

OSCE
Office for Democratic Institutions and Human Rights

**Report of the Second Meeting in the ODIHR Human Rights
Discussion Series for Representatives of the
Forum for Security Co-operation**

**The Role of Ombuds Institutions in Protecting
Human Rights of Armed Forces Personnel
(14 October 2013, Vienna)**



Disclaimer

This report should neither be interpreted as official OSCE recommendations based on a consensus decision, nor as an opinion of the OSCE Office for Democratic Institutions and Human Rights or of any particular OSCE participating State. The content of this report reflects opinions expressed by participants in the meeting on the Role of Ombuds Institutions in Protecting Human Rights of Armed Forces Personnel on 14 October 2013 and no additional information has been included since then. The reader should therefore refer to other sources for updates on this topic. The meeting was conducted entirely under Chatham House Rules. The comments contained in this report, while not attributed to specific individuals reflect the views and opinions expressed by panellists and participants during the meeting.

Table of Contents

<i>Executive Summary</i>	2
Introduction and Background	3
Ombuds Institutions and Human Rights in the Armed Forces.....	5
Exercising Independent Oversight of the Armed Forces	8
Handling Complaints and Providing Essential Protection	9
Setting up an Independent Ombuds Institution for the Armed Forces	12
Recommendations	14
Annex I – Background Paper.	15
Annex II – Meeting Agenda	22

Executive Summary

The OSCE Code of Conduct on Politico-Military Aspects of Security calls on participating States to protect the human rights of military personnel. This includes the provision of appropriate legal and administrative procedures to practically enforce these rights. In this regard, a number of OSCE participating States report on the mandate and activities of ombuds institutions through the Annual Information Exchange on the Code of Conduct on Politico-Military Aspects of Security.

It was against this backdrop that the OSCE Office for Democratic Institutions and Human Rights (ODIHR) organized a one-day event on the Role of Ombuds Institutions in Protecting Human Rights of Armed Forces Personnel on 14 October 2013. The overall purpose was to allow for a more in-depth discussion on the subject matter in light of the reporting already taking place within the context of the OSCE Code of Conduct. The discussion was organized primarily for the benefit of OSCE participating States’ representatives to the Forum for Security Co-operation (FSC) who are generally the military advisers and OSCE Politico-Military Dimension experts in each delegation.

The panellists speaking during the event included representatives of ombuds institutions, parliamentary committees, as well as independent experts and staff from research institutions, who examined how ombuds institutions can protect human rights in the armed forces by exercising independent oversight and handling complaints. The discussion also looked into considerations for establishing independent ombuds offices for the armed forces and provided some concrete recommendations for OSCE participating States and OSCE structures and institutions.

Speakers agreed that sound complaints-handling mechanisms, institutional independence and co-operation are essential factors in determining the effectiveness of ombuds institutions in

exercising oversight and protecting rights in the armed forces. In this context, the importance of gender mainstreaming the work of the ombuds institution to address the various needs of women and men serving in the armed forces was emphasized. The discussion also touched upon the added value that an ombuds institution can bring, as well as the advantages and disadvantages of the different models and approaches in general terms. A key point raised was that, while ombuds institutions for the armed forces can play an important role in rights protection, the primary responsibility lies with the military itself.¹

The active participation and discussions at the meeting confirmed that the FSC welcomes human dimension aspects of security on its agenda, in particular, in the deliberations concerning the review and implementation of the 1994 OSCE Code of Conduct on Politico-Military Aspects of Security. This was the second event in a series to discuss human rights and gender issues with members of the FSC, organized by the ODIHR Human Rights, Gender and Security programme. The first event focused on armed forces and women's access to combat positions and took place in Vienna on 19 April 2013.²

Introduction and Background

This report provides a synthesis of the discussions of the meeting on the Role of Ombuds Institutions in Protecting Human Rights of Armed Forces Personnel, organized by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) on 14 October 2013 in Vienna.

Since 2008, the FSC and ODIHR have been engaged in a fruitful exchange such that human rights and gender perspectives, and corresponding Human Dimension commitments, are taken into consideration when interpreting the Code of Conduct, a document originating primarily in the Politico-Military Dimension of the OSCE. In the Helsinki Act and in the OSCE's comprehensive approach to security, the security of states is intrinsically linked to the security of individuals.

The decision to highlight the topic of ombuds institutions is based on the fact that it has been recognized as a timely and important topic, given that a number of OSCE participating States provide information on the activities of ombuds institutions through the Annual Information Exchange on the Code of Conduct on Politico-Military Aspects of Security. In 2013, about a quarter of OSCE participating States included information on the role of ombuds institutions in protecting the rights of armed forces personnel in information exchange. Approximately a third reported on this issue in 2012.

There are several OSCE commitments on national human rights institutions, ombuds institutions and human rights. In the Code of Conduct three articles are particularly relevant: Art. 20 on the democratic control of the armed forces; Art. 32 on the enjoyment of human

¹ For the purposes of this report, 'ombuds institution for the armed forces' refers to any independent institution that is mandated to receive and investigate complaints related to the armed forces.

² The report of the meeting on armed forces and women's access to combat positions is available online: <http://www.osce.org/odihr/108776>.

rights of armed forces personnel, and; Art. 33 on the provision of appropriate legal and administrative procedures to protect rights of all its forces personnel.³ The Copenhagen Document (1990) states that “The participating States will (...) facilitate the establishment and strengthening of independent national institutions in the area of human rights and the rule of law.”⁴

More than 60 participants attended the event. This group consisted of FSC representatives, officials from the OSCE Secretariat and speakers representing ombuds institutions, parliamentary committees, academia and training institutions, as well as independent experts from various parts of the OSCE, and ODIHR officials.

The participants discussed various ombuds institution models, mandates and approaches. The discussion also focused on how ombuds institutions can protect human rights in the armed forces through exercising independent oversight and handling complaints. Finally, the event looked into considerations of why and how to set up an independent ombuds office for the armed forces. Speakers from Armenia, Bosnia and Herzegovina, Canada, Finland, Germany, Georgia, the Netherlands, Switzerland, Serbia, and the United Kingdom shared their national, as well as personal experiences on the topic.

