

SPAIN

Please find enclosed our authorities' responses to your survey on the human rights within the armed forces. **Our answers prompt the following remarks:**

1. In the absence of evidence on the follow-up (translation, dissemination, the designation of a responsible authority etc.) we chose not to answer questions in section one and two (impact, assessment, dissemination of the recommendation) rather than responding negatively.
2. We respond "N/A" (not applicable) if the question asked does not concern our armed forces. This is in particular the case about the issues involving conscripts or soldiers less than 18 years of age.

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 right to life is consecrated in the Spanish Constitution. Organic Law 11/1995 (27 Nov. 1995) abolished the death penalty in military criminal legislation even in times of war. Therefore, in Spain, the death penalty is not applicable in any case. Spanish Military Penal Code (organic Law 13/85) includes several articles on the punishment of suspicious deaths or alleged violations of the right to life of a member of the armed forces. This Code also guarantees an independent investigation.

Furthermore, military legal framework always includes a mandatory obligation to report events that might constitute an offence or be contrary to the Law. For example, the Spanish Military Procesal Law (organic Law 2/89) established in article 134 that members of the armed forces who see or know the perpetration of any offence are "obliged" to report it, as soon as possible, to the Military Judicial Authorities or to the immediate Military Authority. Similarly, Spanish Military penal Code (organic Law 13/85) and Disciplinary Regime (organic Law 8/98, article 45), within their scopes, include similar provisions.

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
N/A

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.

Law 9/2011 on Rights and Obligations of the Members of the Armed Forces sets out the framework for the definition of the rights and duties of its members. In article 6 (Rules of behavior), point 5, clearly states that members of the armed forces will respect and demand for themselves the dignity and inviolable rights of the human being. The Royal Decree 96/2009 (Reales Ordenanzas para las Fuerzas Armadas) develops Law 9/2011 and constitutes the moral rule by which the armed forces must abide. Article 11 also refers to the dignity of the person, establishing that in any case, military personnel will be subjected or subject others to any measure that might involve any damage to their personal dignity or an unlawful limitation of their rights.

Spanish Military Penal Code and Disciplinary Regime punish these kinds of offences and set out the procedures for an independent and effective official investigation.

As mentioned before, military legal framework always includes a mandatory obligation to report events that might constitute an offence or be contrary to the law. For example, the Spanish Military Procesal Law (organic Law 2/89) established in article 134 that members of the armed forces who see or know the perpetration of any offence are "obliged" to report it, as soon as possible, to the Military Judicial Authorities or to the immediate Military Authority. Similarly, Spanish Military penal Code (organic Law 13/85) and Disciplinary Regime (organic Law 8/98, article 45), within their scopes, include similar provisions.

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

Spanish armed forces are purely professional and compulsory military service was abolished in Spain in 2001.

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

Spanish Military Penal Code (organic Law 13/85) and Disciplinary regime (Organic Law 8/98) constitutes the main legal framework governing military discipline

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

One of the conditions to be eligible as a member of the armed forces in Spain is to be of legal age/adult (18 years)

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
N/A

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

According to the legal framework, there is no limitation to have access to a tribunal for the determination of members of the armed forces' civil rights and obligations.

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?

The military justice system is neither special nor separate from the ordinary justice system. The Supreme Court which is placed at the top of the military jurisdiction has no competence for the examination of appeals for cassation on military matters (Chamber n°5). Organic Law 6/1985, of the Judicial Power, establishes in article 3(2) that: "the competencies of military jurisdiction will be limited to the strictly military framework with respect to the facts regulated as military by the Military Criminal Code, and the

existence of a state of siege, in agreement with the declaration of this situation and the organic law that regulates it". In the case of uncertainty as to who has jurisdiction, the question must be referred to the Supreme Court Chamber of Conflicts of Jurisdiction, according to article 39 of Organic Law 6/1985 on the Judiciary. Finally, military cases can also be brought before the Constitutional Court. Regarding the procedural safeguards set out in Paragraphs 33 and 34 of the Appendix to the Recommendation, there are no differences in the organisation and operation of military courts in comparison with civil courts.

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

Spanish armed forces are purely professional. Royal Decree 456/2011 (Reglamento de destinos del personal militar profesional) sets out the procedure of posting of professional members of the armed forces. Seniority, merit or professional effectiveness are different criteria established in the decree when assigning different positions. Posting regulations do not content any measure related with disciplinary punishment.

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.

Reconciling family and professional life of members of the armed forces is one of the priorities of the Spanish Ministry of Defence. As an example of measures included in section "G" of the Appendix to the Recommendation, the Spanish MoD has developed a policy of pre-schools in military facilities. Currently there are a total of 26 pre-schools and more than 1200 children attending these centres.

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

Article 9 of the Law 9/2011 on Rights and Obligations of the Members of the Armed Forces states that military personnel have the right to freedom of religion that shall be protected and respected in accordance with the constitutional Law 7/1980. As an example, Law 26/1992 approving the Agreement of Cooperation between the Spanish state

and the Islamic Commission of Spain, includes several elements in relation with the rights of military personnel of the Muslim faith, specifically (art.8) “to receive Islamic spiritual support and to participate in religious activities and rites inherent to the Islam, subject to authorisation by their superiors, who shall endeavour that these be compatible with the needs of service, facilitating the places and suitable means for this purpose”.

