of them issues which are raised by their implementation in the context of armed forces. The issues raised are reflected in the elements which can be found in Appendix III to this report.

5. For the next meeting, the Chair will draft elements for the recommendation with the assistance of the Secretariat. All members of the Group are invited to submit drafting suggestions and comments through the restricted website (see paragraph 7 below).

**Item 3: Other business**

6. Mr Robert-Jan UHL indicated that OSCE/ODIHR has prepared a handbook on human rights and fundamental freedoms of armed forces personnel which is due to be published for their next Human Dimension Implementation Meeting in September. He said that extracts from the handbook containing recommendations on specific rights would be made available to the Group after the meeting.

7. Ms Catherine VARINOT presented a restricted website accessible only to members of the Group (<http://www.extraweb.coe.int/team20/gt-dh-dev/default.aspx>).

8. The dates of the next meeting will be agreed on by e-mail.

Appendix I

**LIST OF PARTICIPANTS**

**MEMBERS / MEMBRES**

**AUSTRIA / AUTRICHE**

Ms Sonja SCHITTENHELM, Human Rights Coordinator, Ministry of Defense Interministerial Legislation Division

**BELGIUM / BELGIQUE**

Mme Chantal GALLANT, Conseiller-Adjoint, Service des Droits de l'Homme, Direction générale de la Législation et des Libertés et Droits fondamentaux, Service Public Fédéral Justice

**DENMARK / DANEMARK**

Mrs Lena MAERSK, Head of Section, Defence Command Denmark

**FINLAND / FINLANDE**

Ms Camilla BUSCK-NIELSEN, (Chairperson), Legal Officer, Ministry of Foreign Affairs

Ms Satu KASKINEN, Legal Officer, Ministry of Foreign Affairs, Legal Department

**FRANCE**

Mme. Emilie PADELLEC, Chargée d'études, Ministère de la Défense, Direction des Affaires juridiques

Mme Marie RUHARD, Chargée d'études, Ministère de la Défense, Direction des Ressources humaines du ministère de la défense (DRH-MD)

**HUNGARY / HONGRIE**

Dr. Péter KISS, Legal Adviser, Legal Department of the National Police Headquarters

**LATVIA / LETTONIE**

Mr Emils PĻAKSINS, Lawyer of the Office of the Government Agent of the Republic of Latvia

**POLAND / POLOGNE**

Mr Michal BALCERZAK, Assistant Professor, Nicholas Copernicus University, Faculty of Law and Administration

**PORTUGAL**

Lieutenant Colonel Francisco José Bernardino da Silva LEANDRO, Portuguese Army, Allied Joint Command Lisbon

**RUSSIAN FEDERATION / FÉDÉRATION DE RUSSIE**

Mr Alexander KOSMODEMYANSKIY, Senior Military Prosecutor, Office of the Chief Military Prosecutor of the Russian Federation

Colonel Evgeny POLESHCHUK, Military Officer, Division of Military Discipline, Ministry of Defense of the Russian Federation

M. Alexey VLASOV, Adjoint au Représentant Permanent, Représentation Permanente de la Fédération de Russie auprès du Conseil de l'Europe

**SLOVAKIA / SLOVAQUIE**

Mr Branislav KADLECIK, Principal State Counsellor, International and European Law Department, Human Rights and Foreign Relations Division

**TURKEY / TURQUIE**

Mr Orhan ÖNDER, Judge Colonel, Legal Consultancy of the Turkish General Staff

Mme Deniz AKÇAY, Adjointe au Représentant permanent de la Turquie auprès du Conseil de l'Europe

**UNITED KINGDOM / ROYAUME-UNI**

Mrs Paula WILLIAMS, Deputy Director of Policy Issues Affecting Service Personnel, Service Personnel Policy, Ministry of Defense

Mr John EVANS, Director General Law, Ministry of Defense

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**PARTICIPANTS**

**Parliamentary Assembly / Assemblée Parlementaire** – Apologised / Excusé

**Council of Europe Office of the Commissioner for Human Rights / Bureau du Commissaire aux Droits de l'Homme** – Apologised / Excusé

