



Strasbourg, 10 June 2009

DH-DEV-FA(2009)005final

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

Meeting Report

5th meeting
Wednesday 13 May – Friday 15 May 2009

Room G05, Agora Building
Strasbourg

Item 1: Opening of the meeting, election of the Chair and adoption of the agenda

1. The DH-DEV Group on Human Rights of Members of the Armed Forces (DH-DEV-FA) held its 5th meeting in Strasbourg on 13-15 May 2009. Mr Daniele CANGEMI, Head of the Human Rights Law and Policy Division (Directorate General of Human Rights and Legal Affairs, DG-HL) made an opening statement to welcome all participants. The Committee elected Ms Sonja SCHITTENHELM (Austria) as Chairperson. 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: Draft recommendation of the Committee of Ministers on human rights of members of the armed forces

2. The Group revised the proposed text of the draft recommendation, as it appeared in document DH-DH-FA(2009)001, taking into account guidance given by the CDDH and the DH-DEV and written comments that had been made by several delegations. Most of the Secretariat's suggestions for moving parts of the text to the explanatory memorandum were accepted.

3. Concerning the scope of the recommendation, delegations agreed to remove the word "normal" from the phrase "work and service life" in paragraph 1 of the appendix to the recommendation. However, it was requested that a paragraph be added to the explanatory memorandum clearly defining the scope of the recommendation as applying to the ordinary service life of members of the armed forces, but recalling that in times of armed conflict international humanitarian law and international human rights law are complementary.

4. As regards the territorial application of the recommendation, it was decided that this should cover the state's own territory, but could also extend to operations abroad where that state exercised sufficient authority and control over its armed forces. It was suggested this be clarified in the explanatory memorandum with a reference to Article 1 of the Convention in the light of the case-law of the Court, although it was pointed out that the case-law referred mainly to action by members of the armed forces against civilians, rather than to action carried out by military authorities against their servicepersons, or by members of the armed forces against their fellow members.

5. The use of the words "should" and "shall" in the recommendation was also considered. Some members thought that as this was a recommendation, the word "should" should be used throughout. Others considered that, as was the case for Committee of Ministers guidelines, "shall" should be used where a principle referred to a right guaranteed in the European Convention on Human Rights. After some discussion, it was decided to use the word "shall" in the headings in boxes which were taken directly from articles of the Convention, with the word "should" appearing in the individual, more specific, principles under these headings. The use of "shall" was also considered to be appropriate for paragraphs 2 and 4 of the general principles.

6. Despite the wish expressed by a number of delegations for reference to be made to national legislation regarding certain principles of the recommendation, it was decided not to refer to this anywhere in the text, as the aim of the recommendation was to improve the human rights situation for members of the armed forces and, in any case, it would not be legally binding on states.

7. The Group finalised the revision of the draft recommendation, requesting that certain principles be explained more fully in the explanatory memorandum. The revised draft can be found in Appendix III.

8. The Group also began its examination of the explanatory memorandum, making concrete drafting suggestions. Owing to lack of time, revision of the entire text could not be completed. Delegations were invited to send their comments on the remainder of the text to the Secretariat (claire.askin@coe.int) by 30 June 2009, with a view to its possible finalisation by written procedure.

9. The Chair warmly thanked all members of the Group, including NGOs, for their constructive approach to the revision of the recommendation.

Item 3: Other business

10. The Group decided that should a further meeting be necessary to finalise the explanatory memorandum, it should take place preferably before the next meeting of the DH-DEV, in order to transmit the texts of both the draft recommendation and the explanatory memorandum to the Committee. This would, however, involve the rescheduling of both meetings. The Secretariat agreed to explore the feasibility of this solution, in agreement with the Chairperson of the DH-DEV.