This event was the second in a human rights series that ODIHR has organized for the benefit of FSC members in 2013. The event followed the previous meeting that took place on 19 April 2013 on women’s access to combat positions. The purpose of this series is to analyse current issues of concern to both servicemen and servicewomen and to inform the daily deliberation process that takes place within the FSC with the latest human rights and gender trends. The event and future events in this series provide FSC members with the opportunity to freely exchange views, focus on analysing the lessons learned from national level policymaking, and derive practical examples for implementation in their respective countries.

The series is underpinned by the OSCE’s cross-dimensional and comprehensive approach to security. As such, the discussion series seeks to substantiate and feed into the deliberations on fundamental questions related to the security sector, such as how to ensure human rights in the security sector, how to strengthen accountability and transparency in the military, and how best to go about democratic control of armed forces.

Ombuds institutions for the armed forces can play a bridging role between the military and the civilian democratic institutions. Human rights, human security and national security are not separate but interconnected. Ombuds institutions can help balance the various considerations and needs, point out and help address shortcomings. Here, the moral authority and standing of the ombudsperson are often critical to ensure that recommendations to the executive and military authorities are heeded and followed up on.

³ Relevant paragraphs of the Code of Conduct include: primacy of civilian oversight and democratic accountability (paragraphs 21-26) ; subjection of armed forces to international humanitarian law (paragraphs 29-31, 35-35); respect for the human rights of members of armed forces (paragraphs 23, 27-28 and 32-33); and domestic use of the armed forces and respect for citizen’s rights (paragraphs 36-37).

⁴ Copenhagen Document (1990), Paragraph 27 (<http://www.osce.org/node/14304>).

Ombuds Institutions and Human Rights in the Armed Forces: Approaches and Models

1. The participants touched upon a number of issues related to the main models of ombuds institutions for the armed forces, their respective mandates and scope of work. The common understanding of ombuds institutions for the armed forces is that they are institutions that are mandated to receive and investigate complaints related to the armed forces. The three main types of ombuds institutions that may address issues related to the armed forces are: a general ombuds institution where military issues are part of its mandate; an ombuds institution with exclusive jurisdiction over the armed forces; or an inspectorate-type institution within the military chain of command.

Human Rights Concerns for Armed Forces Personnel

2. Human rights also apply within the barracks and armed forces personnel should enjoy the same human rights as civilians, subject to certain limitations imposed on them due to the requirements of service. This is also known as the *citizen in uniform* approach. Service personnel must safeguard human rights of the civilian population such as in peacekeeping operations and they are more inclined to do so if their own rights are respected. This is why the protection of human rights of armed forces personnel is essential for the society as a whole.
3. Examples of human rights issues that are particularly relevant for armed forces personnel include:
 - *Right to life*, e.g. extreme bullying of conscripts; inquiries into unexplained deaths on military premises or during military service
 - *Freedom from arbitrary arrest or detention*, e.g. when a member of the armed forces is detained under military justice systems
 - *Right not to be subjected to torture or other cruel, inhuman, or degrading treatment or punishment*, e.g. in cases of bullying of conscripts and initiation rituals
 - *Right to equality and prohibition of discrimination*, where there are differences in treatment of women, religious and ethnic minorities or gay and lesbian service personnel
 - *Right to a fair trial*, e.g. in the case of courts martial and military justice systems
 - *Right to freedom of thought, conscience, religion or belief*; relevant to issues such as conscientious objection, restrictions on manifestation of religion
 - *Right to freedom of expression, association and peaceful assembly*, e.g. in cases where there are restrictions on military staff associations, ban on participating in political life

Special Attention to Conscripts

4. Studies have revealed that officers are often more satisfied with their working environment than conscripts and those with lower ranks, which may be an indication that

some service members are more exposed to violations of their rights than others.⁵ Such documentation can help to identify problem areas, in particular, issues that affect those most vulnerable to human rights violations. OSCE participating States that have a conscription system have a particular obligation to ensure the rights of service personnel given the mandatory nature of their military service. This also includes the rights and concerns of the families of the conscripts.

Characteristics of Effective Ombuds Institutions

5. The main functions of ombuds institutions for the armed forces are typically complaints-handling, conducting investigations, and issuing reports and recommendations. Although each ombuds institution operates in different socio-political and historical contexts, there are several general factors that can influence the effectiveness of an ombuds institution.
6. A key issue is independence in its various forms whether institutional, operational, budgetary or investigatory, and how independence is spelled out in the mandate of the ombuds institution. Impartiality and independence are connected with concepts of fairness, confidentiality, and credibility. An ombuds institution should be seen as credible to their constituency where factual correctness and transparency are key factors. In order to remain impartial, the body having oversight responsibilities should be independent from the organizational structure it is mandated to oversee. The public should be reminded that the ombuds institution is in fact an independent advocate for fairness. An example of signalling independence from the structure it is overseeing can be to have the ombuds institution office in a separate building away from the government, the defence ministry and the armed forces. Overreliance on expertise from external actors and limited capacity can also risk the independence of the ombuds institution. This is why it is important for the ombuds institution to possess specialized knowledge about military issues. Finally, the level of independence can be measured against the results achieved and the perception of institutional independence is as important as actual independence.
7. Without adequate human and financial resources even the strongest mandate and legal anchoring of an ombuds institution will be of limited value. The staff of the ombuds institution must be properly trained to handle a wide variety of complaints, while keeping in line with the mandate of their office. In this regard, training on a number of issues including on gender mainstreaming should not be neglected. Effective ombuds institutions need to be accessible to complainants. Furthermore, the ability to issue reports and give recommendations is a key feature in order to generate pressure on relevant authorities to heed the advice provided and take action to rectify specific issues.

