



Strasbourg, 14 May 2008

DH-DEV-FA(2008)003

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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3<sup>rd</sup> meeting  
Strasbourg, Wednesday 9 – Friday 11 April 2008

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 3<sup>rd</sup> meeting in Strasbourg on 9-11 April 2008, 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.

**Item 2:           Work on the draft elements for a Committee of Ministers recommendation on human rights of members of the armed forces**

2.       The Group examined the principles of the draft recommendation they had not considered at its previous meeting – the revised draft principles can be found in Appendix III. The Group decided to re-examine at their next meeting the whole draft recommendation, focusing in particular on those principles which were not covered or agreed on at this meeting. The Secretariat presented different options which could be envisaged to ensure the recommendation's follow-up (Appendix IV) – the Group will examine them at its 4<sup>th</sup> meeting.

**Item 3:           Other business**

3.       The Group will hold its next meeting on 15-17 October 2008 in Strasbourg.

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Appendix I

**LIST OF PARTICIPANTS**

**MEMBERS / MEMBRES**

**AUSTRIA / AUTRICHE** – Apologised / Excusé

**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**

Mr Jes Rynkebye KNUDSEN, Special Adviser, Judge Advocate Corps

**FINLAND / FINLANDE**

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

Ms Satu KASKINEN, Legal Officer, Ministry of Foreign Affairs

**FRANCE**

Mme. Dorothée MERRI, 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 PLAKSINS, Lawyer of the Office of the Government Agent of the Republic of Latvia, Ministry of Foreign Affairs of the Republic of Latvia

**POLAND / POLOGNE**

Mr Michał BALCERZAK, Assistant Professor, Nicholas Copernicus University, Faculty of Law and Administration / Legal Adviser, Ministry of Foreign Affairs, Legal and Treaty Department

**PORTUGAL**

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

**RUSSIAN FEDERATION / FÉDÉRATION DE RUSSIE**

Mr Alexander KOSMODEMIYANSKIY, Senior Military Prosecutor, Office of the Chief Military Prosecutor 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, Ministry of Justice of the Slovak Republic

**TURKEY / TURQUIE**

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

**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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**OBSERVERS / OBSERVATEURS**

**Amnesty International**

Ms Jill HEINE, Legal Adviser, International Legal and Organizations Program, Amnesty International

**Conference of European Churches (KEK) / Conférence des Eglises européennes (KEK)**

Mr Daniel SPRATEK , Czech Republic

**Human Rights Watch**

Mr Alexander PETROV, Deputy Director of HRW Russia office

**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 – Apologised / Excusé

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

Mr Anatol TICHONIUK (Poland), Organisation: KONWENT/EUROMIL, President

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

**European Bureau of Conscientious Objection (EBCO) / Bureau Européen de l'Objection de Conscience (BEOC)**

M. Friedhelm SCHNEIDER, Représentant du Bureau Européen de l'Objection de Conscience (EBCO - BEOC) auprès du Conseil de l'Europe

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**SECRETARIAT**

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**Direction générale des droits de l'homme et des affaires juridiques**

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M. Christopher TYCZKA

Appendix II

**AGENDA**

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

**Item 2:        Draft recommendation of the Committee of Ministers on human rights of members of the armed forces**

Working documents

- |  |                            |
|--|----------------------------|
| - Written contributions by the Group members on the future recommendation (contributions in their original language) | DH-DEV-FA(2008)001Addendum |
| - Drafting proposals provided by the Group members on the future recommendation                                      | DH-DEV-FA(2008)001         |
| - Draft text for the explanatory memorandum of the CM recommendation on human rights of members of the armed forces  | DH-DEV-FA(2008)002         |
| - Relevant texts of the CDDH – terms of reference and opinion on PACE Recommendation 1742(2006)                      | DH-DEV-FA(2007)001         |
| - Relevant texts of the Parliamentary Assembly and the Committee of Ministers  | DH-DEV-FA(2007)002         |
| - Report of the 1 <sup>st</sup> meeting of the Group (14-15 June 2007)   | DH-DEV-FA(2007)005         |
| - Report of the 2 <sup>nd</sup> meeting of the Group (3-4 December 2007)   | DH-DEV-FA(2007)008         |

Information documents and additional comments of the experts and observers are available on the Group's restricted website.