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Appendix I

LIST OF PARTICIPANTS

MEMBERS / MEMBRES

AUSTRIA / AUTRICHE

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

BELGIUM / BELGIQUE

Mme Linda SCHWEIGER, Legal Adviser, Department Legal Support and Mediation, Ministry of Defence, EVERE

DENMARK / DANEMARK

Mr Jes Rynkebye KNUDSEN, Special Adviser, Judge Advocate Corps, Copenhagen Ø

FINLAND / FINLANDE

Ms Satu KASKINEN, Legal Officer, Unit for Human Rights Courts and Conventions, Ministry for Foreign Affairs

FRANCE

Mme Dorothée MERRI, Chargée d'études, Ministère de la Défense, Direction des Affaires juridiques, Sous-Direction du Droit International et du Droit Européen, Bureau du Droit Européen

Mlle Emilie PADELLEC, Officier rédacteur, Etat-major des armées, Division organisation et ressources humaines, Section juridique militaire

M. Renaud PERIN DUREAU, Chargé d'études, Direction des ressources humaines du ministère de la défense, Sous direction de la fonction militaire, Bureau des statuts

HUNGARY / HONGRIE

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

LATVIA / LETTONIE

Mr Emils PĻAKSINS, Lawyer of the Office of the Government Agent of the Republic of Latvia, Ministry of Foreign Affairs, RIGA

POLAND / POLOGNE

Ms Barbara KOPYDŁOWSKA, II Secretary, Office of the Agent for proceedings before international human rights protection bodies, Ministry of Foreign Affairs, WARSAW

PORTUGAL – apologised/excusé

RUSSIAN FEDERATION / FÉDÉRATION DE RUSSIE

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

SLOVAKIA / SLOVAQUIE

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

TURKEY / TURQUIE

Mr Orhan ÖNDER, Judge Colonel, Genel Kurmay Başkanlığı Adli Müşavirliği, Legal Adviser's Department, ANKARA

UNITED KINGDOM / ROYAUME-UNI

Mr John EVANS, Head of General Law Division, Ministry of Defense, Central Legal Services, LONDON

Mr Antony SALT, Ministry of Defense, Armed Forces Diversity Team, SP Pol SCW, LONDON

AUTRES PARTICIPANTS ET OBSERVATEURS

Holy See / Saint-Siège

Rév. Frère Olivier POQUILLON, Expert, Mission permanente du Saint-Siège, STRASBOURG

Amnesty International

Mr Tomaso FALCHETTA

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

Ms Elizabeta KITANOVIC, Executive Secretary for Human Rights and Communication Church and Society Commission of CEC, BRUXELLES

European Organisation of Military Associations (EUROMIL)

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

Mr Douglas YOUNG (UK), Organisation: British Armed Forces Federation (BAFF), Chairman, MELKSHAM, Wiltshire, United Kingdom (apologised/excusé)

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, Allemagne (apologised/excusé)

International Commission of Jurists (ICJ) / Commission internationale de juristes (CIJ)

Ms Róisín PILLAY

Senior Legal Adviser, Europe Programme, International Commission of Jurists, Geneva, Switzerland

OSCE Office for Democratic Institutions and Human Rights (ODIHR) / Bureau de l'OSCE des institutions démocratiques et des droits de l'homme (BIDDH)

Apologised /Excusé

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SECRETARIAT

Directorate General of Human Rights and Legal Affairs

Direction générale des droits de l'Homme et des affaires juridiques

Council of Europe/Conseil de l'Europe, F-67075 STRASBOURG CEDEX

Mr Daniele CANGEMI, Head of Human Rights Law and Policy Division / Chef de la Division du droit et de la politique des droits de l'Homme, Secretary of the DH-DEV-FA / Secrétaire du DH-DEV-FA

Ms Claire ASKIN, Administrative assistant, Human Rights Law and Policy Division / Assistante administrative, Division du droit et de la politique des droits de l'Homme, Co-secretary of the DH-DEV-FA / Co-secrétaire du DH-DEV-FA

Mme Stéphanie BUREL, Programme Officer / Officier de programmes, Human Rights Law and Policy Division / Division du droit et de la politique des droits de l'Homme

