

**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 Central and Eastern Europe

10 September 2014



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 Central and Eastern Europe which took place on 10 September 2014 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

OSCE participating States commit to ensure the enjoyment and protection of human rights and fundamental freedoms of armed forces personnel in the OSCE Code of Conduct on Politico-Military Aspects of Security (Budapest, 1994). This includes the right of service personnel to form or join associations. While this right is increasingly recognized internationally, restrictions are still upheld in a number of OSCE participating States impacting on the ability of military associations to protect 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 Central and Eastern Europe on 10 September 2014 in Budapest, Hungary. The meeting facilitated the exchange of information on international and regional standards, experiences and views regarding the realization of the right to association in the region, as well as best practices in other parts of Europe.

The meeting brought together 20 representatives of military associations, national authorities, the Council of Europe (CoE), EUROMIL and ODIHR. Open discussion acknowledged areas where progress was made, as well as remaining challenges. The forum itself provided an opportunity for representatives of authorities and associations to meet and discuss on an equal footing. The regional setting allowed for reflection on domestic legislation and practices drawing on the experiences with the legal and procedural arrangements elsewhere.

The experience in Hungary, in which the trade union partakes in negotiations with the Ministry of Defense, stood out positively. Participants from other countries elaborated on varying degrees of restrictions in place particularly on active service personnel to join or set up military associations. However, it should be noted that easing certain restrictions is still being considered in the Czech Republic and Slovakia.

Introduction and Background

This report provides a synthesis of the main issues discussed at the meeting on The Role of Military Associations in Protecting Human Rights of Armed Forces Personnel in Central and Eastern Europe organized by ODIHR and EUROMIL on 10 September 2014 in Budapest, Hungary.

The right to freedom of association rests at the core of functioning democratic systems. It is closely related to other cornerstones of democracy and pluralism, such as freedom of expression and freedom of assembly. The right to freedom of association is enshrined in all major international and regional human rights instruments and is guaranteed in the OSCE's Copenhagen Document of 1990. In the Code of Conduct, OSCE participating States commit themselves to ensure that armed forces personnel are able to enjoy and exercise their human rights and fundamental freedoms.

In principle, women and men in uniform enjoy the same fundamental rights as all other citizens. Nevertheless, due to concerns regarding military hierarchy and discipline – the requirements of service – states may impose certain restrictions on the rights of the "Citizen in Uniform". Since each state has the prerogative to determine these restrictions, the differences in the ability of service personnel to enjoy their civil and political rights in the OSCE region including freedom of association vary substantially.

ODIHR and EUROMIL organized this one-day meeting in order to provide a venue for discussing and sharing views on freedom of association in the armed forces in Central and Eastern Europe. There were 20 participants (5 women and 15 men) representing military associations and authorities in the Czech Republic, Hungary, Poland, Slovakia and Romania, as well as associations in Cyprus, Denmark, Germany and Sweden, the CoE and the meeting organizers.

The agenda included:

- Session 1: International Standards and Good Practices Concerning Human Rights of Armed Forces Personnel
- Session 2: Freedom of Association and the Status of Military Associations in Central and Eastern Europe
- Session 3: Creating the Conditions for Military Associations to be Effective in Safeguarding Human Rights

The meeting was deemed particularly useful for facilitating dialogue and understanding between representatives of the associations and the authorities, some of whom met for the first time, as well as identifying successes, issues of concern and approaches elsewhere.

The topic was considered timely in light of the disparities in the legal framework and practices concerning military associations in the region. The intention of specific states to review their legislation on association rights in the military further underscored the merit of discussing more closely the concerns and valuable work of associations to improve the conditions for individual service personnel and their families.

ODIHR and EUROMIL have cooperated on issues relating to military associations and rights protection in the armed forces for a number of years. The meeting in Budapest follows a meeting of a similar format for the southern European region in Madrid, Spain, in November 2013.

International Standards and Practices

1. Human rights and freedoms apply equally to all individuals. Thus, members of armed forces do not surrender their civil and political rights when they join the armed forces. These rights are enshrined in international and regional human rights instruments including the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Social, Economic and Cultural Rights (ICESCR), the European Convention on Human Rights (ECHR) and OSCE commitments.
2. There are a number of OSCE commitments on freedom of association and related political and civil rights. Since the Madrid Conference in 1983, the OSCE has recognized the rights of workers to establish and join trade unions, within the law of the respective state. In accordance with the Copenhagen Document (1990): “The [OSCE] participating States express their commitment to [...] ensure that individuals are permitted to exercise the right to association, including the right to form, join and participate effectively in non-governmental organizations which seek the promotion and protection of human rights and fundamental freedoms, including trade unions and human rights monitoring groups”.
3. The ECHR indicates the following criteria for defining restrictions on this right: “No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.” The European Social Charter (Article 5) also allows for restrictions.
4. Freedom of association is closely related to other human rights such as freedom of peaceful assembly and freedom of expression. Indeed, freedom of association is rendered hollow without these rights, which together are essential for the protection of human rights as they allow individuals to come together to express their views.
5. In the Code of Conduct, OSCE participating States commit to ensure that armed forces personnel are able to enjoy and exercise their human rights and fundamental freedoms. Thus, states have a positive obligation to protect and ensure the enjoyment of freedom of association also in the armed forces.
6. Taking into account the special functions of the military in ensuring national security, the enjoyment of this right may be restricted for service personnel in order to guarantee the operational effectiveness and neutrality of the armed forces. According to the Code of

