

Address by Ambassador Janez Lenarčič
Director of the OSCE Office for Democratic Institutions and
Human Rights (ODIHR)

3rd Congress of the European Organisation of
Military Associations (EUROMIL),
Brussels, 13 November 2008



Check against delivery!

Excellencies,
Ladies and Gentlemen,

I thank you very much for your kind invitation to join you here in Brussels. Let me start by saying a few words about the OSCE as an organization to put my presentation in context.

The OSCE is a regional security organisation covering 56 States between Vancouver and Vladivostok. Since 1975, the OSCE and its predecessor, the Conference on Security and Cooperation in Europe, have adopted a large body of politically binding commitments. These cover everything from military security, the economy and the environment, to human rights, democracy and the rule of law. The responsibility of my Office, the Office for Democratic Institutions and Human Rights, is to assist OSCE participating States in implementing the commitments on democracy, the rule of law and human rights – what we in the OSCE call the ‘human dimension’.

As you know, ODIHR has published a *Handbook on the Human Rights and Fundamental Freedoms of Armed Forces Personnel* together with our partner in this area, the Geneva Centre for Democratic Control of Armed Forces (DCAF) in May this year. This Handbook covers a wide variety of human rights issues as they relate to armed forces personnel, including civil and political rights, non-discrimination issues, working conditions, military justice and the role of ombudsman institutions.

The Handbook is based on the key OSCE document in this sphere, the OSCE *Code of Conduct on Politico-Military Aspects of Security*, which OSCE participating States agreed to during their Budapest Meeting in 1994. The Handbook and the Code of Conduct will be presented to you in greater detail tomorrow, but allow me to say a few words on the core provisions of the Code of Conduct and the recommendations ODIHR makes in relation to these provisions in the Handbook.

What does the Code have to say about human rights of armed forces personnel, and how is this relevant to you as members of military associations?

First, OSCE participating States have committed themselves to ensure that military, paramilitary and security forces personnel will be able to enjoy and exercise their human rights and fundamental freedoms as reflected in OSCE documents and international law, and in conformity with relevant constitutional and legal provisions and with the requirements of service (para 32).

Second, participating States have agreed to ensure that their armed forces as such are politically neutral – while at the same time providing an opportunity for the individual service members to exercise their civil rights (para 23).

Third, OSCE participating States have promised to provide appropriate legal and administrative procedures to protect the rights of all its armed forces personnel (para 33).

Allow me make a few remarks on ODIHR's interpretation of these provisions. What do they mean for the States – what should they be doing in the field of protecting human rights and fundamental freedoms in the armed forces?

First, it is necessary to ensure that restrictions on the exercise of civil and political rights should be kept to a minimum. Such restrictions should be prescribed by law; they should be prescribed only to the extent that they are really necessary; and they should be non-discriminatory and proportional to the purpose they serve. This applies also to freedom of association.

Naturally, we are all well aware that the activities of military associations are restricted in many States. This is usually justified

by claiming that such associations could supposedly negatively impact unit cohesion, military discipline, or could undermine the authority of the chain of command. The experience in the many participating States that have allowed such associations to function freely – often for a long time already – is the opposite. Rather than undermine discipline or unit cohesiveness, such associations actually boost morale and are viewed as valuable interlocutors for the military authorities. Indeed, senior officials may themselves benefit from being represented by such associations. I am sure you can give examples of this from your own experience.

Military associations can also deal with important issues regarding the conditions of service of personnel, such as treatment, equipment, pay and benefits, and thus improve the attractiveness of the armed forces as a modern employer. In raising such issues with the government, they may prevent tensions on these vital issues from building up. Viewed from this perspective, I believe one can say that security is actually strengthened by allowing such associations to function freely. This is why ODIHR recommends in the Handbook that restrictions on freedom of association be lifted in armed forces throughout the OSCE region.

On the broader issue of political participation of armed forces personnel, I believe a careful reading of the Code is necessary. As I mentioned previously, the Code specifies that the armed forces *as such* should remain politically neutral. At the same time, it also specifies that the civil rights of armed forces personnel themselves – acting in their individual capacity, so to speak – should be maintained.

This is an important distinction. After all, the argument is sometimes made that severe restrictions on civil and political rights are necessary to protect the political neutrality of the armed forces. This argument has been used to curtail, amongst others, the right of armed forces personnel to vote, to stand for elections, to

express themselves freely on matters of public concern, and to assemble and associate.

However, the fact that many states do not restrict these rights calls into question whether such restrictions are really necessary. Why should one state ban armed forces personnel from voting, whereas the state next to it allows all members to do so freely? Although such restrictions may sometimes be understandable from a historical perspective, from a human rights perspective we should approach any and all restrictions on fundamental freedoms with scepticism. The Handbook has specific data on the wide variety of state practice in this regard.

I would like to make a final remark on the third section of the Code that I cited earlier, in which States promise *to take appropriate legal and administrative measures to protect the rights of their armed forces personnel*. The Handbook goes into greater detail on this point, but the basics of what constitutes ‘appropriate measures’ are clear. They include:

- clear and detailed instruction in human rights for all personnel from the lowest to the highest rank to prevent mistreatment;
- maintaining independent military courts under civilian jurisdiction;
- independent, specialised military ombudsman institutions dealing with complaints from armed forces personnel outside the chain of command; and
- appropriate sanctions against personnel who violate human rights of their fellow service members.

Next to such measures, however, it would also be appropriate to find a role for independent NGOs monitoring the armed forces. Civil society monitoring of the human rights of armed forces personnel can and has yielded positive results in the past. In our view, Ministries of Defence and the chain of command should be

open to hearing the recommendations and concerns of civil society, and act on them where necessary.

We are all partners in this: the chain of command and those exercising civilian control over the armed forces, NGOs, independent military ombudsman institutions, and you, associations of armed forces personnel. I believe that when we are all acting together in a spirit of cooperation and partnership we can ensure that the citizens in uniform who serve to protect freedom and democracy will get what they deserve: the same freedom and the same democracy.

Thank you very much for your attention.