DH-DEV-FA(2009)005final

Ms Caroline MOSLER, Trainee / Stagiaire

Mme Frédérique BONIFAIX, Assistant / Assistante, Human Rights Law and Policy Division / Division du droit et de la politique des droits de l'Homme

Mme Michèle COGNARD, Assistant / Assistante, Human Rights Intergovernmental Cooperation Division / Division de la coopération intergouvernementale en matière de droits de l'Homme

Interpreters / Interprètes:

Mme Julia TANNER

M. Philippe QUAINÉ

M. William VALK

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Appendix II**Agenda****Item 1: Opening of the meeting, election of the Chair 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

- Revised draft principles for the future recommendation as proposed by the Secretariat DH-DEV-FA(2009)001
- Revised draft principles for the future recommendation showing comments made by several delegations and explanations for the Secretariat's proposals for shortening the text DH-DEV-FA(2009)002
- Revised comments of the UK on the revised draft principles for a Recommendation of the Committee of Ministers to member states on human rights of members of the armed forces DH-DEV-FA Misc 003rev
- Comments of the Russian Federation on the revised draft principles for a Recommendation of the Committee of Ministers to member states on human rights of members of the armed forces DH-DEV-FA Misc 004
- Comments of the Turkish Government on the revised draft principles for a Recommendation of the Committee of Ministers to member states on human rights of members of the armed forces DH-DEV-FA Misc 005
- Comments of the Republic of Moldova on the revised draft principles for a Recommendation of the Committee of Ministers to member states on human rights of members of the armed forces DH-DEV-FA Misc 006
- Position of the German Government on the "Revised draft principles for a Recommendation of the Committee of Ministers to member states on human rights of members of the armed forces" (DH-DEV-FA(2008)005, Appendix III) and on the "Draft explanatory memorandum for a CM recommendation on human rights of members of the armed forces" (DH-DEV-FA(2008)006) DH-DEV-FA Misc 007
- Finland's Comments on the revised draft principles for a Recommendation of the Committee of Ministers to Member States on the human rights of members of the armed forces DH-DEV-FA Misc 008
- Comments of France on the revised draft principles for a Recommendation of the Committee of Ministers to member states on human rights of members of the armed forces (French only) DH-DEV-FA Misc 009
- Norwegian observations on the comments of the UK, the Russian Federation, the Turkish Government and EUROMIL on the revised draft principles for a Recommendation of the Committee of Ministers DH-DEV-FA Misc 010

to member states on human rights of members of the armed forces

- International Commission of Jurists and Amnesty International
Comments on Revised Draft Principles for a Recommendation of the
Committee of Ministers to Member States on human rights of
Members of the Armed Forces DH-DEV-FA Misc 011
- Comments from the European Bureau for Conscientious Objection
(EBCO) on the revised draft principles for a Recommendation of the
Committee of Ministers to member states on human rights of
members of the armed forces DH-DEV-FA Misc 012
- EUROMIL position - 67th Meeting of the CDDH / Agenda point 4.7.
Human Rights for Members of the Armed Forces, 27 November 2008
- Revised draft explanatory memorandum for a CM recommendation
on human rights of members of the armed forces DH-DEV-FA(2009)003
- Report of the 4th meeting of the Group (15-17 October 2008) DH-DEV-FA(2008)005
- Report of the 38th meeting of the DH-DEV (11-13 March 2009) DH-DEV(2009)002final
- Report of the 67th meeting of the CDDH (25-28 November 2008) CDDH(2008)014
- Report of the 68th meeting of the CDDH (24-27 March 2009) CDDH(2009)007final

Item 3: Other business

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Appendix III

**Draft Recommendation of the Committee of Ministers
to member states on human rights of members of the armed forces**

[Preamble]

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

[2] 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;

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

[4] Taking into consideration the relevant United Nations instruments, in particular the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the observations and decisions of the monitoring bodies established under the aforementioned instruments;

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

[6] Having regard to the relevant OSCE commitments and Handbook on human rights and fundamental freedoms of armed forces personnel, published by the OSCE/ODIHR and the Centre for the Democratic Control of Armed Forces (DCAF) in 2008;

[Operative part]

[7] 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 among competent civil and military authorities and members of the armed forces, with a view to raising awareness of the human rights and fundamental freedoms of members of the armed forces, and to providing training aimed at increasing their knowledge of human rights;

3. examine within the Committee of Ministers the implementation of this recommendation two years after its adoption.