**Item 3:        Other business**

- Date of the next meeting

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Appendix III**Draft appendix to the Recommendation – Principles examined at the 3<sup>rd</sup> meeting<sup>1</sup>****Members of the armed forces have the right to freedom of expression.<sup>2</sup>**

[58] The right to freedom of expression includes freedom to hold opinions and to receive and impart information and ideas. The exercise of these freedoms by everyone, including members of the armed forces, carries with it duties and responsibilities. It may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and necessary in a democratic society in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority or impartiality of the judiciary. Such measures should be proportionate, should not be arbitrary and should be reasonably foreseeable.

[59] Subject to the above requirements being met, it must be open to the state to impose restrictions on freedom of expression where there is a real threat to military discipline, as the proper functioning of the armed forces is not possible without legal rules designed to prevent members of the armed forces from undermining it.<sup>3</sup>

[60] In addition, in specific circumstances, restrictions may be justified if they concern matters such as the disclosure of information objectively considered to be classified in the interests of national security or a description of how particular military duties are performed<sup>4</sup> or if the political neutrality of the armed forces is affected,<sup>5</sup> [unless there is an overriding public interest in disclosure.<sup>6</sup>]

[61] States should not seek to frustrate the expression of opinions, including those that are unpopular or disturbing, or those that are directed against the armed forces as an institution.<sup>7</sup>

**Members of the armed forces have the right to have access to relevant information.<sup>8</sup>**

[62] Potential recruits should be provided with full and detailed information about all aspects of recruitment, the induction process and the specific nature of the commitments involved in enlisting in the armed forces. In the case of potential recruits who are under the age of 18, this information should also be provided to their parents or legal guardians.

[63] Former and current members of the armed forces should have access to their own personal data, including medical records, upon request.

[64] Current and, where applicable, former members of the armed forces should have the right to information where they are, or have been, exposed to situations potentially hazardous to their health.<sup>9</sup>

<sup>1</sup> The Group has not yet revised the text contained in all the boxes.

<sup>2</sup> Article 10 ECHR. *Engel and Others v. Netherlands*, judgment of 8 June 1976, para. 100.

<sup>3</sup> *Grigoriades v. Greece*, judgment of 25 November 1997, para. 45.

<sup>4</sup> *Hadjianastassiou v. Greece*, judgment of 16 December 1992

<sup>5</sup> *Erdel v. Germany*, decision of 13 February 2007

<sup>6</sup> Article 3(2) of the Draft Council of Europe Convention on Access to Official Documents, before the Committee of Ministers for adoption.

The Portuguese Group member suggested not keep the text between square brackets.

<sup>7</sup> *Grigoriades v. Greece*, op.cit.

<sup>8</sup> Article 8 and 10 ECHR.

<sup>9</sup> *Roche v. UK*, judgment of 19 October 2005; *McGinley and Egan v. UK*, judgment of 9 June 1998.

[65] Access to information, may be restricted if the documents requested are classified, or if the restrictions aim to protect national security, defence or international relations.<sup>10</sup>

**Members of the armed forces have the right to freedom of peaceful assembly and to freedom of association with others, including for the protection of their interests.<sup>11</sup>**

[66] There should be no restrictions on these rights other than such as are prescribed by law and necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.<sup>12</sup> Unnecessary restrictions on the right to assembly and association [and collective bargaining]<sup>13</sup> should be lifted.<sup>14</sup>

[67] Members of the armed forces should have the right to [organise or to participate freely in representative organisations] [join organisations representing their interests and, where permitted by national law, have the right to organise and to bargain collectively.]<sup>15</sup> They should also have the right not to join a trade union.

[68] Members of the armed forces should have the right to join legal political parties<sup>16</sup>, unless there are legitimate grounds for certain restrictions.<sup>17</sup> There may also be legitimate grounds for certain restrictions on political activities, especially when a member of the armed forces is on active duty.<sup>18</sup>

[69] Military associations or trade unions, including conscripts' associations, [where applicable] / [where they exist], should be involved in determining conditions of service of members of the armed forces [and representing their interests].<sup>19</sup>

[70] No disciplinary action or discriminatory measures should be taken against members of the armed forces merely because of their participation in the activities of military associations or trade unions.<sup>20</sup>

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<sup>10</sup> See Recommendation Rec(2002)2 of the Committee of Ministers to member states on access to official documents

<sup>11</sup> The UK Group members expressed reservations on the principles contained under this section.

