

**OSCE Office for Democratic
Institutions and Human Rights**

**European Organisation of
Military Associations**

Meeting Report

The Role of Military Associations in Protecting Human Rights of Armed Forces Personnel in Southern Europe

19 November 2013



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, the European Organisation of Military Associations or of any particular OSCE participating State. The content of this report reflects opinions expressed by participants in the meeting The Role of Military Associations in Protecting Human Rights of Armed Forces Personnel in Southern Europe which took place on 19 November 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 panelists and participants during the meeting.

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Executive Summary

The enjoyment and protection of human rights and fundamental freedoms of armed forces personnel is an integral part of the OSCE Code of Conduct on Politico-Military Aspects of Security (Budapest, 1994). This includes the right to freedom of association. While there is an increasing international recognition of the rights of military personnel to form and join associations, and to partake in collective bargaining, these rights are still being restricted in a number of OSCE participating States. This has an impact on how effective military associations can be in protecting rights in the armed forces.

It was against this backdrop that the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the European Organisation of Military Associations (EUROMIL) co-organized a meeting on the Role of Military Associations in Protecting Human Rights of Armed Forces Personnel in Southern Europe on 19 November 2013 in Madrid, Spain. The main aim of the meeting was to share experiences and views regarding the realization of the right to association and related rights for armed forces personnel in southern Europe.

The meeting speakers and participants included representatives of military associations and national authorities in southern Europe, as well as representatives and experts from military associations and authorities from other parts of Europe, academia and the Council of Europe. The meeting provided a forum conducive to discussing areas in which progress had been made, broader and common issues of concern, as well as approaches from both within and beyond the region that could be considered going forward.

The meeting was deemed particularly useful for facilitating dialogue and understanding between the associations and the authorities, some of whom met for the first time. The progress regarding legislation allowing for association rights for members of the armed forces and increased dialogue between associations and authorities was noted in a limited number of countries. Nevertheless, the overall picture remains that military associations face a restrictive environment both in legislation and in practice in the region.

Introduction and Background

This report provides a synthesis of the discussions of the meeting on The Role of Military Associations in Protecting Human Rights of Armed Forces Personnel in Southern Europe, organized by ODIHR and EUROMIL on 19 November 2013 in Madrid, Spain.

The right to associate, together with other civil and political rights, is intrinsic to democratic societies and expressly recognized in OSCE commitments, as well as all major international and regional human rights instruments. In the Code of Conduct on Politico-Military Aspects of Security OSCE participating States commit themselves to ensure that armed forces personnel are able to enjoy and exercise their human rights and fundamental freedoms.

As “Citizens in Uniform”, servicewomen and servicemen are entitled to the same rights as all other persons, subject to certain limitations imposed by military service. Nonetheless, sovereign states have the prerogative to determine which limitations on the rights of armed forces personnel are necessary, and as a result there exists great variation in the degree to which service personnel are able to enjoy their civil and political rights in the OSCE region.

The issue of military associations in southern Europe was deemed a timely topic in light of the limitations imposed on military associations in several countries in the region and on association members in the recent past. Nevertheless, commendable steps to enhance the right to associate in the armed forces and the work associations already do to represent the interests of their members and protect human rights also merits attention.

Against this backdrop, the aim of the meeting was to share experiences and views regarding the realization of the right to association and related rights for armed forces personnel. In total, 27 participants (6 women and 21 men) representing military associations from Italy, Spain, Portugal, Cyprus, Greece and Montenegro, and ministries of defense of Cyprus, Montenegro, Portugal and Spain, as well as experts from other parts of Europe including from the Council of Europe took part in the meeting.

ODIHR and EUROMIL have a long track record in cooperating on issues related to military associations and rights protection in the armed forces and in co-organizing regional meetings to bring attention to the issues at hand.