Appendix to Recommendation [...]

[1] This recommendation concerns the enjoyment of human rights and fundamental freedoms by members of the armed forces in the context of their work and service life.

General Principles

[2] Whilst taking into account the special characteristics of military life, members of the armed forces, whatever their status, shall enjoy the rights guaranteed in the Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter, the Convention) and the European Social Charter (hereafter, the Charter), as well as other relevant human rights instruments, to the extent that states are bound by them.

[3] According to Article 15 of the Convention and Article F of the Charter, in time of war or other public emergency threatening the life of the nation, states may derogate from their obligations under the Convention and the Charter to the extent strictly required by the exigencies of the situation and provided that such measures are not inconsistent with their other obligations under international law.

[4] Derogations under Article 15 of the Convention shall not be permitted in relation to the following rights: the right to life, except in respect of deaths resulting from lawful acts of war, the prohibition of torture and inhuman or degrading treatment or punishment, the prohibition of slavery and servitude, the principle that no punishment can be inflicted without a law, and the right not to be tried or punished twice.

[5] The following rights and freedoms should be respected and implemented in accordance with the accompanying principles:

Members of the armed forces have the right to life

[6] Members of the armed forces should not be exposed to situations where their lives would be avoidably put at risk without a clear and legitimate military purpose.

[7] The responsibility of the military authorities in case of the death of a member of the armed forces should be engaged if they had or ought to have known of a real and immediate risk to a member or in circumstances where they disregarded the threat to life.

[8] An independent and effective inquiry should be held into any suspicious death or alleged violation of the right to life of a member of the armed forces.

[9] Member states should take measures to encourage the reporting of acts which are inconsistent with the right to life of members of the armed forces. They should also put in place a legal or administrative framework to prevent retaliation against those who have reported allegations in breach of Article 2 of the Convention affecting a member of the armed forces.

[10] Members of the armed forces should never be sentenced to death or executed.

No member of the armed forces shall be subjected to torture or to inhuman or degrading treatment or punishment

[11] States should take measures to protect members of the armed forces from being subjected to torture or inhuman or degrading treatment or punishment. Particular attention should be given to more vulnerable categories such as, for example, conscripts and minorities.

[12] Where members of the armed forces raise an arguable claim that they have suffered treatment in breach of Article 3 of the Convention, or when the authorities have reasonable grounds to suspect that such treatment has occurred, there should promptly be an independent and effective official investigation.

[13] Member states should take measures to encourage the reporting of acts of torture or ill-treatment within the armed forces. They should also put in place a legal or administrative framework to prevent retaliation against members of the armed forces having complained of or reported torture or ill-treatment.

[14] Members of the armed forces, notably when deprived of their liberty should be treated with humanity and with respect for the inherent dignity of the human person.

Members of the armed forces shall not be used for forced or compulsory labour
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[15] Military service or service exacted instead of compulsory military service should not be considered as constituting forced or compulsory labour. The nature and duration of service exacted instead of compulsory military service should not be punitive, disproportionate or unreasonable compared to that of military service.

[16] Members of the armed forces should not be used to perform tasks incompatible with their assignment to the national defence service, with the exception of emergency and civil assistance carried out in accordance with the law.

[17] The authorities should not impose on professional members of the armed forces a length of service which would constitute an unreasonable restriction on their right to leave the armed forces such as to amount to forced labour.