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

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

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
N/A

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 different procedures to follow in order to resign from the armed forces depending on the different categories or contracts but finally it is always a free decision of the individual which can not be limited by any authority. Therefore reasons of conscience might be a personal reason to resign from 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
N/A

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.

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 right to freedom of expression and information for the members of the armed forces is regulated in article 12 of Law 9/2011 of the Members of the Armed Forces. The article contents several restrictions to this right, such as issues related with national defence and security, confidential information, respect to the dignity of people and public institutions and authorities. The principle of political neutrality also

prevents members of the armed forces from engaging in any political activities. Regarding issues related to the service within the armed forces, the right to freedom of expression is also subject to the limits deriving from military discipline.

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.

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

Members of the Armed Forces can join lawfully established military associations but the right to syndication is limited. Both issues have been recently regulated by Law 9/2011 on Rights and Duties of the Members of the Armed Forces.

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

Law 9/2011 on Rights and Duties of the Members of the Armed Forces establishes the obligation of military personnel to political neutrality, specifically prohibiting joining political parties.

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

Members of the Spanish armed forces have the right to vote without any limitation (active suffrage). The right to stand for election (passive suffrage) is not limited but when members are included as candidates on lists of elections or during the term of office upon being elected, those members have to change to a different administration situation ('special service').

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
N/A

In any case, there is no retention of any property of members of the armed forces upon joining the armed forces.

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

Spanish Military penal Code and Disciplinary Regime include within their different scopes articles protecting the dignity at work of members of the armed forces. Both codes typify and punish offences related with sexual harassment.

- 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.

As an example, there is a collective life and accident insurance signed by the Spanish MoD covering all members of the armed forces (duty and reserve). The full content of this insurance (Spanish language) can be found at: <http://portal.mdef.es/portalseguro/CargarPaginicio.do>

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

A specific publication produced by Inspección general de sanidad (main authority on issues related with nutrition) titled “Manual de Alimentación y seguridad Alimentaria en las Fuerzas Armadas” (Manual on Nutrition and Food Security) provides a comprehensive reference and sets out the appropriate guidelines on this topic.

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

The principle of equality is consecrated in article 14 of Spanish constitution that states that ‘Spaniards are equal before the law, without any discrimination for reasons of birth, race, sex, religion, opinion, or any other personal or social condition or circumstance’. Law 9/2011 on Rights and Duties of the Members of the Armed Forces (art.4), in the same vein, extends this principle within the sphere of the armed forces. Furthermore, the same article of this Law established that military authorities will foster the measures to ensure that the equality of men and women is true and effective.

Ministerial Order 51/2011 of 28 July created the Military Observatory for equality between women and men in the Armed forces and regulated its structures and operation.

The ‘Idoia Rodríguez Buján’ award might be an example of good practice. The ‘Soldado Idoia Rodríguez Buján, Mujer en las Fuerzas Armadas’ award (‘Soldier Idoia Rodríguez Buján, Women in the Armed Forces’) was created by the Ministerial order 509/2007, March 6, 2007, with two different objectives: first, in remembrance of Idoia, as she was the first Spanish military woman to die when carrying out an overseas mission (Afghanistan); and second, in recognition of the efforts made by any organization, collective or individuals, which had promoted the equality of opportunities and women’s integration in the Spanish Armed Forces.

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

The principle of gender is being fully applied in the assignments to the different Military Units. In this way, all posts are open for every man and woman who can meet the specified requirements in each case, without any gender-based restrictions. Nowadays, none of the different Corps keep formal restrictions to women’s access, thus granting that all posts will be covered on the principles of merit and capability.

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

Spanish armed forces are purely professional and compulsory military service was abolished in Spain in 2001. Recruitment is always voluntary and only involves persons who have reached the age of 18 (Royal decree No. 1735/2000, adopting the General regulations on enlistment and Promotion in the Armed Forces).

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 of their parents or legal guardians? Yes No
N/A

T.3 Are there special measures in place to protect the physical and psychological welfare of these persons? Yes No
N/A

T.4 Can these persons take an active part in the hostilities? Yes No
N/A

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

There is a wide range of training within the armed forces regarding human rights law and international humanitarian law. All military personnel in the armed forces is trained on these areas during their initial formation and later on. The level and context of this activities depend on the specific audience, ranging from courses devoted to the lawyer Branch of the armed forces, different ranks within the combatant units, etc...
Other than that, the new “Royal Ordinances of the Armed Forces” (Reales Ordenanzas para las Fuerzas Armadas), promulgated ion February 2009, include in its chapter VI a complete repertory of International Humanitarian Law rules to be applied by and to military operations in Spain and abroad when engaged in war and peace 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

Human rights violations are typified and punished in the military legal framework. As mentioned previously and according to the reporting procedure or through the chain of command, the allegations must always reach the competent and independent authority.

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?

All of them except those conflicting with the due principle of political neutrality in the armed forces of different countries.

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?

The Council of Europe should continue examining periodically the implementation of the recommendation with a general approach and assessment.

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

None.