Co-operation and Relationships with Other Stakeholders

⁵ For a more in-depth study on conscripts' issues see for instance, Salo, Mikael (2008): *Determinants of military adjustment and attrition during Finnish conscript service*. University of Tampere, (<http://tampub.uta.fi/bitstream/handle/10024/67908/978-951-44-7470-5.pdf?sequence=1>)

8. Clearly defined mandates are useful but not always the case, and co-operation becomes particularly important when different institutions have overlapping powers. In addressing complaints and human rights violations, regular dialogue and co-operation with defence authorities, civil society and other relevant stakeholders need to take place. There are examples of defined rules of co-operation with various institutions, but there are also situations where the co-operation functions on an *ad hoc* basis. Findings and recommendations from ombuds institutions can prompt a national ministry of defence and military leadership to look into certain issues of concern such as discrimination and gender-biased recruitment procedures, or sanitary standards in the army barracks.
9. Ombuds institutions may draw on the expertise of civil society organizations in areas such as victim assistance and human rights education. In some OSCE participating States parliamentary defence committees are also empowered to conduct inspection visits to military facilities. In addition to endorsing the work of the ombuds institution, parliamentary committees can act as a bridge between civil society and the executive branches of government.

Soldiers Stationed Overseas

10. Service personnel deployed abroad should also have access to the ombuds institution for the armed forces and have the ability to submit complaints. The ombudsperson can strengthen the visibility and access of his or her institution through visits to peacekeeping theatres of operation abroad where soldiers are deployed. This can also help to ensure that ombuds institutions are more aware of the situation of soldiers that are serving in missions overseas.

Human Rights Awareness and Training

11. Some ombuds institutions are involved in awareness-raising and professional development activities for service personnel. For example, this can involve providing guidance on what service personnel themselves can do to safeguard human rights in the military, or how to use the internal grievance system within the armed forces. The ombuds institution may also become involved in developing training courses for service personnel on human rights. Some ombuds institutions promote the idea that all service personnel should be aware of what it means to be a soldier in a democratic society, the concept of citizens in uniform, and be capable of identifying when an order is illegal. Promoting human rights compliant leadership behaviour by commanding officers is equally important.

Research on Ombuds Institutions for the Armed Forces

12. A mapping study on ombuds institutions for the armed forces in the OSCE region is currently being undertaken by the Geneva Centre for the Democratic and Control of Armed Forces (DCAF) and ODIHR. The aim is to help identify and clarify the strengths and weaknesses of ombuds institutions for the armed forces in the OSCE participating States and to share good practices among ombuds institutions. The research project is a

continuation of the ODIHR-DCAF co-operation that resulted in the development of the Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel in 2008, which contains a chapter on the role of ombuds institutions.

13. Based on the responses to a questionnaire sent through OSCE Delegations in Vienna from approximately half of the OSCE participating States at the time of the event, preliminary findings include the following: (1) recruitment, maladministration, working conditions and veterans' issues are the most common reasons for complaints; (2) the main challenges to the work of ombuds institutions are insufficient financial and human resources, as well as limited powers to investigate complaints; (3) the most common way to deal with non-compliance during investigations is to refer the issue to a superior or use other disciplinary means.

Exercising Independent Oversight of the Armed Forces

Mandates

14. Together with a range of stakeholders including media and civil society, ombuds institutions can provide independent oversight of the armed forces. This mandate may state that the institution can act as a direct source of information with the ability to refer and provide education to individuals in the armed forces. It can detail how the ombudsperson should act as a neutral and objective sounding board, mediator, investigator, and reporter. The ombuds institution can also be mandated to contribute to substantial and long-lasting improvements in the welfare of members of the defence community.
15. In some OSCE participating States the mandate of the ombuds institution is set out in ministerial directives. Others are legally founded and situated in the parliamentary structure or as a state-funded independent institution. Regular independent oversight is dependent on a mandate that is long-term and which cannot be easily revoked. An ombuds institution with a mandate founded in a ministerial directive and not in law can in theory be dissolved singlehandedly by a decree from the minister of defence. The risk of this occurring can be considered minimal within a system with strong democratic traditions and values, and if the government understands the benefits of an effective ombuds institution.
16. There are advantages of having a mandate which is inclusive and that allows the ombuds institutions to extend beyond armed forces personnel issues and also include civilian employees of the defence sector and seconded staff from other countries. There have been cases where civilians employed in the armed forces have felt that they have not been treated fairly in recruitment for positions open to both civilians and military personnel. The mandates of ombuds institutions for the armed forces often include limitations related to mitigating security concerns. However, the work of ombuds institutions benefits from having a strong mandate, which is largely unrestricted and grants the institution access to all relevant information regardless of classification.

Investigations and Inspections

17. An ombuds institution can be vested with the power to investigate an issue upon instruction and in many OSCE participating States ombuds institutions are allowed to conduct investigations on their own initiative. Inspections can be an important part of the ombuds institution's activities, because of the fact that problems may exist which are not conveyed in complaints. In some OSCE participating States, inspections that the ombuds institution takes on its own initiative form the majority of its activities, whereas in other countries the activities are limited or restricted and can be more complaint driven. The ombuds institution should maintain a regular dialogue not only with male and female service personnel, but also with social and medical staff. In some institutional models the right to conduct unannounced inspection visits is limited to the ombudsperson himself/herself. Some ombuds institutions have created procedures for rapidly responding to urgent reports of mistreatment. A few ombuds institutions even have the authority to file lawsuits.

Reporting and Public Outreach

18. Annual reporting on activities can have tangible effects on making stakeholders aware of the activities and concerns of the ombuds institution. Reports can be made publicly available online and specific reports can also be issued for the national parliament, the defence ministry and the government. If recommendations made by the ombuds institution are not implemented, most ombuds institutions can choose to issue a special report to the parliament, to the defence minister, or to the public. In some OSCE participating States the government is required to comment on the annual report published by the national ombuds institution.

19. Typically, the ombuds institution should attempt to discuss issues of concern with government and ministry officials. However, ombuds institutions may decide that an issue is of importance to the wider public and deserves national media coverage, which also can put pressure on authorities to take action. This can be done through press releases and information-sharing with media outlets to raise public awareness on a particular issue. Increased public awareness can have significant effects in prompting authorities to implement recommendations made by the ombuds institution.