International Standards, Key Issues and Good Practices

1. The right to freedom of association of armed forces personnel can be viewed as an indicator of the degree of democratization of a country and the military. Freedom of association in the armed forces needs to be considered in terms of its legal foundation in national legislation, its implementation in practice and the effectiveness of the implementation of the right. Thus, although the right to establish a military association is acknowledged in national legislation, it does not truly exist unless people decide and can *de facto* take advantage of this right.

International standards

2. The right to freedom of association is spelled out in a number of international and regional instruments, including:
 - International Covenant on Civil and Political Rights (ICCPR), Article 22
 - International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 8
 - International Labour Organization (ILO) Conventions of 1948, 1949, and 1981
 - European Convention of Human Rights (ECHR) Article 11
 - European Social Charter, Article 5
 - The Charter of Fundamental Rights of the European Union, Article 12
 - OSCE commitments (Madrid, 1983; Copenhagen, 1990; Paris, 1990; Helsinki, 2008)
3. Fundamentally, everyone has the right to freedom of association with others, which includes the right to form and join trade unions for the protection of his or her interests. There should be no restrictions on the exercise of this right other than those prescribed by law and which are found necessary in a democratic society for reasons of national security, public safety and public order. This does not prevent the imposition of lawful restrictions on members of the armed forces due to the nature of their service.
4. The freedom to associate is closely linked with other human rights such as freedom of peaceful assembly and freedom of expression. These rights allow citizens to come together either on an informal or formal basis by creating or joining associations or by organizing peaceful gatherings to express their views on matters of public concern or of particular groups. Therefore, the freedom to associate, together with other fundamental civil and political rights, is essential for the protection of human rights.
5. In the OSCE the concept of security is a comprehensive one where human rights are an integral part of the politico-military dimension of security (Helsinki, 1975). The Code of Conduct on Military-Politico Aspects of Security specifically affirms the rights of armed forces personnel. In accordance with paragraph 32, participating States will “ensure that military, paramilitary and security forces personnel will be able to exercise their human rights and fundamental freedoms...in conformity with relevant constitutional and legal provisions and with the requirements of service”.
6. Security sector personnel, including armed forces personnel, are “Citizens in Uniform” with all the rights of other citizens albeit with certain limitations due to the particular requirements of service. Hence, there is recognition that armed forces are a special institution, built upon distinctive concepts such as military hierarchy and discipline. Nevertheless, members of armed forces should not relinquish their civil and political rights upon joining the armed forces. It follows that OSCE participating States have a positive obligation to protect and ensure the full enjoyment of freedom of association also in the armed forces.
7. The Council of Europe Recommendation CM/Rec (2010)4 on human rights of members of the armed forces, catalogues the rights and freedoms of military personnel and specifies the cases

where the exercise of the above rights may be limited. The Committee of Ministers of the CoE has urged states to review their legislation concerning the right for military personnel to organize and bargain collectively. The committee has also emphasized that it favors the idea that all citizens, including members of the armed forces, should enjoy the same political rights. The aim of the recommendation is to provide guidance to CoE Member States on how to better ensure that individuals serving in the armed forces enjoy their human rights to the fullest extent possible.

8. The CoE recommendation covers a wide range of issues: right to life, freedom from torture and ill-treatment, forced labor, military discipline, right to liberty and security, right to a fair trial, privacy and family life, right to dignity and health protection, freedom of thought, religion, expression, information, association, non-discrimination, right to marry, right to vote and to stand for election, accommodation and nutrition, remuneration, rights of persons under the age of 18 years, human rights education and training, and remedies against human rights violations.

