

**PORTUGAL****Section I – Impact assessment**

I.1 Has an authority been assigned as responsible for the implementation of the Recommendation? If so, which? Yes  No

?

I.2 How would you assess the impact of the recommendation on the human rights of members of the armed forces in your country? Please explain your reply.

Fully satisfactory  Adequate  Insufficient  Absent

The Portuguese legislation in place prior to the signature of the Recommendation already covered most of these rights. Although most measures apply, up to this date, it's not possible to carry out an impact assessment.

I.3 Have specific measures for the promotion and protection of the human rights of members of armed forces been adopted after and pursuant to the adoption of the Recommendation? If so, please provide examples. Yes  No

Matters relating to human rights are nuclear throughout the training provided as part of the curriculum of most courses in military training.

I.4 Which obstacles, if any, have been encountered in the implementation of the Recommendation?

Not applicable

**Section II – Dissemination of the Recommendation**

II.1 Has an authority been assigned as responsible for the dissemination of the Recommendation? If so, which? Yes  No

II.2 Have specific events been organised to ensure the dissemination of the Recommendation? If so, please provide examples. Yes  No

II.3 Which obstacles, if any, have been encountered in the dissemination of the Recommendation?

Not applicable

II.4 To which authorities has the Recommendation been distributed?

The Ministries of Foreign Affairs, Defense, Justice and the General Staff of the Armed Forces, were part of a working group on human rights in the armed forces, which led to the drafting of the recommendation.

II.5 Has the Recommendation been distributed to members of the armed forces? Yes  No

- II.6 Has the Recommendation been translated ? Yes  No
- II.7 If not, is this foreseen? Yes  No
- II.8 How would you assess the visibility of the Recommendation?  
Fully satisfactory  Adequate  Insufficient  Absent

### Section III – Implementation of specific provisions

#### A - Right to life

A.1 Are there measures in place to ensure an independent and effective investigation into suspicious deaths or alleged violations of the right to life of a member of the armed forces? Yes  No

A.2 Are there measures in place to encourage reporting of acts inconsistent with the right to life and to protect those reporting such acts against retaliation? Yes  No

A.3 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is “NO”, please explain why such measures are not in place and whether any measure is in preparation.

The Portuguese legal system (law) already guarantees those measures on equal terms with civilians. The Constitution, the Penal Codes, the Military justice Code, rules of military discipline and Military Status of Armed Forces, are the legal documents that specify these rights and duties.

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

B.1 Are there measures in place to protect members of the armed forces from torture or other inhuman or degrading treatment or punishment? Yes  No

B.2 Are there specific measures in place for more vulnerable categories, such as conscripts? Yes  No

B.3 Are there measures in place to ensure an independent and effective investigation into alleged acts of torture or other ill-treatment, or when the authorities have reasonable grounds to suspect that such acts have occurred? Yes  No

B.4 Are there measures in place to encourage reporting of acts of torture or other ill-treatment and to protect those reporting such acts against retaliation? Yes  No

B.5 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is “NO”, please explain why such measures are not in place and whether any measure is in preparation.

The rules of military discipline (Orgânico Law n.º2/2009, of July 22<sup>th</sup>) contain the rights and duties of the military regarding these matters.

C – Forced or compulsory labour

C.1 Is military service compulsory? If so, please indicate whether it is possible to exact an alternative service instead of compulsory military service, and which are the differences in nature and duration of such service? Yes  No

D – Military Discipline

D.1 Is there a clear legal framework in place governing military discipline in accordance with paragraphs 19-21 of the Appendix to the Recommendation? If so, please indicate a reference to the relevant legal framework. If not, please explain why and whether any measure is in preparation. Yes  No

There are the Military justice Code (Law 100/2003, of November 15<sup>th</sup>) and the rules of military discipline (Orgânico Law n.º2/2009, of July 22<sup>nd</sup>). Since 2003, military courts work only in time of war, out of these situations special civil courts try military crimes.