Military discipline should be characterised by fairness and procedural guarantees should be secured
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[18] Each member state should be competent to organise its own system of military discipline and enjoys a certain margin of appreciation in the matter. However, only conduct likely to constitute a threat to military discipline, good order, safety or security may be defined as a disciplinary offence. The severity of any punishment should be proportionate to the offence.

[19] Collective punishment should be prohibited.

[20] The acts or omissions by members of the armed forces which constitute disciplinary offences, the procedures to be followed at disciplinary hearings, the types and duration of punishment that may be imposed, the authority competent to impose such punishment and any right of appeal should be provided for in law.

[21] Any allegation of infringement of the disciplinary rules by a member of the armed forces should be reported promptly to the competent authority, which should investigate it without undue delay.

[22] Members of the armed forces charged with disciplinary offences should be informed promptly, in detail, of the nature of the accusations against them. Where Article 6 applies, they should have the right to a fair hearing. They should also be given the opportunity to appeal to a higher and independent body.

Members of the armed forces enjoy the right to liberty and security

[23] No member of the armed forces should be deprived of his or her liberty except in cases provided for under Article 5(1) of the Convention, and in accordance with a procedure prescribed by law.

[24] For as long as recruitment of persons under the age of 18 into military service continues, these persons should be detained only as a measure of last resort and for the shortest possible appropriate period of time. Furthermore, if detained, they should be held separately from adults, unless it is in the individual's best interest.

[25] Members of the armed forces who are arrested or detained should be informed promptly of:

- the reasons for their arrest or detention;
- any charge against them;
- their procedural rights.

[26] When members of the armed forces are arrested or detained in relation to a criminal offence, they should be brought promptly before a judge or other officer authorised by law to exercise judicial power and be entitled to trial within reasonable time or to release pending trial.

[27] Members of the armed forces who are deprived of their liberty should be entitled to take proceedings by which the lawfulness of the detention should be decided speedily by a court and their release ordered if the detention is not lawful.

[28] Any disciplinary penalty or measure which amounts to deprivation of liberty within the meaning of Article 5(1) of the Convention should comply with the requirements of this provision.

Members of the armed forces enjoy the right to a fair trial

In criminal matters

[29] The guarantees of a fair trial should apply to all proceedings that qualify as criminal under the Convention on account of the nature of the offence and the seriousness of the potential penalty as well as its purpose, be they qualified as disciplinary or criminal in national law.

[30] In order to safeguard the independence and impartiality of judicial authorities acting in criminal proceedings, there should be a clear separation between the prosecuting authorities and those handing down the court decision.

[31] In accordance with the principle of adversarial proceedings and equality of arms between the parties, members of the armed forces charged with a criminal offence should be given full access, to the same extent as criminal proceedings against civilians, to the criminal case file and have the right to present their defence.

[32] Members of the armed forces who are found guilty of an offence should to the same extent as in criminal proceedings against civilians be able to appeal to a competent and independent higher authority which ultimately should be an independent and impartial tribunal that fully complies with Article 6 requirements.

In civil and other matters

[33] Any exclusion of the right to have access to a tribunal for the determination of members of the armed forces' civil rights and obligations should be expressly provided for by law and should also be justified on objective grounds in the public interest.

Competence of military courts and procedural safeguards

[34] The organisation and operation of military courts, where they exist, should fully ensure the right of everyone to a competent, independent and impartial tribunal at every stage of legal proceedings.

[35] Members of the armed forces should have the right to a public hearing. The holding of sessions in camera should be exceptional and be authorised by a specific, well-grounded decision the lawfulness of which is subject to review.

[36] When members of the armed forces can be brought before a military or ordinary court, where there is a civilian element in any offence, priority should be given to the ordinary court except when it is not compliant with the Convention.

Members of the armed forces have the right to respect for their private and family life, their home and correspondence. Any interference by a public authority with the exercise of this right shall comply with the requirements of Article 8(2) of the European Convention on Human Rights

[37] Where states rely on national security in order to impose restrictions on the right to respect for private and family life, they should only do so where there is a real threat to the armed forces.