Key issues

9. The question of unionization and associations is a debated question in many OSCE participating States and it is not confined to the military sphere only. The implementation of OSCE commitments related to the right to freedom of association through national legislation and practices still poses challenges in a number of participating States, which means that much work is still needed in order for this right to be exercised effectively.
10. Association rights of military personnel are viewed by many as being in conflict with the unique nature of the military and its role in maintaining national security. As a result, the majority of OSCE participating States impose greater or lesser degrees of restrictions on the ability of armed forces personnel to establish unions or other types of representative associations. Nevertheless, several countries across Europe recognize military associations as valuable partners for defense administrations.
11. In light of the international human rights standards and jurisprudence, the right of members of the armed forces to associate should not be a discussion about the right *per se* but rather the need to impose limitations on the right. Therefore, the key issue in the debate on military associations should be *how* to respect the rights of military personnel, including the freedom to associate, while at the same time satisfying the concerns of the national and military authorities, given the unique function that the military is expected to fulfil.
12. In accordance with the Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel, produced by ODIHR and the Geneva Centre for the Democratic Control of Armed Forces (DCAF), restrictions on freedom of association should be prescribed by law, necessary in a democratic society, proportionate, and non-discriminatory.
13. States that allow members of the armed forces to join associations have typically defined a regulatory framework of their work in order to avoid any external influence of civilian trade

unions. Moreover, many OSCE participating States have forbidden strikes or other forms of industrial action that could potentially disrupt military discipline, the operational effectiveness of the armed forces or threaten national security.

Good practices

14. In a number of OSCE participating States members of the armed forces are permitted to establish or join professional representative associations or trade unions entitled to negotiate issues such as salaries, conditions of employment and pensions with the military administration. Various categories of military personnel can be represented, which can be an effective measure in addressing concerns at an early stage in a consultative manner.
15. Autonomous military associations enjoy accountability to their members and can speak with authority on their behalf. Thus, independence can be of tangible significance for association members in terms of credibility and relevance.
16. In practice autonomy is often not absolute. In some OSCE participating States personnel may only join authorized associations such as specific associations for officers and service personnel. In terms of funding, military associations are in some cases state funded, typically through the Ministry of Defense, whereas in other cases they are entirely funded by their members. Funding sources and the organizational set-up of military associations affect the level of perceived and real independence.
17. While states have the primary responsibility to respect and protect human rights, civil society and non-state actors play a very important role. This is especially the case regarding dissemination of information and awareness-raising on human rights as complementary means to implement specific rights. Through determined and focused activities associations can exert considerable influence on government human rights policy.
18. Military associations are well-placed to also bring up issues of concern to their members in discussions with the authorities. Usually military associations represent sectional groups that have affiliation to the armed forces, such as male and female service personnel, families of service personnel, veterans or those wounded in service. Thus, associations have a direct stake in not only identifying issues, but also in scrutinizing and challenging abuses, and in addressing problems that affect the association members, their families and service personnel in general.
19. Associations can be good partners in helping to determine the best balance between the operational effectiveness of the armed forces and the enjoyment of fundamental freedoms and human rights of the personnel. If members of the armed forces are satisfied with their working conditions they are more likely to also have the motivation and enthusiasm which are necessary for performing their duties well. A “satisfied soldier” should be in the interest of all parties.
20. Experience and practices from several OSCE participating States demonstrate that military associations can also have a role in contributing to wider security sector reform, transparency

and accountability in the armed forces. This includes having a say and access to the defense administration and the Ministry of Defense on relevant matters, being consulted on specific issues concerning service personnel and contributing to the public discussion concerning defense policy, procedures and standards in the armed forces.

The Status of Military Associations in Southern Europe

21. There are a number of military associations active in their respective countries in southern Europe. These include associations of active personnel, officers and veterans. The associations operate in very different environments particularly in terms of their legal status, access to the military administration and authorities, and ability to express their opinions and concerns in public. Several of the associations co-operate and participate in regional activities as members of European Organisation of Military Associations (EUROMIL), which is an umbrella organization of 40 national military associations and trade unions.

Legal framework

22. Recent years have seen some progress in legislation that permits members of the armed forces to associate. This includes for example Law 9/2011 on the Rights and Duties of the Members of the Armed Forces in Spain, and an amendment to the Army of the Republic Law of 1990 in Cyprus in 2005. In some countries military associations are increasingly able to consult and discuss issues with relevant authorities such as in Montenegro and Cyprus.