Handling Complaints and Providing Essential Protection

20. The core function of many ombuds institutions is handling and investigating complaints. A variety of well-developed complaints-handling mechanisms exist within OSCE participating States. Free and independent complaint mechanisms for military personnel are essential to enforce fundamental rights protection to individual servicewomen and servicemen. However, it may take time to develop a culture within armed forces where submitting complaints to an independent agency is encouraged. There is often a need to advocate and

convince the military leadership that a healthy and well-functioning complaints-handling structure does not negatively affect military effectiveness, but rather achieves the opposite by fostering a culture based on professionalism, trust and respect. This can only be achieved through upholding and respecting the rule of law and human rights.

Effective Complaints-handling

21. Complaints-handling should be performed in a manner which is timely, impartial and confidential. There are different ways to handle complaints, but having a standardized application procedure with a processing period deadline has often proved to be beneficial. A telephone hotline service is one example of a simple complaints procedure without many formalities that may encourage more individuals to bring forward their complaints. Complaints-handling can include steps, such as preliminary analysis, referral of cases to other relevant agencies, obtaining factual information, determining the appropriate follow-up and concluding a case.
22. The number of complaints submitted can be an indication of interest, trust and awareness of the ombuds institution. If only very few complaints are received, it may indicate that there are some problems with the complaints system or indeed that there are few problems. Therefore, large numbers of complaints do not necessarily mean that there is something fundamentally wrong with the armed forces, but that there is confidence in the system to address needs and concerns of service personnel. Moreover, complaints can help pinpoint areas where improvements are needed. When concerns and recommendations are acted upon, an effective complaints-handling mechanism can benefit both the individual service member and the military organization as a whole.
23. All members of the armed forces should be granted the possibility to file a complaint and be assured that it will be treated in a confidential, professional and timely manner. In addition to receiving complaints from active service personnel, some ombuds institutions also accept complaints from veterans, relatives of service personnel and other citizens not employed in the armed forces. Some persons choose to submit their complaint only after they have completed their service out of fear that there will be reprisals if they file a complaint during service.
24. Introducing fees for submitting complaints can ensure that the complainants are serious and could limit the number of irrelevant complaints. On the other hand, a high fee for submitting a complaint may also discourage complaints from persons with limited or no income.
25. The staff of the ombuds institution should have the right skill-sets to appropriately handle complaints and fulfil the mandate of the office. The development of the capacities of the ombuds institution regarding the many evolving issues in the military and security sector should take place on a regular basis.

26. Ombuds institutions can be viewed as an 'early warning system', because they are often amongst the first institutions to look into a complaint that may be a symptom of larger problem areas. A well-functioning ombuds institution contributes to the improvement of transparency and accountability of the security sector, as well as to addressing and helping to prevent human rights abuses and maladministration.

Types of Complaints

27. The types of complaints and human rights violations, as well as their extent and gravity, often vary due to the differences in military environments in the OSCE region. Common reasons for complaints relate to recruitment, maladministration, contractual issues, lack of compensation and benefits, working conditions and veterans issues. Complaints can also revolve around physical and psychological mistreatment, harassment and discrimination. There is a tendency for the number of complaints to increase when there are structural changes in the conditions of service, usually as a result of re-organization of the armed forces.

Anonymity and Protection

28. Some ombuds institutions allow anonymous complaints while others do not. In the latter case, however, ombuds institutions may be in a position to act on anonymous tips by initiating their own investigations. In the complaints process, careful assessment must be carried out of whether the complainant is at risk of reprisals, and if so, measures to protect the individual must be identified. Similarly, other involved persons must be safeguarded against complaints that turn out to be unfounded.

Gender Mainstreaming of Complaints-handling

29. Women are increasingly being recruited into the armed forces of OSCE participating States. The increased number of female service personnel calls for resources to ensure gender neutral job requirements and special attention to recruitment procedures and equal opportunities for career advancement. Nonetheless, the armed forces remain a male dominated environment and many women face harassment and peer-pressure. As a consequence, ombuds institutions need to closely monitor the evolving conditions for women serving in the armed forces and propose recommendations as deemed needed.

30. Ombuds institutions need to build up their own capacity to effectively handle complaints from both women and men. This can take the form of staff training and capacity-building, but also concerns the composition of the staff itself.

Follow-up Actions

31. Following a complaint the ombuds institution can take several steps, including assisting individuals to seek redress and referring them to other appropriate resolution mechanisms. Ombuds institutions in most OSCE participating States do not have the power to initiate

legal proceedings or prosecution on the grounds of a complaint. Nevertheless, if it is a serious matter it may be handed over to military or civilian prosecution authorities or to civilian police to allow for the initiation of a criminal investigation. However, this depends on the particular case, the national legislation and institutional arrangements. Depending on the mandate, the institution can issue reprimands or opinions regarding a case, i.e. on sexual harassment. Individual cases may also feed into trends and recommendations of a more systemic character by the ombudsperson, which often will be compiled in reports and presented, for example, at a parliamentary hearing.

Other Complaints-handling Mechanisms

32. In participating States where there is no ombuds institution for the armed forces, alternative complaint mechanisms usually exist. This could involve submitting a complaint to: the superior officer; military prosecutor; civilian complaints-handling board; civil society organizations; or members of parliament.
33. Within some armed forces soldiers are required to first submit their complaint internally. If the commander receiving the complaint is an involved party, this can be very problematic. Similarly, it can be difficult when there is a prevalent view that all problems, regardless of their severity, should be solved internally in the armed forces resulting in soldiers being intimidated from submitting an official complaint to the ombuds institution.
34. The military prosecutor's office can play an important role in human rights protection of military personnel. The military prosecutor can provide advice to the armed forces and investigate improper conduct. In order to be effective, the military prosecutor's office should have an in-depth understanding of the situation of the armed forces.
35. The ombuds institution can also help to improve internal complaints mechanisms. An example of this is to recommend that a recording system is established for all internal complaints. This enables the military authorities to have an overview of complaints received and allows for monitoring of complaints-handling and for setting time targets. Failure to handle internal complaints in a timely manner can push skilled contracted service personnel to leave the armed forces thus adversely affecting operational effectiveness. In other words, complaints-handling can improve operational effectiveness and achieve redress and justice on an individual basis.