**European Commission against Racism and Intolerance (ECRI) / Commission européenne contre le racisme et l'intolérance (ECRI)** – Apologised / Excusé

**Steering Committee on the Media and New Communication Services (CDMC) / Comité directeur sur les médias et les nouveaux services de communication (CDMC)** – Apologised / Excusé

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**OTHER PARTICIPANTS / AUTRES PARTICIPANTS**

**European Commission / Commission européenne** – Apologised / Excusé

**Council of the European Union / Conseil de l'Union européenne** – Apologised / Excusé

**Canada** – Apologised / Excusé

**Holy See / Saint-Siège** – Apologised / Excusé

**Japan/Japon** – Apologised / Excusé

**Mexico/Mexique** – Apologised / Excusé

**United States of America/Etats-Unis d'Amérique** – Apologised / Excusé

**The Organisation for Security and Co-operation in Europe (OSCE) / the Office for Democratic Institutions and Human Rights (ODIHR) / L'Organisation pour la sécurité et la coopération en Europe (OSCE) / le Bureau pour les institutions démocratiques et les droits de l'homme (ODIHR)**

Mr Robert-Jan UHL, Human Rights Officer, OSCE/ODIHR

**The Office of the United Nations High Commissioner for Human Rights / Le Haut Commissariat des Nations Unies aux Droits de l'Homme** – Apologised / Excusé

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**OBSERVERS / OBSERVATEURS**

**Belarus** – Apologised / Excusé

**Amnesty International** – Apologised / Excusé

**International Commission of Jurists (ICJ) / Commission internationale de Juristes (CIJ)** – Apologised / Excusé

**International Federation of Human Rights / Fédération internationale des Ligues des Droits de l'Homme (FIDH)** – Apologised / Excusé

**European Coordinating Group for National Institutions for the Promotion and Protection of Human Rights / Groupe de coordination européenne des institutions nationales pour la promotion et la protection des droits de l'homme** – Apologised / Excusé

**European Roma and Travellers Forum / Forum européen des Roms et des gens du voyage**  
- Apologised / Excusé

**Conference of European Churches (KEK) / Conférence des Eglises européenne (KEK)**  
- Apologised / Excusé

**Human Rights Watch**

Mr Alexander PETROV, Deputy Director of HRW Russia office

**International Helsinki Foundation** – Apologised / Excusé

**International Committee of the Red Cross (ICRC) / Comité International de la Croix Rouge (CICR)** – Apologised / Excusé

**European Organisation of Military Associations (EUROMIL)**

Mr Mikko HARJULEHTO (Finland), Secretary General, European Organisation of Military Associations (EUROMIL)

M. Jacques BESSY (France), Organisation: ADEFDROMIL/EUROMIL, Vice Président, Association de Défense des droits des militaires

Mr Poul SØRENSEN (Denmark), Organisation: HKKF/EUROMIL, Political / Legal Adviser

Ms Birte DOLPP (Germany), Organisation: DBwV/EUROMIL, Deutscher Bundeswehrverband (German Armed Forces Association), Lead Association Legal Advice in EUROMIL / Lawyer in Department of Labour Law and Participation Law

Mr Douglas YOUNG (UK), Organistaion: British Armed Forces Federation (BAFF)

Mr Lt Col. Waldemar TRZESZCZKOWSKI (Poland), Organisation: KONWENT/EUROMIL,  
Member of the Board of Polish Konwent

[Coordinator :Mr Derek Gottfried HAELLMIGK, Officer for Fundamental Rights and Social Affairs,  
European Organisation of Military Associations (EUROMIL)]