23. The recent report on the responses to a questionnaire to states on their implementation of the Council of Europe Recommendation CM/Rec (2010)4 on human rights of members of the armed forces is informative in this context. The report was finalized in March 2013 and is based on the substantive responses of 33 out of 47 states. In the southern Europe region this included Greece, Portugal and Spain which replied to all questions, and Italy, which replied only to a partial extent. The freedom to join established trade unions is granted in 21 of the states that responded, while the right to join associations is granted in the majority of the other responding states.

24. Service personnel in Portugal and Spain can form or join lawfully established military associations, which have no political party or trade union character. In Portugal active military personnel may attend political party meetings provided they are dressed in civilian clothes, but they cannot speak or be part of the preparation or execution of such meetings, or any of the decisions-making. In Greece members of the armed forces can participate in non-profit scientific associations or organizations after a written permission.

25. In terms of other civil and political rights, service personnel cannot join political parties in Greece, Portugal or Spain. The right to stand for election is generally recognized in the region, but members of the armed forces have to leave the service in order to stand for election. Freedom of expression is also generally guaranteed although with possible restrictions justified by national security, military discipline, confidentiality and a number of other reasons.

Objectives of military associations

26. Strengthening the legislation that regulates the right to freedom of association in the armed forces is a key issue for a number of military associations in their respective countries. Many associations also fight for the right of their members to join a political party, stand for election, and to make public statements.
27. There is a strong wish among military associations in the southern European region to improve the professional, economic and social interests of their members by safeguarding the welfare and rights of the members and their families. This includes for example achieving a better work-life balance, which relates to working hours, sufficient periods of rest between long shifts, family life and health issues.
28. A common goal for many associations is to strengthen the relationship with the military administration and the Ministry of Defense to achieve specific goals of the associations and contribute to enhancing the capability of the armed forces.
29. According to some military associations, more effort should be made towards narrowing the gap between the military and the rest of society to improve mutual understanding. Members of the armed forces should be able to participate more in the surrounding society arguing that nobody should be separated from the society in which he or she serves.

Achievements of military associations

30. Military associations have helped to initiate discussions on regulating promotions, postings and retirements in the military, secure free access to health care for its members, and provide legal assistance to association members free of charge.
31. Associations in the region have also addressed cases of service personnel in which inadequate medical assistance were received or flaws in career promotion systems were revealed.

Obstacles for military associations

32. The denial of legal status for military associations coupled with restrictions on freedom of expression and assembly is considered a major hindrance for the effectiveness of military associations. In some situations, members of the armed forces are prevented from joining associations or are forced to join a specific association. There are associations that operate in a national setting in spite of a legislative framework covering military associations. In these instances associations may be forced to operate on an illegal or semi-legal basis. Other associations operate in a legislative environment that excludes the possibility of one common organization representing all cadres of the armed forces, except for the veterans.
33. Notwithstanding national legislation granting freedom of association to military personnel, in a number of participating States service personnel continue to face obstacles in exercising their

legal right. There have been cases where members of military associations have been subject to disciplinary measures handed down by the military justice system in connection with their association activities. In Spain members of military associations have been imprisoned for criticizing defense policy in the media.

34. Effectively partaking in collective bargaining and consultations with military and state authorities is still limited in most countries in the region. Rather than being viewed as constructive partners with considerable insight into the concerns of armed forces personnel, the military leadership sometimes view associations as impediments to reform, military hierarchy and effectiveness. In other cases associations are barred from communicating directly with the Ministry of Defense since all information has to go through the military leadership.
35. It is often the case that a member of the board of an association will not be awarded any time off to participate in association activities. The members of the associations at the meeting all confirmed that they had to take annual leave in order to participate. In practice, this means that association members have to work on a voluntary basis and their efforts and costs on behalf of fellow service personnel are not recognized or compensated by relevant authorities.