Setting up an Independent Ombuds Institution for the Armed Forces

36. Several perspectives were provided during the meeting regarding the merits of establishing an independent ombuds institution for the armed forces. An independent office specifically for the armed forces can have particular advantages in terms of independence, expertise and credibility with service personnel, which could help to maintain discipline, strengthen morale and reinforce democratic control and oversight. It was pointed out that due care needs to be taken in developing a mutually respectful, but no overly close working

relationship with the armed forces so as not to call the institution's independence into question.

37. Various circumstances can trigger the establishment of an ombuds institution for the armed forces. For example, ombuds institutions have been established following public inquiries that called for increased accountability of the armed forces and individual cases revealing widespread mismanagement in the armed forces. Experiences can also be drawn from other areas of the security sector where oversight mechanisms have already been put in place, such as police complaints systems.

Determining the Resources Needed

38. Deliverables should be matched with the power and resources available. Resources are not only a matter of funds but also of the ability to access relevant data. The ombudsperson should clearly communicate what resources are needed for the future and not over-promise or under-deliver. Consequently, there is a relationship between resources and outputs. The ombudsperson may decide to argue that additional resources need to be allocated to her/his office. In circumstances where resources are limited or directed elsewhere, it may be difficult to obtain resources to establish a new ombuds institution specifically for the armed forces. Practice shows that in such cases the mandate is often included within a general ombuds institution.

Situational Awareness of the Ombudsperson

39. In arguing for an independent ombuds office, it is essential for the ombudsperson to understand his or her role and to have a good sense of the current state of affairs and key issues to be addressed in the armed forces. Likewise, newly appointed ombudspersons with a non-military background should quickly make the effort to understand the military culture, language, and customs. Situational awareness can be achieved through general research, meeting army personnel, visits to military facilities, following parliamentary debates, initiating and studying surveys of military personnel, and monitoring media reports. The ombudsperson must also have a good sense of the institution's formal powers and the level of resources needed in order to understand what the expectations are. Furthermore, the ombudsperson should have a clear understanding of how the institution's independence is likely to be contested and consider how to safeguard against these challenges.

Leadership and Accountability

40. Strong leadership by the ombudsperson is a key factor in building the credibility of the ombuds institution. This is crucial not only in establishing the office, but also for maintaining the continued effectiveness of the ombuds institution. The ombuds persons must convince the military leadership that complaints can actually be beneficial for operational effectiveness in the long term. By addressing wrongdoings and shortcomings in

the military administration the system itself can avoid becoming stagnant and non-responsive to the needs at both individual and institutional levels.

41. Ombudspersons should have a vision of what they want to achieve during their term. Priorities could be to develop a strategy for improving complaints recording and processing time and strengthening the relationship with military leadership. The ombudsperson should act as a role model and promote good practices for the armed forces personnel in leadership positions including on how to: deal with complaints; identify and remedy systemic weaknesses; and treat their subordinates. Reports detailing expenditures are needed to demonstrate the accountability of the ombuds institution. Last, but not least, the ombudsperson must also pay attention to the wellbeing of his or her office staff.

Knowledge Exchange

42. ODIHR can facilitate information-sharing and knowledge exchange between OSCE participating States on the issue of human rights of armed forces personnel and ombuds institutions, and other related topics.
43. DCAF provides support through for example the International Conference of Ombuds-Institutions for Armed Forces (ICOAF), which aims to establish best practice and lessons learned related to the mandate, powers and functioning of ombuds institutions for the armed forces. The initiative also reaches out to states that do not have an ombuds institution for the military, but have expressed an interest to learn from experiences of other countries.⁶

Recommendations

44. In addition to the above considerations involving the role of ombuds institutions, the meeting also put forward three concrete recommendations for OSCE structures and institutions and for OSCE participating States:
 - A) The FSC should encourage OSCE participating States to report on role of ombuds institutions in response to the annual questionnaire on the implementation of the Code of Conduct on Politico-Military Aspects of Security.
 - B) The OSCE Secretariat, ODIHR, and participating States should stand ready to provide support to those participating States (and OSCE Partners for Co-operation) that are planning to establish ombuds institutions for the armed forces.
 - C) ODIHR is encouraged to continue to address the rights of servicemen and servicewomen in an informed manner via the Human Rights Discussion Series for Representatives of the Forum for Security Co-operation.

⁶ For more information about ICOAF, see <http://icoaf.org>.

Annex I



Discussion Series on Human Rights, Gender and Security Sector Issues

THE ROLE OF OMBUDS INSTITUTIONS IN PROTECTING HUMAN RIGHTS OF ARMED FORCES PERSONNEL*

Background Paper⁷

Through the Information Exchange on the Code of Conduct on Politico-Military Aspects of Security⁸ a number of participating States (pS) report on ombuds institutions for the armed forces⁹ and human rights. Art. 20, 32 and 33 in the Code of Conduct provide the main principles in this context. Responses to the Information Exchange demonstrate the importance attached to the role of ombuds institutions through the provision of procedures for protecting the rights of all forces personnel. In addition, ombuds institutions are seen to contribute towards ensuring democratic political control of the armed forces. These two functions are interconnected but are not the only elements which determine the effectiveness of ombuds institutions in safeguarding rights of servicewomen and servicemen.

This brief paper will discuss different models of ombuds institutions for the armed forces, the independence of these offices, the necessary powers of an effective ombuds institution, the connection with other procedures for protecting the rights of members of the armed forces, the question of access for complainants and the possible outcomes from a complaint or a report. First, however, it is useful to explain the context in which ombuds institutions for the armed forces operate.

* This paper has been drafted by Ian Leigh, Professor of Law, Durham University. The views expressed in this paper do not necessarily reflect the opinions of the OSCE.

⁷ On 14 October 2013 ODIHR will host an event on “The Role of Ombuds Institutions in Protecting Human Rights in the Armed Forces” at the Hofburg in Vienna. The primary audience of the event are the OSCE delegates to the Forum for Security Co-operation. Hence, this background paper will help identify and provide an overview of key issues to be presented and discussed in more detail at the event.