<sup>12</sup> Text of Art. 11 (2).

<sup>13</sup> The Belgium Group Member suggested to include the right to organise to the list.

The Portuguese Group Member suggested to delete the text between square brackets.

<sup>14</sup> PACE Recommendation 1572 (2002) on the right of association for members of the professional staff of the armed forces.

<sup>15</sup> CM notes it exists in many member states in its reply to PACE Recommendation 1572 (2002) on the right of association for members of the professional staff of the armed forces. Article 11 CEDH, Articles 5 and 6 of the European Social Charter.

<sup>16</sup> Political parties are covered by Article 11 ECHR, *United Communist Party of Turkey and Others v. Turkey*, judgment of 11 January 1998, paras. 24-25.

<sup>17</sup> CM reply to PACE Recommendation 1572 (2002) on the right of association for members of the professional staff of the armed forces.

<sup>18</sup> The Portuguese Group Member expressed reservations on this principle.

<sup>19</sup> Article 22 European Social Charter (revised).

<sup>20</sup> Article 28 European Social Charter (revised).



**Members of the armed forces have the right to marry and found a family without any kind of special authorisation.<sup>21</sup>**

[71] Members of the armed forces should have the right to marry and to form civil partnerships where the latter can be formed by civilians.

[The Group decided to examine at its next meeting whether the two following sections should be kept in the Recommendation:

***[Members of the armed forces enjoy the right of property.<sup>22</sup>***

*[\*] Any possessions of a conscript confiscated upon joining the armed forces should be returned at the end of that person's military service.*

***[Children of members of the armed forces should have access to an educational system.<sup>23</sup>***

**Members of the armed forces enjoy the right to vote and to stand for election.<sup>24</sup>**

[72] Any restrictions on the electoral rights of members of the armed forces which are no longer necessary and proportionate in pursuit of a legitimate aim should be removed.<sup>25</sup> However, Member States may impose restrictions on membership of the armed forces during a member's candidacy or following election.

**Members of the armed forces should be provided with accommodation of an adequate standard.<sup>26</sup>**

[73] The accommodation provided for members of the armed forces [and their family]<sup>27</sup>, and in particular sleeping accommodation, should as far as possible allow some privacy, as well as meet basic requirements of health and hygiene.

**Members of the armed forces have the right to receive fair remuneration and retirement pension.<sup>28</sup>**

<sup>21</sup> Article 12 ECHR

<sup>22</sup> Article 1 Protocol No. 1 ECHR

<sup>23</sup> Article 2 Protocol No. 1 ECHR

<sup>24</sup> Article 3 Protocol No. 1. Principle of equality of treatment of all citizens in the exercise of their right to vote and their right to stand for election in *Mathieu-Mohin and Cleyfayt v. Belgium*, judgment of 2 March 1987, para. 54.

<sup>25</sup> Reply of the Committee of Ministers to PACE Recommendation 1714 (2005) on abolition of restrictions on the right to vote. See also the Venice Commission's Code of Good Practice in Electoral Matters, 3.2.2.2. Military voting

<sup>26</sup> Art. 31 (1) European Social Charter (revised). See notably collective complaints No. 15/2003, European Roma Rights Center (ERRC) v. Greece (decision of 8 December 2004), No. 27/2004 European Roma Rights Center (ERRC) v. Italy (and 31/2005, European Roma Rights Center (ERRC) v. Greece, Italy and Bulgaria, and 18 October 2006, European Committee of Social Rights.

The Danish Group member expressed reservations concerning references to the Revised Social Charter.

<sup>27</sup> The Portuguese Group member suggested not to keep the text between square brackets.

<sup>28</sup> Articles 4, 12 and 23 European Social Charter

[74] All members of the armed forces should receive just and adequate remuneration for their work, which should be paid on time.

[75] Men and women in the armed forces should be entitled to equal pay for equal work or work of equal value. Equal pay shall mean that the same pay scales are applied.

[76] Full time professional members of the armed forces should be entitled to an adequate retirement pension, which should be paid on time, without any discrimination.

**Members of the armed forces enjoy the right to dignity, health protection, and security at work.**<sup>29</sup>

[77] Members of the armed forces should [have the right to the protection of their dignity at work and] not be subjected to sexual harassment or sexual violence.<sup>30</sup>

[78] Members of the armed forces should be entitled to paid leave [,time for rest and free time.]