[38] Members of the armed forces should not be subjected to investigations into the most intimate aspects of their private life.

[39] Conscripts should as far as possible be posted near their family and home. Postings of professional members of the armed forces far from those close to them and their homes should not be imposed as disciplinary punishment but only for operational reasons.

[40] Where members of the armed forces are posted abroad, they should as far as possible be able to maintain private contacts and reasonable means should be provided to this end. Where those close to them accompany the members of the armed forces who are posted abroad, assistance programmes targeted at them should be organised before, during and after deployment.

[41] Members of the armed forces who are parents of young children should enjoy maternity or paternity leave, appropriate child care benefits, access to nursery schools and to an adequate children's health and educational system.

Members of the armed forces have the right to freedom of thought, conscience and religion. Any limitations on this right shall comply with the requirements of Article 9(2) of the European Convention on Human Rights

[42] Members of the armed forces have the right to freedom of thought, conscience and religion. Specific limitations may be placed on the exercise of this right within the constraints of military life. Any restriction should however comply with the requirements of Article 9(2) of the Convention. There should be no discrimination between members of the armed forces on the basis of their religion or belief.

[43] Members of the armed forces have the right to change religion or belief at any time during service.

[44] For the purposes of compulsory military service, conscripts should have the right to be granted conscientious objector status and an alternative service of a civilian nature should be proposed to them.

[45] Professional members of the armed forces should be able to leave the armed forces for reasons of conscience.

[46] A request by a member of the armed forces to leave the armed forces for reasons of conscience should be examined within a reasonable time. Pending the examination of their request they should be transferred to non combat duties, where possible.

[47] Any request to leave the armed forces for reasons of conscience should ultimately, where denied, be examined by an independent and impartial body.

[48] Members of the armed forces having left the armed forces for reasons of conscience should not be subject to discrimination or to any criminal prosecution. No discrimination or prosecution should result from asking to leave the armed forces for reasons of conscience.

[49] Members of the armed forces should be informed of the rights mentioned in paragraphs 43 to 48 above and the procedures available to exercise them.

Members of the armed forces have the right to freedom of expression. Any restrictions on the exercise of this freedom shall comply with the requirements of Article 10(2) of the European Convention on Human Rights

[50] 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.

[51] Any restrictions on freedom of expression which are imposed where there is a real threat to military discipline, given that the proper functioning of the armed forces is not possible without legal rules designed to prevent members of the armed forces from undermining it, should respect the above requirements. These restrictions may concern, for example, how military duties are performed or whether the political impartiality of the armed forces is affected.

[52] States should not seek to frustrate the expression of opinions of members of the armed forces, including those that are unpopular or disturbing, or those that are directed against the armed forces as an institution.

Members of the armed forces have the right to have access to relevant information

[53] 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.

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

[55] Current and, where applicable, former members of the armed forces should have access to information where they are, or have been, exposed during service to situations potentially hazardous to their health.

[56] Access to information, may however be restricted if the documents requested are objectively considered to be classified, or if the restrictions aim to protect national security, defence or international relations. Such restrictions should be duly justified.

Members of the armed forces have the right to freedom of peaceful assembly and to freedom of association with others. Any restrictions placed on the exercise of this right shall comply with the requirements of Article 11(2) of the European Convention on Human Rights

[57] No restrictions should be placed on the exercise of these rights other than such as are prescribed by law and are 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.

[58] Members of the armed forces should have the right to join independent organisations representing their interests and have the right to organise and to bargain collectively. Where these rights are not granted, the continued justification for such restrictions should be reviewed and unnecessary and disproportionate restrictions on the right to assembly and association should be lifted.

[59] Military associations or trade unions, including conscripts' associations, where applicable, should be involved in determining conditions of service of members of the armed forces and representing their interests.

[60] No disciplinary action or any discriminatory measure should be taken against members of the armed forces merely because of their participation in the activities of military associations or trade unions.