**Coalition to Stop the Use of Child Soldiers** – Apologised / Excusé

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**SECRETARIAT**

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Appendix II

**ADOPTED AGENDA**

**Item 1:       Opening of the meeting and adoption of the agenda**

**Item 2:       Discussion on the content of the Committee of Ministers recommendation  
to be drafted**

Working documents

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|---|--------------------|
| - Relevant texts of the CDDH – terms of reference and opinion on PACE Recommendation 1742(2006) | GT-DEV-FA(2007)001 |
| - Relevant texts of the Parliamentary Assembly and the Committee of Ministers                   | GT-DEV-FA(2007)002 |
| - Different options for the drafting of the recommendation                                      | GT-DEV-FA(2007)003 |
| - Seminar conclusions from the Council of Europe Commissioner for Human Rights                  | GT-DEV-FA(2007)004 |

**Item 3:       Other business**

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Appendix III**Issues to be addressed in a recommendation  
of the Committee of Ministers to member states  
on human rights of members of the armed forces**

The Committee of Ministers, under the terms of Article 15 b. of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its member states, inter alia, by promoting the adoption of common rules;

Bearing in mind the European Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights in its case-law, the Revised European Social Charter, in the light of the conclusions of the European Committee of Social Rights, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment,

Taking also into consideration the relevant United Nations instruments, in particular the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the findings of the Committee against Torture [...];

Taking into account the Committee of Minister's Recommendation No. R (87) 8 regarding conscientious objection to compulsory military service, as well as Parliamentary Assembly's recommendations 1380(1998) on human rights of conscripts, 1742(2006) on human rights of members of the armed forces, 1572(2002) on the right of association of the professional staff of the armed forces, 1714(2005) on the abolition of restrictions on the right to vote and 1518(2001) on the exercise of the right of conscientious objection to military service;

Recommends that governments of member states:

1. ensure that the principles set out in the appendix to this recommendation are complied with in national legislation and practice relating to members of the armed forces;
2. ensure, by appropriate means and action, a wide dissemination of this Recommendation to members of the armed forces to inform them of their rights and freedoms, and training to increase their awareness of human rights
3. [follow-up]

Appendix to Recommendation [...]

[Opening sentence]

**Human rights**

**- the right to life**

*Members of the armed forces should not be exposed to situations where their lives would be avoidably put at risk. This would imply taking adequate measures in respect of military training, planning of operations and the material used.*

*Responsibility of the military authorities if they had or ought to have known of a real and immediate risk to an individual (Yavuz v. Turkey)*

*Importance of an independent and effective inquiry into any suspicious death (McKerr v. UK)*

*Mention should also be made of the abolition of the death penalty including in wartime (Protocol No. 13 ECHR).*

**- the right to protection against torture and inhuman or degrading treatment or punishment;**

*The bullying of conscripts or members of the armed forces belonging to minorities is not acceptable and those responsible should be held accountable (disciplinary and criminal proceedings). Prevention measures should be taken against such practice.*

*Conditions of detention of soldiers should not violate Art 3 ECHR and the CPT standards.*

*State responsibility may be engaged where the authorities fail to take reasonable steps to avoid a risk of ill-treatment about which they knew or ought to have known (Mahmut Kaya v. Turkey).*

*Effective investigations should be undertaken whenever there are serious reasons to think somebody has been subjected to ill-treatment.*

**- the prohibition of slavery and forced labour;**

*Members of the armed forces should not be used to perform tasks incompatible with their assignment to the national defence service, nor be used for forced or compulsory labour.*

*[European Social Charter: Forced labour re army officers (Article 1§2): in its most recent conclusions the Committee said the following in respect of Ireland Article 1§2:*

*"2. Prohibition on forced labour*

*The Committee recalls that it has previously found that the situation was not in conformity because army officers could not seek early termination of their commission unless they repaid to the state at least part of the cost of their education and training, and the decision to grant early retirement was left to the discretion of the Minister of Defence. This could lead to a period of service which would be too long to be regarded as compatible with the freedom to choose and leave an occupation. This reason for non-conformity has remained unchanged since 1998 (Conclusions XIV-1, pp. 409-410) and the report does not refer to any change. The Committee therefore concludes that the situation in this respect is not in conformity with the Revised Charter." Conclusions 2006, p. 363]*

**- the right to liberty and security**

*Engel and Others v. Netherlands* – where conscripts had had various disciplinary punishments imposed on them, the Court found that confining soldiers to barrack, under light arrest, did not run contrary to Art. 5 as such restrictions were not beyond the exigencies of normal military service.