[79] Military training and planning of operations should include, as far as possible, periods of rest [or free time]<sup>31</sup>. [add under Article 9 ECHR: Military authorities should take into consideration religious practices of members of the armed forces while granting them time of rest.]

[80] Members of the armed forces should as far as possible not be exposed to epidemic, endemic or other diseases.<sup>32</sup>

[81] Member states should take appropriate measures to prevent accidents and injury to health arising out of, linked with or occurring in the course of members of the armed forces' work, particularly by minimising the causes of hazard inherent in the military working environment.<sup>33</sup>

[82] Members of the armed forces should enjoy access to preventive health care and the right to benefit from medical treatment.

[83] Adequate medical care should be provided to members of the armed forces during military operations.

[84] Where members of the armed forces are injured in service, adequate health care and, where appropriate, allowances should be provided to those members. Members of their families should, where appropriate, also receive adequate allowances. Where members of the armed forces are killed or die in service, adequate allowances should be provided to members of their families.<sup>34</sup>

[to be possibly moved to a section dealing with families of the members of the armed forces] [\*] The families of members of the armed forces should also have access to health and social services.<sup>35</sup>

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<sup>29</sup> Articles 2 and 3 of the European Social Charter and 26 of the Revised Charter. See, for example, collective complaint n°30, *Marangopoulos Foundation for Human Rights v. Greece*, decision of 6 December 2006, European Committee of Social Rights. Article 11 of the European Social Charter

<sup>30</sup> Article 26 of the Revised European Social Charter

The Portuguese Group Member suggested to include the text indicated between square brackets.

<sup>31</sup> The Portuguese Group Member suggested to delete the text between square brackets.

<sup>32</sup> Article 11 of the European Social Charter

<sup>33</sup> Article 3(1) of the European Social Charter

<sup>34</sup> The French Group Members suggested to make a separate paragraph of the last sentence of the current paragraph concerning members of the armed forces who die or are killed in service.

<sup>35</sup> Article 16 European Social Charter

[85] Members of the armed forces leaving the armed forces should be provided with appropriate benefit packages and rehabilitation programmes.

[86] An appropriate compensation scheme should be available to persons leaving the armed forces who have been injured or become ill as a result of service.

**Members of the armed forces have the right to decent and sufficient nutrition.<sup>36</sup>**

[87] Members of the armed forces should be provided with an adequate diet that takes into account their age, health, religion, culture and the nature of their work.

[88] Clean drinking water should be available to members of the armed forces at all times.<sup>37</sup>

**There shall be no discrimination in the armed forces based on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth[, disability, age], sexual orientation or other status. [Members of the armed forces enjoy the aforementioned rights and freedoms without discrimination] [There shall be no discrimination in the armed forces]<sup>38</sup>**

[89] Members of the armed forces should have the right to bring allegations of discrimination in relation to their Convention and Social Charter rights before a national authority.

[90] Members of the armed forces should not be discriminated against on grounds of their gender or sexual orientation, especially where career perspectives are concerned.<sup>39</sup>

[91] Access to the armed forces should not be barred on the ground of sexual orientation.<sup>40</sup>

[92] Members of the armed forces belonging to a sexual minority and their partners should be entitled to the same benefits as other members of the armed forces and their partners, where their partnerships are recognised by national law.

## **OTHER ISSUES**

**Special attention should be given to the protection of the rights of persons under the age of 18 enlisted<sup>41</sup> in the armed forces.**

*[Amnesty International proposal: States must ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.<sup>42</sup>*

*- States should avoid voluntary recruitment of persons under the age of 18 into the armed forces. - States that permit voluntary recruitment into their national armed forces under the age of 18 years should give*

<sup>36</sup> Article 11 International Covenant on Economic, Social and Cultural Rights.

<sup>37</sup> Rights derived from Articles 11 and 12 combined, International Covenant on economic, social and cultural rights.

<sup>38</sup> Article 14 ECHR, Article E European Social Charter (revised), Protocol No. 12 ECHR.

<sup>39</sup> ECJ Cases C-273/97 Sirdar [1999] and C-285/98 Kreil [2000], and European Social Charter (revised) Art. 20(d).

<sup>40</sup> *Lustig-Prean and Beckett v. UK, Smith and Grady v. UK, Perkins and R. v. UK*, etc.