E- Right to liberty and security

E.1 Is there a procedure prescribed by law dealing with the deprivation of liberty of members of the armed forces? Yes  No

E.2 Is it lawful to detain members of armed forces under the age of 18? Yes  No

E.2.1 If so, do detention conditions comply with the conditions set out in Paragraph 23 of the Appendix to the Recommendation? Yes  No

E.2.2 If the reply to question E.2.1 is “NO”, please explain why and whether any measure is in preparation.

E.3 Are there any limitations or exceptions to the guarantees set out in Paragraphs 24 to 27 of the Appendix to the Recommendation possible? If so, please specify. Yes  No

F- Right to a fair trial

F.1 In matters that qualify as criminal under the European Convention on Human Rights, do members of the armed forces enjoy procedural rights and safeguards to the same extent as in criminal proceedings against civilians, in accordance with Paragraphs 28, 30 and 31 of the Appendix to the Recommendation? If not, please explain why and whether any measure is in preparation in this area. Yes  No

F.2 Is there a clear legal framework setting out limitations or exclusions to the right to have access to a tribunal for the determination of members of the armed forces’ civil rights and obligations? If any, please provide examples of such limitations or exclusions. Yes  No

Not applicable
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F.3 Does your country have military courts? Yes  No

F.3.1 If so, are they separate from the chain of command? Yes  No

F.3.2 If the reply to question F.3 is "yes", are there differences in the organisation and operation of military courts, in comparison with civil courts, in particular as regards the procedural safeguards set out in Paragraphs 33 and 34 of the Appendix to the Recommendation? Yes  No

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

G.1 Are there measures in place to ensure that conscripts are posted near their family and home, and that posting of professional members far from their family and home is not used as a disciplinary punishment? Yes  No

G.2 Are there measures in place to ensure that members of the armed forces posted abroad are able to maintain private contacts? Yes  No

G.3 Are there assistance programmes in place for those accompanying the members of the armed forces posted abroad? Yes  No

G.4 Can members of the armed forces enjoy parental leave, childcare benefits, access to nursery schools and adequate children's health and educational systems? If not, please explain why and whether any measure is in preparation. Yes  No

G.5 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to respect for their private and family life, home and correspondence, in accordance with section "G" of the Appendix to the Recommendation.

<p>The Portuguese Armed Forces members have the same Constitutional protection and rights concerning their private and family life, home and correspondence, as normal citizens. The Armed Forces provide through their internet, national scope and internal documentation, and the information necessary for the effective enjoyment of parental leave and other matters concerning the legislation applicable to them.</p> <p>For instance the army provides means of communication to their military so that they are able to communicate with their relatives when they are on missions outside the national territory.</p> <p>Any correspondence sent to the address of any branch of the Armed Forces, is not open and delivered to the addressee only. Also medical confidentiality is respected for all the medical data of any military.</p>
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H – Freedom of thought, conscience and religion

H.1 Are there measures in place to allow all members of armed forces to comply, as much as possible, with their religious obligations? If so, please provide examples. If not, please explain why and whether any measure is in preparation. Yes  No

The law gives freedom of religion to armed forces members. Regardless of their confession the state guarantees religious assistance (Decree Law n.º 251/2009, of september 23<sup>rd</sup>).  
Each branch of the armed forces has a religious assistance service.

H.2 Do conscripts have the rights to be granted conscientious objector status? Yes  No

H.2.1 If so, is an alternative service of a civilian nature available? Yes  No

H.2.2 If not, please explain why and whether any measure is in preparation.

H.3 Are conscientious objectors exposed to sanctions, disciplinary measures or judicial prosecutions? Yes  No

H.4 Can professional members of the armed forces leave the armed forces for reasons of conscience? If so, please explain the conditions and the procedure, and in particular whether the requests can be reviewed by an independent and impartial authority. If not, please explain why and whether any measure is in preparation. Yes  No

There are no measures to be implemented.  
It should be noted that, according to current legislation, the military have the right to ask to leave the Armed Forces.

H.5 Are there measures in place to ensure that conscripts and members of the armed forces are informed, respectively, of the right to be granted conscientious objector status and to leave the armed forces for reasons of conscience and of the procedures available to exercise these rights? Yes  No

H.6 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to freedom of thought, conscience and religion, in accordance with section "H" of the Appendix to the Recommendation.