⁸ Code of Conduct on Politico-Military Aspects of Security (Budapest, 1994): <http://www.osce.org/fsc/44574>

⁹ In this paper ‘an ombuds institution for the armed forces’ refers to any institution mandated to receive and investigate complaints related to the armed forces of a state.

Ombuds institutions should *not* be seen as the main safeguard for human rights within the armed forces. Rather, it is the armed forces themselves that have the primary responsibility for protecting the rights of armed forces personnel. Nevertheless, ombuds institutions can play an important complementary, supporting and critical role along with other institutions such as the judiciary and actors such as civil society and the media.

From this secondary and complementary position ombuds institutions for the armed forces enhance rather than undermine military objectives. They can assist with maintaining discipline, morale and esprit de corps. They should also be seen as strengthening democratic control and oversight. Armed forces that are transparent, accountable, adhere to principles of good governance and to the rule of law will enjoy substantially greater legitimacy and public trust as a result.¹⁰

Handling complaints in the military

Complaints-handling is a key part of the mandate and work of most ombuds institutions. One relevant question in this context is therefore the question of credibility of different models¹¹ of ombuds institutions in handling complaints in the armed forces. There seem to be four relevant criteria by which this question can be assessed: independence, specialist expertise, credibility with potential complainants, and trust and credibility with the armed forces themselves.

Where a civilian ombuds institution has jurisdiction to investigate matters in the armed forces (for example, in Denmark, Poland and Sweden), this has some advantages in terms of autonomy. Being autonomous in nature, a civilian ombuds institution may perhaps have more credibility with complainants, by comparison with integrated ombuds institutions for the armed forces. It also means treating service personnel in the same way as the rest of the population and therefore strongly comports with a 'citizens in uniform'¹² approach to the human rights of military personnel. The disadvantages, however, are the relative lack of specialist expertise in handling

¹⁰ H. Born and I. Leigh, *Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel*, (Organisation for Security and Cooperation in Europe, Office of Democratic Institutions and Human Rights, Warsaw, 2008), p. 230. <http://www.osce.org/odihr/31393>

¹¹ A valuable source that provides more detailed and extensive discussion of ombuds institutions for the armed forces in a number of countries is the DCAF publication *Ombuds Institutions for the Armed Forces – A Handbook* (2012). <http://www.dcaf.ch/Publications/Ombuds-Institutions-for-the-Armed-Forces-A-Handbook>

This handbook compares in some detail the following: Austria, the Parliamentary Commission for the Federal Armed Forces; Bosnia Herzegovina, Parliamentary Military Commissioner; Canada, the National Defence and Canadian Forces Ombudsman; Estonia, the Military Ombudsman of the Estonian Defence Forces; Finland, the Parliamentary Ombudsman; France, the Commission of Appeals for the Military; Germany, the Parliamentary Commissioner for the Armed Forces; Ireland, the Ombudsman for the Defence Forces; Montenegro, the Protector of Human Rights and Liberties; the Netherlands, National Ombudsman; Norway, Parliamentary Commissioner for the Norwegian Armed Forces; Poland, the Human Rights Defender; Romania, the Advocate of the People; Slovenia, the Human Rights Ombudsman; UK, the Service Complaints Commissioner for the Armed Forces.

¹² H. Born and I. Leigh, *Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel*, (Organisation for Security and Cooperation in Europe, Office of Democratic Institutions and Human Rights, Warsaw, 2008), p. 22. <http://www.osce.org/odihr/31393?download=true>

military matters (although a civilian ombuds institution, including by dealing with a significant number of military complaints, can of course build up expertise) and possible barriers to a civilian, generalist, institution establishing an effective relationship of trust and confidence with the military itself.

On the other hand, an ombuds institution for the armed forces where the institution is integrated in the military itself (for example, the Inspector-Generals of the Netherlands and Belgium) may score more highly in terms of specialist knowledge and in winning the confidence of the military. The cost, however, may be a real or perceived lack of independence and credibility with service personnel and the public, who may regard it simply as a variant on internal investigation.

An optimum solution in terms of independence,¹³ expertise and credibility with service personnel would appear to be the independent specialized ombuds institutions for the armed forces model found in countries such as Austria, Bosnia and Herzegovina, Germany, Ireland and Norway. The effectiveness of such institutions necessarily depends on building a mutually respectful, but not overly close working relationship with the armed forces. Although the formal legal powers of the ombuds institution must be available to be used where necessary, an effective working relationship will depend to a greater extent on voluntary cooperation and flexibility. However, it is important that the ombuds institution retains its distance even while developing expertise, to be able to challenge military opinion where necessary and so that there is no public perception of too close linkages between the ombuds institution and the armed forces.

In particular, in the context of the investigation of allegations of grave human rights violations within the military the need for independence is underlined by the European human rights jurisprudence of the European Court of Human Rights. In particular, where there has been an unexplained death of a member of the armed forces the Court has found that an investigation into the cause of death that is clearly independent of the military unit concerned and of the chain of command must be conducted in order to satisfy the procedural requirements of the right to life (Article 2).¹⁴ This strengthens the case for a specialized or civilian ombuds institution for the armed forces that is genuinely independent.

Similarly, the Council of Europe in Parliamentary Assembly Recommendation 1742 (2006)¹⁵ has recommended the introduction of an 'autonomous' military ombudsman with powers to resolve confidential complaints from service personnel, where one does not currently exist. In this context a range of OSCE commitments on the rule of law and right to a fair trial are relevant. In addition, in accordance with the Copenhagen Document (1990): "The participating States will (...) facilitate the establishment and strengthening of independent national institutions in the area of human rights and the rule of law, which may also serve as focal points for co-ordination and collaboration between such institutions in the participating States." In the Code of Conduct itself (Budapest,

¹³ The independence of ombuds institutions can be further considered in relation to several factors: the legal status of the office, the appointment process and term of office (security of tenure), control of budget and staffing, as well as operational independence.

¹⁴ See *Shevchenko v Ukraine* (2006) 45 EHRR 642.