Formal, visible requirements stated in the "law" especially important for the identification of the judicial authority empowered to decide on the liberty of the individual in view of the confidence which that authority must inspire in the public in a democratic society (*De Jong, Baljet and van den Brink v. the Netherlands*).

Even having regard to the exigencies of military life and military justice, length of absence of access to a court was in each case such as to deprive the applicant of his entitlement to bring proceedings to obtain a "speedy" review of the lawfulness of his detention (*De Jong, Baljet and van den Brink v. the Netherlands*).

The detention on remand of conscripts accused of military criminal offences was considered to be in breach of Art 5.3 and 5.4 considering that a delay of 8 to 14 days' imprisonment before being brought before the court-martial was excessive.

**- the right to an effective remedy and the right to a fair trial;**

Procedures for lodging official complaints, proceedings before military courts and, where applicable, the conditions of arrest and detention must be lawful and must comply with Art. 6 ECHR (appropriate remedies, fair proceedings, impartiality and independence of the court).

The independence and impartiality of the courts is another requirement (*Findlay v. UK*, flaws in the court-martial system). Military courts should be separate from the chain of command.

It is not sufficient to qualify an offence as disciplinary to escape the obligations of a fair trial under Art. 6. In *Engel and Others*, the Court found a violation of this provision on the ground that the applicants had not been granted a fair hearing because the nature of the offence and seriousness of the potential penalty entailed a criminal qualification of the charge rather than disciplinary.

**- the right to respect for private and family life, the home and correspondence;**

Special characteristics of military life should be taken into account. It is difficult to draw a clear line between public and private life: soldiers may be required to be on duty for long periods or be subject to be called on duty at any time of the day or night. They may be required to spend long periods separated from their families during military service or training.

Conscripts should be posted near their family and home.

Important to keep contact with family when posted abroad.

Restrictions based on "national security" must mean more than what "the ministry of defence decides". In *Smith and Grady v. UK*, the claims to discharge homosexual members of the armed forces on the ground of national security were not upheld by the Court.

The same goes for interception of correspondence. There may be grounds for it if the soldier is in a combat zone. But preventing conscripts from corresponding with their families on the basis of national security would be hard to justify.

**- the right to freedom of thought, conscience and religion**

Army are composed of people of various religious convictions, making accommodations an important feature of life in army barracks (food, religious practice, prayer rooms etc.).

No reference to national security as a legitimate aim to impose restrictions on this right. However the Court has found in respect of a serviceman that “In choosing to pursue a military career Mr Kalac□ was accepting of his own accord a system of military discipline that by its very nature implied the possibility of placing on certain of the rights and freedoms of members of the armed forces limitations incapable of being imposed on civilians. States may adopt for their armies disciplinary regulations forbidding this or that type of conduct, in particular an attitude inimical to an established order reflecting the requirements of military service” (Kalaç v. Turkey)

Mention the right of conscientious objection for members of the armed forces (conscripts and/or career servicemen; see PACE Rec 1742 para. 40)?<sup>1</sup> What is meant? A right to leave the army or to do non-military work?

**- the right to freedom of expression;**

Freedom of expression “does not stop at the gates of army barracks” (Grigoriades v. Greece). “Freedom of expression applies to servicemen just as it does to other persons within the jurisdiction of the contracting states” (Vereinigung Demokratischer Soldaten Österreichs und Gubi v. Austria which concerned the publication of a soldier’s association’s paper which was critical of the army). The Court will only be satisfied that the interests of national security necessary in a democratic society require a limitation on this right if this is proved objectively so.

Distinction between information related to military and general, non-military matters. The Court has found that a duty of discretion may legitimately be imposed on civil servants on account of their status. A restriction may be considered acceptable if it concerns the disclosure of information objectively considered to be military secrets or a description of how particular military duties are performed (Hadjianastassiou v. Greece).