Conduct, participating States will ensure the human rights of armed forces personnel “as reflected in [OSCE] documents and international law, in conformity with relevant constitutional and legal provisions and with the requirements of service”.

7. The CoE Recommendation CM/Rec (2010)4 provides guidance to CoE member States on how to better ensure that members of the armed forces enjoy their human rights taking into account the particularities of military life and requirements of service. The Recommendation contains principles based on existing international legal instruments and evolving case law of the European Court of Human Rights (ECtHR).
8. Paragraph 54 of CoE CM/Rec (2010)4 states that where association rights are not granted, the justifications for such restrictions should be reviewed with the view to lift unnecessary and disproportionate restrictions of the right to assembly and association.
9. Paragraph 55 indicates that no disciplinary action or any discriminatory measure should be taken against members of the armed forces merely because of their participation in the activities of lawfully established military associations or trade unions.

Key Issues

10. 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 requirements of service. The question of the right to freedom of association of armed forces personnel should not be a question of the right *per se*, but rather of the need to impose limitations on the right and if so to which extent.
11. The question of unionization and associations is a debated question in many participating States and it is not confined to the military sphere only. One should also bear in mind that states have very different traditions, practices and experiences with participatory processes and mechanisms for social dialogue. In some countries such as Denmark and Belgium there is a long history of trade unionism, whereas in other countries there is very limited or no such experience. Hence, the development of association rights is likely to take a different course depending on the specific circumstances of every country.
12. Within the military sphere, questions arise in terms of the right to freedom of association of military personnel 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 certain restrictions on the ability of armed forces personnel to establish unions or other types of representative associations.
13. Military associations should be sensitive and respond to the needs of service personnel. As armed forces become increasingly diverse, this is all the more relevant. For example, military associations should be aware of the different needs and concerns of women and men, as well as between younger and older service personnel, as well as those that have left the service and veterans.

Main Approaches

14. The OSCE/ODIHR-DCAF Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel identifies three main approaches to the recognition of freedom of association within OSCE participating States. These approaches vary from countries that prohibit such bodies entirely, to those that have officially sponsored associations, and those that allow independent military associations or unions.
15. In the first approach, the welfare of the service personnel is seen as the responsibility of the commanders – “we think for the soldiers”. Hence, specific needs, problems or grievances of a service member should be dealt with by his or her commander. In some cases, such a system of reporting through the chain of command may exist alongside military associations and an ombuds institution for the armed forces. The main drawback with the chain-of-command approach is the lack of independence, which becomes particularly contentious if the source of the problem is the commander himself or herself.
16. The second approach consists in non-autonomous arrangements providing the legal machinery for representation of the interests of members of the armed forces established by the state. While this approach ensures a better mechanism for collective grievances to be heard and addressed, it, nevertheless, lacks independence. While the bodies established by the authorities may make it easier for the armed forces to consult them, they may be perceived to have less credibility and legitimacy, as they were not created by the members themselves.
17. The third approach, allows for independent military associations to be established by the members of the armed forces. In countries with such arrangements, service personnel are not legally restricted from joining military associations. Such associations enjoy accountability to their members and can represent their views with confidence. They should also be recognized as partners for consultation and negotiation by their respective ministry of defense.

Good Practices and Lessons Learnt

18. In a number of OSCE participating States, national legislation allows service personnel to join or set up autonomous military associations. Such associations are accountable to their members and can speak with authority on their behalf. A permissive legal framework is an important factor in creating an enabling environment for military associations.
19. Most independent military associations are recognized partners for consultation and negotiation by the respective ministries of defense. While associations primarily seek to improve the conditions of their members and their families, their work and achievements usually have a positive impact on non-members, as well. Associations may negotiate issues such as salaries, pensions and other conditions of employment with the military administration. In other states associations participate in legislative review processes, provide free legal services and other types of support to their members. Through such interaction, as

well as through advocacy, military associations can also contribute to wider security sector governance and reform (SSG/R), transparency and accountability in the armed forces.