¹⁵ <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta06/EREC1742.htm>

1994), participating States commit themselves to “provide appropriate legal and administrative procedures to protect the rights of all its forces personnel.”

In terms of legal status, an ombuds institution may be established by various means: under the constitution,¹⁶ by legislation¹⁷ or by executive decree.¹⁸ A constitutionally-based ombuds institution for the armed forces may appear to have added legitimacy in relation to governmental institutions, a more secure and permanent basis for its mandate, and greater security of tenure. In theory, an ombuds institution created by executive decree is more vulnerable to pressure and change. Legal differences in the status of ombuds institutions are certainly important but should also be understood in the context of other related factors. The independent status of the office will be enhanced or diminished in practice by the extent of political support that it enjoys and the respect given to its reports and recommendations by political actors. Equally, without adequate funding and staffing levels to implement its mandate, an otherwise legally independent ombuds institution will be stunted, whatever its powers on paper. Unless an ombuds institution receives its budget separately from the bodies it is responsible for overseeing there is a risk that its independence will be compromised.¹⁹

Overall it can be said that questions of perception of independence and trust are perhaps as important as formal legal powers (considered below), although the two issues are delicately inter-related. The calibre and personal qualities of the ombuds person will be important in commanding the necessary respect of service personnel, the military, politicians and the public. Senior, non-partisan figures, without a military background are more likely to be seen to have the necessary characteristics.

Accessing ombuds institutions for the armed forces

The question here is: who can initiate a complaint or how otherwise an investigation by the ombuds institution can be initiated? We can differentiate between narrow complaints-based systems where the focus is exclusively on redress of individual grievances and broader, more open, systems.

In the first type a relatively narrow approach may be taken, for example, in restricting complaints to current members of the armed forces, veterans and members of their immediate family. Clearly these are the individuals most directly affected by any abuses in the armed forces and with a direct and personal interest in redress. One of the main advantages of an ombuds institution for armed forces from their perspective is the tangible contribution that it can make to enhance their working lives. For example, an ombuds institution can provide a safe and independent mechanism for raising complaints concerning bullying of conscripts, inappropriate forms of discipline, discrimination or harassment faced by members of the armed forces.

¹⁶ As in Albania, Germany, Poland and Romania. See further *Ombuds Institutions for the Armed Forces – A Handbook* (2012).

¹⁷ *Ibid.*, discussing Bosnia and Herzegovina, Ireland and the UK.

¹⁸ *Ibid.*, discussing Canada.

¹⁹ *Ombuds Institutions for the Armed Forces – A Handbook* (2012), pp. 43-44.

The schemes in the second type are more open and allow for self-referral (i.e. by the armed forces themselves or the Ministry of Defence), own initiative investigation (i.e. the ability of the ombuds institution to generate an investigation based on third party information, news reports or into a potential systemic question), or for complaints by members of the public. Referral by members of the public opens the possibility of harnessing the resources of the investigatory journalists and NGOs in exposing abuses. In principle there are advantages to self-referral in that it encourages the military to develop and strengthen their own effective internal systems for dealing with complaints. The expertise of the ombuds institution is then available when they become aware of a failure²⁰, which internal processes have not handled satisfactorily. Self-referral may also help to overcome the potential limitations of complaints-based systems in which individual members of the armed forces may be reluctant to be seen to challenge the chain of command.

A power of own initiative²¹ on the part of the ombuds institution allows for strategic use of scarce investigative resources to target potential problems where there could be a wider ripple effect, especially if coupled with an ability to recommend broader changes to the policy or practice of the armed forces that transcend individual cases. Examples might include the duty of care owed to younger members of the armed forces, especially conscripts, and ensuring the provision of adequate food or accommodation, or medical care.

The relationship to other procedures for protecting human rights

In some arrangements armed forces personnel may present a petition directly to the ombuds institution without going through other bodies of the military grievance system. In other systems the internal complaint system through the chain of command needs to be exhausted first before referring the case by way of appeal to the ombuds institution. This requires a prior internal complaint, which has not been satisfactorily resolved.

On the one hand, direct access systems will certainly have the effect of encouraging more complainants to use the facility, as the internal barriers that might deter service personnel will be removed or lowered. On the other hand, this is a resource-intensive way to deal with complaints, unless there are effective procedures to sift the most serious and to encourage resolution of others by mediation.

A requirement for internal or prior ventilation of complaints allows for an opportunity to resolve grievances nearer the source and more efficiently. The cost, however, may be that the additional obstacles deter some complainants with a legitimate complaint which may therefore go unresolved. The extent to which proper safeguards can be put in place to ensure confidentiality and trust in the internal complaints mechanism so as not to expose a complainant to possible intimidation or harassment may have a mitigating effect. Another measure may be setting a strict

²⁰ Failures of this kind may, for example, come to light as a result of disciplinary investigations by military prosecutors or in evidence before military courts or tribunals. In this way the ombuds institution can act as a cooperative partner and as a source of independent advice in implementing a process of reform and modernisation in the armed forces.

²¹ As exists, for example, in Austria, Canada, Estonia, Finland, Germany, Netherlands, Norway, Poland, Romania, Serbia, Slovenia and Sweden.

time limit for internal resolution of a complaint after which the ombuds institution for the armed forces can take jurisdiction.

The powers of an effective ombuds institution for the armed forces

To some extent the precise powers that an effective ombuds institution needs depend on the scope of its mandate with regard to the variations noted above. At a minimum, however, a grievance redress type of ombudsman requires effective powers of access to information to investigate the facts that lie behind a complaint in a way that commands confidence. These include the power to demand access to information and to hear witnesses and experts, as well as the right to visit military premises without prior notice. The question of access to classified papers may be controversial, but without such a right the institution is likely to face barriers to effective investigation in some sensitive cases.

Ombuds institutions are often thought of as an alternative to more formal legal challenges and at their best have the flexibility to mediate a settlement and to make recommendations both in individual cases (and more generally where they have a broader remit). A degree of public accountability would suggest that there should be a public annual report of the ombuds institution's work (that may refer to individual cases, whether or not the outcomes are routinely public). Where there is a power to make recommendations there should also be a power to monitor implementation.