The Court attaches particular importance to the fact that publications at issue “though putting forward proposals for reforms and encouraging its readers to institute legal complaints did not recommend disobedience or violence” (Vereinigung Demokratischer Soldaten Österreichs and Gubi judgment; Saszmann v. Austria)

**- the right to freedom of assembly and association**

Certain restrictions can be placed on the right to freedom of association of military personnel but such a right cannot be purely and simply abolished. According to the PACE report, of the 42 MS with armed forces 19 do not grant their personnel the right of association and 35 withhold the right to bargain collectively (fear of mutiny, of orders being challenged hence representing a threat on discipline ).

The right to form trade unions? According to PACE’s report on the right of association for members of the armed forces, in past years, the armies of member states converted from conscription to a purely professional system and consequently military personnel are increasingly becoming “regular” employees, whose employer is the ministry of defence, and should be fully eligible for employees’ rights in the ECHR (Art 11) and the ESC (Art 5). This includes the right to establish, join, and actively participate in specific associations to protect their professional interests.

The right to belong to political parties? “With respect to the Assembly’s recommendation in relation to the right of members of the armed forces and military personnel to be members of legal political parties, the Committee of Ministers underlines that in principle it favours the idea that all citizens shall enjoy the same political rights. It notes, however, that there may be legitimate grounds for certain restrictions on the right to join political parties in respect of members of the armed forces. Such restrictions do exist in a number of member states. The Committee of Ministers recalls that in a democratic society, it is important that any restrictions on the exercise of political rights should be as limited as possible. In this connection, it refers to Article 11 of the European Convention on Human Rights guaranteeing the freedom of association” (CM Reply to PACE Rec 1572).

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<sup>1</sup> No agreement was reached by the Group as to the inclusion of those rights which are followed by a question mark.

**- the right to marry and found a family;**

*Right for member of the armed forces to form civil partnerships between persons of the same sex in states that have legislation providing for them?*

**[- the right to protection of property;]**

**- the right to free elections;**

*Members of the armed forces should enjoy the right to vote.*

*The right to be elected?*

*[In a 2004 Report the Venice Commission concluded that the need to establish democratic control of the armed forces should not be used as an excuse to automatically deprive soldiers of their voting rights. PACE invited member states "to reconsider existing restrictions on electoral right ... with a view to abolishing all those that are no long necessary and proportionate in pursuit of a legitimate aim".]*

**- the prohibition of discrimination;**

*Prohibition of discrimination should be linked to other human rights (Art. 14 ECHR).*

*A difference in treatment is only discriminatory if it has no objective and reasonable justification, i.e. if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised (established case-law).*

*The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different (Thlimmenos v. Greece).*

*Respect for diversity: There should be no discrimination on grounds of sexual orientation (e.g. Smith and Grady v. UK), religion (e.g. Jehovah's witnesses in Thlimmenos v. Greece) or national or ethnic origin.*

*Women in the armed forces should not be discriminated against insofar as career perspectives are concerned (ECJ, Sirdar and Kreil judgments, see PACE report para. 43).*

**- the right to decent and adequate housing/accommodation;**

*Right to housing (article 31 ESC)*

**- the right to receive fair remuneration and retirement pension;**

*Of particular importance for conscripts and volunteers. Pension rights only appropriate for professional members of armed forces.*

**- the right to health protection and work security;**

*Right to safe and healthy working conditions (article 3 ESC)*

*Right to protection of health (article 11 ESC)*

*Right to social and medical assistance (article 13 ESC)*

*Right of persons with disabilities (article 15 ESC)*

- **the right to decent and sufficient nutrition;**

*This right is of particular importance for conscripts.*

**Other issues**

- **the right to be informed of their rights and to receive training to heighten their awareness of human rights.**

*Members of the armed forces should receive information on their rights.*

*Training on [their] human rights should be provided.*

- **the right to object to an order which would entail the commission of war crimes?**
- **Reference to ombudspersons or similar bodies?**