Nothing to report.

I – Freedom of expression

I.1 Is there a clear legal framework setting out formalities, conditions and restrictions to the right to freedom of expression for the members of armed forces? Yes  No

I.2 If so, please briefly present it, by providing in particular examples of restrictions to the right to freedom of expression.

The Portuguese Constitution establishes in its Article 270<sup>o</sup>, the possibility of restrictions to the right to freedom of expression, implemented in the National Defense Law.

The National Defense Law (Organic Law n.º 1-B/2009, of July 7<sup>th</sup>) concerning the freedom of speech states that the military, in active service, have the right to make public statements about any subject,

with the reservation status of their own military condition, provided they do not endanger cohesion and discipline of the armed forces, nor the politics, party and syndical exemption duty of their members.

The military in active service are subject to confidentiality duties regarding matters covered by judicial secrecy or privilege of State and by other classification systems, the facts about the military capacity, the equipment and operational measures that come to their knowledge in the exercise of their functions, as well as the elements contained in data centers and personnel records that cannot be disclosed.

*J – Right to access to relevant information*

J.1 Are there measures in place to ensure that full and detailed information about recruitment in the armed forces and commitments resulting therefrom are provided to potential recruits? Yes  No

J.2 Can former and current members of armed forces have access to their own personal data, including medical records and information regarding exposure to situations potentially hazardous to their health? Yes  No

J.3 If so, are there restrictions to this right of access? Please provide examples, if any. Yes  No

*K – Freedom of peaceful assembly and association*

K.1 Can members of the armed forces join lawfully established military associations or trade unions? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation. Yes  No

The military associations have the normal conditions of civil associations, with the restrictions contained in the provisions applicable to military, by their Status and the rules of military discipline. The National Defense Law (Organic Law n.º 1-B/2009, of July 7<sup>th</sup>), refers that the military in active service are entitled to form or join any associations regarding they do not have a political party or trade union nature. In Portugal the military form several professional associations. The organic Law n.º 3/2001, of august 29<sup>th</sup>, regulates the right of association of the military. The exercise of associative activities referred to this law cannot, in any way conflict with the duties and legally defined functions or compliance with service missions.

K.2 Can members of the armed forces join political parties? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation. Yes  No

The armed forces are at the service of the Portuguese people and are strictly non-partisan. The law states that the military in active service are strictly nonpartisan and cannot use their weapons, rank or their role to intervene in political, party or trade union, consisting it their exemption duty. The military on active duty may attend political party meetings and union legally summoned but cannot speak nor exercise any role in the preparation, organization, or conduct or execution of the decisions taken, and provided that in civilian clothes and do not bear any national or Armed Forces symbol.

L – Right to vote and to stand for election

L.1 Are there any restrictions on the electoral rights of members of the armed forces and on membership in the armed forces during a member's candidacy or term of office? If so, please provide examples. Yes  No

In wartime, the military in active service cannot contest elections to organs of sovereignty, self-government of the Autonomous Regions and local authorities, or the European Parliament. In peacetime, the military in active service can apply for the bodies referred by special license granted by the Chief of Staff of the branch to which they belong.

M- Right to marry

M.1 Do members of the armed forces enjoy the right to marry and to form civil partnership in the same terms as civilians? If not, please explain why and whether any measure is in preparation. Yes  No

N – Right to protection of property

N.1 Are there measures in place to ensure that the property of members of armed forces, including conscripts, if retained upon joining the armed forces, is returned at the end of military service? Yes  No

Not applicable

O – Accommodation

O.1 Are there measures in place to ensure adequate accommodation for members of armed forces and their families, both on the national territory and abroad? Yes  No

O.2 Where accommodation is provided in barracks, are there separate dormitories for women and men? Yes  No

P – Remuneration and pension

P.1 Do professional members of the armed forces receive remuneration giving them a decent standard of living and an adequate retirement pension? Yes  No

P.2 Are there measures in place to ensure that men and women in the armed forces are entitled to equal pay for equal work or work of equal value? If not, please explain why and whether any measure is in preparation. Yes  No

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

Q.1 Are there specific measures in place to protect the dignity at work of members of armed forces, in particular as regards the prevention of sexual harassment? If so, please indicate the relevant legal framework and provide examples. If not, please explain why and whether any measure is in preparation. Yes  No

This measure is included in the developing work of the Plan for Gender Equality in the Armed Forces. The issues to protect the dignity at work are governed by the general law, the sexual harassment

comes under Penal Code.