[61] Members of the armed forces should have the right to join political parties, unless there are legitimate grounds for certain restrictions. Such political activities may be prohibited on legitimate grounds, in particular when a member of the armed forces is on active duty.

[62] Paragraphs 57 to 61 should not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Members of the armed forces enjoy the right to vote and to stand for election

[63] 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.

[64] Member States may impose restrictions on membership of the armed forces during a member's candidacy or following election.

Members of the armed forces have the right to marry

[65] Members of the armed forces should have the right to marry and to form civil partnerships in accordance with the rights of civilians.

All members of the armed forces enjoy the right of property

[66] The property of members of the armed forces, in particular conscripts, retained upon joining the armed forces should be returned at the end of military service.

Members of the armed forces should be provided with accommodation of an adequate standard

[67] Where accommodation is provided for members of the armed forces and their family, in particular sleeping accommodation, this should allow as far as possible some privacy, as well as meet basic requirements of health and hygiene.

Members of the armed forces should have the right to receive fair remuneration and retirement pension

[68] All members of the armed forces should receive remuneration such as will give them a decent standard of living. This remuneration should be paid on time.

[69] Men and women in the armed forces should be entitled to equal pay for equal work or work of equal value.

[70] 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 should have the right to dignity, health protection, and security at work

[71] Members of the armed forces should have the right to the protection of their dignity at work and to not be subjected to sexual harassment or sexual violence.

[72] Members of the armed forces should be entitled to paid holiday and periods of rest. Periods of rest should, as far as possible, also be included in military training and planning of operations.

[73] Where members of the armed forces are exposed to epidemic, endemic or other diseases, appropriate measures should be taken to protect their health.

[74] 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.

[75] Members of the armed forces should enjoy access to health care and the right to receive medical treatment.

[76] Medical care should be provided as quickly as possible to members of the armed forces during military operations.

[77] Where members of the armed forces are injured in service, adequate health care and, where appropriate, allowances should be provided to those members. There should also be a system of compensation and, where appropriate, allowances in case of death in service of members of the armed forces.

[78] 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.

[79] Members of the armed forces leaving the armed forces should be provided with appropriate benefit packages and programmes preparing them for civilian life.

Members of the armed forces should have the right to decent and sufficient nutrition

[80] 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.

[81] Clean drinking water should be available to members of the armed forces at all times.

Members of the armed forces enjoy rights and freedoms without any discrimination

[82] In the context of the work and service life of members of the armed forces there should be no discrimination in the armed forces in relation to their human rights and freedoms 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 or other status. The principle of non discrimination will not be violated if the distinction between individuals in analogous situations has an objective and reasonable justification by pursuing a legitimate aim, such as maintaining combat effectiveness, and employing means which are reasonably proportionate to the aim sought to be realised.

[83] Members of the armed forces should not be discriminated against, in particular, on grounds of their gender or sexual orientation, especially where career perspectives are concerned.

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

[85] Access to the armed forces should not be barred on the ground of sexual orientation.

OTHER ISSUES

Special attention should be given to the protection of the rights and freedoms of persons under the age of 18 enlisted in the armed forces

[86] States should ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces. Where member states recruit persons under the age of 18 they should maintain safeguards to ensure, as a minimum, that:

- Such recruitment is genuinely voluntary;
- Such recruitment is carried out with the informed consent of the person's parents or legal guardians;
- Such persons and their parents or guardians are fully informed of the duties involved in such military service;

- Such persons provide reliable proof of age prior to acceptance into national military service.

[87] 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, including the conditions of their employment or military service.

[88] 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 or legal guardian.

[89] Member States should take all feasible measures to ensure that members of the armed forces who have not attained the age of 18 years do not take part in combat situations.

Members of the armed forces should receive training on human rights

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

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

Members of the armed forces should have the possibility of lodging a complaint with an independent body in respect of their human rights

[92] 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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