Creating an Enabling Environment for Military Associations

Learning from others

36. In promoting freedom of association for armed forces personnel it is important to take into account the culture and level of social dialogue of a given country. Military associations have come into existence in very different circumstances. There are not two places in in the OSCE area that have the same system when it comes to military associations. Hence, there is no blueprint for how to create an enabling environment for military associations, but rather a number of different factors, experiences and lessons learnt that can be considered.
37. In some countries trade unionization is very much part of the society and the culture, which also enabled military associations to be established over time. In some countries military associations mainly consist of retired soldiers. In one country where freedom of association of military personnel was prohibited, the spouses decided to establish associations on behalf of their partners in the military.
38. Military associations can work together on a regional level such as through EUROMIL. This enables an exchange of information, experiences and best practices among member associations on issues concerning the advancement and protection of human rights, fundamental freedoms and socio-professional interests of service personnel.
39. OSCE participating States can seek assistance from ODIHR to review their legislation for compliance with relevant international standards, including OSCE commitments. This includes

legislation touching on freedom of association. ODIHR also offers an online resource (Associationline) on freedom of association to support government authorities and civil society in advocating for and exercising the right to freedom of association. This resource provides access to key principles and international standards, as well as to relevant jurisprudence and examples of good practices and challenges across the OSCE region. Through various types of meetings ODIHR can also facilitate discussions on freedom of association issues between authorities, civil society and other relevant stakeholders.

Legislation and standards

40. An adequate and solid legal foundation in national legislation on the right to freedom of association, and related civil and political rights, is essential for military associations to be effective in safeguarding human rights. Yet, for military associations to play a role in protecting rights in the armed forces it is necessary that members of associations have a voice, can express their opinion, and have access to decision-making structures both civilian and military.
41. The Council of Europe Recommendation CM/Rec (2010)4 on human rights of members of the armed forces can be regarded, not only as a compilation of human rights principles, but also as a useful tool for non-governmental organizations and concerned individuals, to use in their awareness-raising and advocacy activities.

Establishing dialogue and co-operation

42. Military associations should be recognized as partners of the military administration in ensuring the well-being and preparedness of armed forces personnel particularly in terms of identifying and addressing grievances of armed forces personnel. Therefore, the associations and their members should not be considered as adversaries seeking to challenge military authority or undermine national security.
43. Establishing mechanisms for regular consultations and dialogue between relevant authorities and military associations is a concrete measure to enhance understanding, trust and co-operation. In light of the current budget constraints of many governments, including cutbacks on defense spending, involving military associations in this process can be particularly useful. Through a participatory approach different viewpoints can be heard, which can help to ensure that the needs and concerns of service personnel are taken into account.

Recommendations

44. A number of recommendations came out of the meeting:
 - A. States should allow all members of the armed forces to join a professional association representing their interests.
 - B. Any restrictions on freedom of association should be: prescribed by law, necessary in democratic society, proportionate, and non-discriminatory.

- C. Restrictions that apply to the exercise of the right to freedom of association should be regularly reviewed and lifted if there is no longer a valid justification for their application.
- D. Military associations should be consulted by the political and military leadership on issues concerning the conditions of service for members of the armed forces and be engaged in a regulated social dialogue with the authorities.
- E. No disciplinary action should be taken against members of the armed forces in connection with their participation in activities of lawfully established military associations.

Annex 1 – Meeting Agenda



The Role of Military Associations in Protecting Human Rights of Armed Forces Personnel in Southern Europe

Novotel Puente de la Paz, Madrid, Spain
19 November 2013

AGENDA

09.00-09.30	Registration of meeting participants
09.30-09.45	Opening remarks
09.45-10.45	Presentations and roundtable discussion: international standards and good practices concerning human rights of armed forces personnel
10.45-11.00	<i>Coffee break</i>
11.00-12.30	Presentations and roundtable discussion: freedom of association and the status of military associations in southern Europe
12.30-13.45	<i>Lunch</i>
13.45-15.15	Presentations and roundtable discussion [<i>continued</i>]: freedom of association and the status of military associations in southern Europe
15.15-15.30	<i>Coffee break</i>
15.30-16.45	Presentations and roundtable discussion: creating the conditions for military associations to be effective in safeguarding human rights
16:45-17:00	Closing remarks