Q.2 Is medical care provided during and as a result of military operations free of charge for the servicepersons? Yes  No

Q.3 Are there allowances or compensation schemes available for members of the armed forces obliged to leave the armed forces because of an injury resulting from the exercise of military duties, or in case of death in service? Yes  No

Q.4 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to dignity, health protection and security at work, in accordance with section "Q" of the Appendix to the Recommendation.

The Armed Forces provide their military with mission vacations, specific payments in case of accident and death, in accordance with law requirements. The health care is provided by the Armed Forces Hospital.

They are also beneficiaries of their own health system (ADM), which gives access to affordable medicines and medical care in private hospitals, at lower prices.

R – Nutrition

R.1 Are there measures in place to ensure that members of the armed forces enjoy the right to decent and sufficient nutrition in accordance with section "R" of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices. Yes  No

The meals served at military canteens are planned by a dietitian.

S – Non-discrimination

S.1 Are there measures in place to ensure that members of armed forces enjoy their rights and freedoms without any discrimination, in accordance with section "S" of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices. Yes  No

S.2 Are there any limitations to the access of women to the armed forces, or to particular types of occupational activities within the armed forces? If so, please provide examples. Yes  No

S.3 Can sexual orientation constitute a ground to prevent access to the armed forces, or for discharge? Yes  No

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

T.1 Does your legislation allow the voluntary recruitment into the armed forces of persons under the age of 18? Yes  No

T.2 If so, are there measures in place to ensure the full information about the duties involved and the informed consent of these persons and Yes  No

of their parents or legal guardians?

Not applicable

T.3 Are there special measures in place to protect the physical and psychological welfare of these persons?

Yes  No

Not applicable

T.4 Can these persons take an active part in the hostilities?

Yes  No

Not applicable

#### U – Training

U.1 Are training activities aimed at increasing the knowledge of human rights by members of armed forces in place? If so, please indicate by whom are such training activities carried out.

Yes  No

Each Branch of the Armed Forces provides training in human rights, preparing its military for missions within this framework on the national territory, in humanitarian operations and military-technical cooperation missions.

U.1.1. If the reply to question U.1 is "YES":

U.1.1.1 Is international human rights law part of the training programme ?

Yes  No

U.1.1.2 Are the human rights of the members of armed forces themselves part of the training programme?

Yes  No

U.1.1.3 Are prevention of ill-treatment and discrimination part of the training programme?

Yes  No

U.1.1.4 Is international humanitarian law, including the duties mentioned in paragraph 84 of the Appendix to the Recommendation, part of the training programme?

Yes  No

U.1.2 If the reply to question U.1 is "NO", please explain why and whether any measure is in preparation.

#### V – Allegations of human rights violations

V.1 Are there measures in place to ensure that members of the armed forces have the right to bring allegations of human rights violations, in particular of discrimination, harassment and bullying, before an independent body? If so, please indicate to which authorities can such allegations be brought and which is the procedure. If not, please explain why and whether any measure is in preparation.

Yes  No

According article 34<sup>o</sup> to the National Defense Law, the military can complain to the "Provedor de justiça" any actions or omissions of public authorities responsible for the Armed Forces, resulting in violation of their rights, liberties and guarantees.

Also the crimes listed can be brought to normal justice.

There is no measure in preparation.

### **Section IV - Follow-up**

IV.1 Which measures would you recommend to ensure that the principles set out in the Recommendation and in its Appendix are complied with in national legislation and practice?

Nothing to report.

IV.2 Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

Nothing to report.

IV.3 Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

Nothing to report.