<sup>41</sup> The Belgian Group Member proposed to delete the word "enlisted".

<sup>42</sup> Article 2 of the Optional Protocol to the Convention on the Rights of the Child on involvement of children in armed conflict.

priority to recruitment of those who are oldest<sup>43</sup> and must maintain safeguards to ensure, as a minimum, that:

- (a) Such recruitment is genuinely voluntary;
- (b) Such recruitment is carried out with the informed consent of the person's parents or legal guardians;
- (c) Such persons and their parents or guardians are fully informed of the duties involved in such military service;
- (d) Such persons provide reliable proof of age prior to acceptance into national military service.<sup>44</sup>]

[93] Persons under the age of 18 within the armed forces should have the right to such protection and care as is necessary for their well-being and may make representations about their welfare<sup>45</sup>, including the conditions of their employment or military service.

[94] Every person under the age of 18 within the armed forces should have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.<sup>46</sup>

[95] Persons under the age of 18 within the armed forces should not take part in combat situations.

**Members of the armed forces have the right to receive training on their human rights**

[96] Members of the armed forces should receive training to heighten their awareness of human rights, including their own human rights.

[97] During training, military members of the armed forces should have the right to be informed that they have a duty to object to a manifestly unlawful order amounting to a war crime, a crime against humanity, genocide or torture.

**Members of the armed forces should have the possibility of [lodging a complaint with] an independent body, notably in respect of harassment or bullying.**

[98] Members of the armed forces should have the possibility of lodging complaints with an independent body in respect of their human rights.[ It should operate without prejudice to the exercise of the right of the individual to a judicial remedy, where appropriate<sup>47</sup>].

[99] Members of the armed forces who claim to have been victims of harassment or bullying should have access to an independent complaint mechanism.

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<sup>43</sup> Article 38(3) of the Convention on the Rights of the Child

<sup>44</sup> Article 3(3) of the Optional Protocol to the Convention on the Rights of the Child on involvement of children in armed conflict.

<sup>45</sup> Article 7(10) European Social Charter. The Belgian Group Member suggested to replace “make representations” by “express opinions”.

<sup>46</sup> Article 24 para. 3 The rights of the child, EU Charter of Fundamental Rights, Article 8 ECHR.

<sup>47</sup> The French Group Members suggested to delete “where appropriate”.

Appendix IV**Possible options of follow-up to recommendations**

Just as international treaties, recommendations may be subject to reporting procedures. The Statute of the Council of Europe explicitly provides that the Committee of Ministers may ask member governments “to inform it of the action taken by them” with regard to recommendations (article 15 (b) of the Statute). In 1987, the Committee of Ministers adopted a message to all intergovernmental committees (steering committees and committees of experts), urging them to improve their monitoring of the implementation of recommendations and resolutions (message adopted at the 405<sup>th</sup> meeting of Ministers’ Deputies on 20 March 1987). This monitoring usually takes place during the ordinary committee meetings

Occasionally, special conferences have been convened for particularly important recommendations. In view of alarming reports on the scale of child abuse and trafficking all over Europe, a special conference was convened in Strasbourg in 1998, as a follow-up to the 1996 World Congress against Commercial Sexual Exploitation of Children, in order to take stock of measures taken at national level to implement Recommendation (91) 11 concerning sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults.

Follow-up by governments has sometimes been explicitly mentioned by the Committee of Ministers in the original text:

- For example, in Recommendation Rec(2002)5 on the protection of women against violence, the Committee of Ministers recommends that governments “inform the Council of Europe on the follow-up given at national level to the provisions of this recommendation”.
- A similar measure was recommended in Recommendation Rec(2003)3 on balanced participation of women and men in political and public decision making, in which governments are called upon to “monitor and evaluate progress in achieving balanced participation of women and men in political and public life, and report regularly to the Committee of Ministers on the measures taken and progress made in this field.”

It may also be considered that the Committee of Ministers invites the Council of Europe Commissioner for Human Rights to pay special attention to the issue of members of the armed forces’ human rights during his country visits.

Finally, taking into account the specific scope of the recommendation dealing with human rights in the armed forces, another idea would be to have a European Ombudsperson, possibly elected among the existing national ombudspersons, who would organise exchange of information and experiences among national ombudspersons or equivalent institutions.

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