Discussion points for the event

How can an ombuds institution for the armed forces best combine independence with expertise and effectiveness?

This is a core topic that the paper discusses looking into the various ombuds institution models and approaches, as well as key considerations.

Should the core task of an ombuds institution be resolving individual complaints or trying to effect changes to improve the working lives of armed forces personnel?

This raises the question of the effectiveness of individual complaints based models as against more open systems and the respective advantages of each. One consideration is whether an open ombuds institution might become distracted by policy questions and so be less effective in the task of grievance redress.

What is the appropriateness of a power to issue binding directions following an investigation?

On the one hand this provides an incentive to individual complainants, who may otherwise question the usefulness of the process. On the other hand there is a risk that the chain of command could be undermined by the use of power of this kind.

Should there be any direct link between the outcome of an investigation and legal proceedings, either under military discipline or in the criminal courts?

If individuals can be identified and recommendations made for further proceedings, care need to be taken to balance the powers of the institution with the normal evidential and legal safeguards under the right to fair trial. Otherwise later proceedings against individuals may be tainted by the ombuds institution's investigation.

Where and how should an ombuds institution report its findings?

It could be argued that independence requires that an ombuds institution is in control of publication of its reports, rather than the armed forces or the executive. The role of democratic institutions, such as Parliamentary committees, in receiving reports and bringing pressure to bear to effect any necessary policy changes might also be significant.

Annex II



**THE ROLE OF OMBUDS INSTITUTIONS IN PROTECTING HUMAN RIGHTS
OF ARMED FORCES PERSONNEL**

VIENNA, HOFBURG, SEGMENTGALERIE I
14 October, 2013

AGENDA

- 08:30-09:00** **Registration of Participants**
- 09:00-09:30** **Welcoming Remarks**
- Ms. Snježana Bokulić**, *Head of the Human Rights Department, OSCE Office for Democratic Institutions and Human Rights (ODIHR)*
Ambassador Hubert Wurth, *Chairperson, OSCE Forum for Security Co-operation (FSC)*
Lt. Col. Detlef Hempel, *Co-ordinator for the Code of Conduct on Politico-Military Aspects of Security, OSCE Forum for Security Co-operation (FSC)*
- 09:30-10:00** **Keynote Address: H.E. Elisabeth Rehn, Minister of State, Finland**
The keynote speaker will explain the importance of mainstreaming human rights and gender in the security sector. Institutional independence and oversight as key elements to ensure effective ombuds institutions, rights protection and trust in the military sector will be discussed.
- Moderator: **Ms. Snježana Bokulić**, *Head of the Human Rights Department, OSCE Office for Democratic Institutions and Human Rights (ODIHR)*
- Discussion**
- 10:00-10:15** **Coffee Break**

10:15-11:15

Panel 1: Ombuds Institutions: Models, Mandates and Approaches

Panelists will present the main models of ombuds institutions for the armed forces, their respective mandates and scope of work. The advantages and disadvantages of the different approaches in general terms, as well as the role of ombuds institutions in protecting rights in the armed forces within a wider rule of law framework will be discussed. The DCAF-ODIHR project on ombuds institutions for the armed forces will be briefly presented.

Moderator: **Dr. Susan Atkins**, Service Complaints Commissioner for the Armed Forces, United Kingdom

Panel members:

Dr. Hans Born, Deputy Head of Research, and **Ms. Riina Turtio**, Research Assistant, Geneva Centre for the Democratic Control of Armed Forces (DCAF)

Mr. Bauke Snoep, Associate, Centre for European Security Studies (CESS)

Discussion

11:15-12:45

Panel 2: Ombuds Institutions: Exercising Independent Oversight

Panelists will present the mandate and work of their respective ombuds institutions for the armed forces. They will draw particular attention to key factors, including independence, that determine the effectiveness of ombuds institutions in exercising oversight and protecting rights in the armed forces.

Moderator: **Mr. Oyvind Hoyen**, Human Rights Officer, OSCE Office for Democratic Institutions and Human Rights (ODIHR)

Panel members:

Mr. René Hoffmann, Personal Assistant of the Parliamentary Commissioner for the Armed Forces of the German Bundestag

Mr. Pierre Daigle, Ombudsman for the Department of National Defence and the Canadian Forces

Discussion

12:45-14:00

Lunch

14:00-15:30

Panel 3: Ombuds Institutions: Handling Complaints and Providing Essential Protection

Panelists will explain the complaints-handling mechanisms in their respective ombuds institutions and provide practical examples on how this provides fundamental rights protection to individual servicewomen and servicemen. Cooperation with other institutions, civil society and other relevant stakeholders in addressing complaints and human rights violations will be discussed.

Moderator: **Dr. Hans Born**, *Deputy Head of Research, Geneva Centre for the Democratic Control of Armed Forces (DCAF)*

Panel members:

Mr. Aram Vardevanyan, *Head of the Legal Analysis Department, Office of the Human Rights Defender of the Republic of Armenia*

Ms. Kosana Beker, *Assistant to the Commissioner for Protection of Equality, Serbia*

Col. Enes Husejnović, *Inspector General, Ministry of Defence, Bosnia and Herzegovina*

Discussion

15:30-15:45

Coffee Break

15:45-17:15

Panel 4: Ombuds Institutions: Setting up an Independent Office for the Armed Forces

Panelists will share considerations and provide perspectives on the merits of establishing an independent ombuds institution for the armed forces. Practical experience with setting up such an office or lobbying for its establishment will be discussed.

Moderator: **Col. Anton Eischer**, *Senior Military Adviser of the Permanent Mission of Austria to the OSCE*

Panel members:

Dr. Susan Atkins, *Service Complaints Commissioner for the Armed Forces, United Kingdom*

Mr. Irakli Sesiashvili, *Chairman of the Parliamentary Defense and Security Committee, Georgia*

Discussion

17:15-17:30

Closing Remarks

Ms. Snježana Bokulić, *Head of the Human Rights Department, OSCE Office for Democratic Institutions and Human Rights (ODIHR)*