20. Since military associations represent active and/or former personnel, they are well acquainted with issues of concern whether they are regarding housing, salaries, veteran entitlements or maltreatment. Thus, associations have a direct stake in not only identifying issues, but also in scrutinizing and challenging maladministration and abuse, and in addressing problems that affect their members, their families and service personnel in general.
21. Associations can provide useful input and advice to defense administrations on how to balance the operational effectiveness of the armed forces and the enjoyment of fundamental freedoms and human rights of the personnel. This issue has two main aspects. Firstly, a motivated and content soldier is likely to perform better than a demotivated soldier. Secondly, good and competitive conditions of service are important to attract new recruits and talent.
22. Military associations can play an important role in disseminating information, raising awareness and debate on laws, procedures and entitlements amongst their members, armed forces personnel in general and the wider public. Social media and online forums are increasingly used for this purpose.
23. In strengthening association rights in the military it is important to bear in mind the importance of trust-building and the recognition that there is no equal arrangement from one country to another. In countries where there are very few or practically no specific restrictions on military associations, the experience has been that achieving this stage takes time and requires much effort. It is important to have allies and partners such as national unions and civil society, and, even if the unions are separate, there should be mutual interest and broad common goals.
24. The work of military associations is about working and finding solutions together, whether this is among the service personnel or between associations and authorities. A major task is to convince military authorities that associations do not challenge military discipline, order or effectiveness, but rather enhance them.
25. In general, most states which allow members of the armed forces to join associations have defined a framework of their work in order to avoid any external influence of civilian trade unions. Moreover, states often forbid strikes or other forms of industrial action that could potentially disrupt the operational effectiveness of the military or threaten national security.

The Status of Military Associations in Central and Eastern Europe

26. Military associations across Central and Eastern Europe exist and operate under very different conditions with regards to their legal status, level of autonomy and consultative powers. The types of challenges they face, as well as their membership also differ. Associations taking part in the meeting were all members of EUROMIL.

Legal Framework

27. In March 2013, the Council of Europe issued a report on the implementation of Recommendation CM/Rec (2010)4 based on a questionnaire to all 47 CoE member States. 33 responses from state parties were received including from the Czech Republic, Hungary, Poland, Romania and Slovakia.
28. According to the response from Hungary, armed forces personnel may join lawfully established military associations or trade unions subject to certain restrictions, which were not elaborated upon in the response to the questionnaire.
29. In Poland, the Act of 11 September 2003 on military service of professional soldiers forbids soldiers to organize in trade unions or associations, but allows for creation of representative bodies organized within the military structure. Moreover, members of the armed forces need to inform their commander of any decision to join any such bodies.
30. Romania's response indicated that members of the armed forces can form or join lawfully established military associations as long as their nature is not political or trade unionist. The activities of the associations cannot in any way conflict with military duties and functions. Nevertheless, it was clarified that according to the legislation members of the armed forces cannot associate during service. Hence, association members consist of retired personnel.
31. In the Czech Republic, the establishment of trade unions by military personnel is not allowed, but soldiers may associate in professional associations agreed by the Ministry of Defense. In the response from Slovakia it was stated that joining trade unions is prohibited. However, both countries indicated that some of these restrictions may be considered for review.
32. It was further noted that in Slovakia soldiers have the right of association, but are prohibited to associate in trade unions active in the armed forces and at their workplace. In effect, there are legal limitations, but associations still exist and are able to operate in the military sphere.
33. With regard to other civil and political rights, in the questionnaire Hungary, Poland and Slovakia replied that the right to stand for election is recognized, at least for certain positions in politics, but members of the armed forces have to either suspend their service, to resign or be discharged from the armed forces in order to stand for election. The Czech Republic indicated that there are no restrictions on this issue.
34. The Czech Republic and the Slovak Republic reported that members of their armed forces do not face any particular restriction in the enjoyment of their right to freedom of expression. In responding to the questionnaire many states reported that they restrict their service personnel's freedom of expression as to holding political opinions, recalling political neutrality, during or outside service. This also seems to be the case in Romania, Hungary and Poland, which provided examples of possible restrictions justified by reasons related to national interests, discipline of military services and certain classified information.

Objectives and Activities of Military Associations

35. A key overall objective shared by most military associations is to improve the conditions of service for their members. This is closely connected with improving relations with the military administration, which is instrumental to achieving this objective. It is also about closing the gap between the expectations of the military leadership and service personnel. Through representing the interests of active and retired military personnel, as well as their families, associations are in a position to provide very detailed and valuable information on their situation, needs and concerns.
36. Some military associations in the region partake in negotiations with their respective ministries of defense on relevant issues concerning the rights and conditions of members of the armed forces. The experience in Hungary where the independent trade military union negotiates with the Ministry of Defense stood out positively. Negotiations on the working conditions of the trade union and its members take place four times a year in the so-called Defense Forum for Reconciliation of Interest. A new agreement between the two parties is negotiated every year.
37. Some associations exert influence by participating actively in law drafting and review processes. This includes taking part in working groups, drafting opinions on legal acts and submitting drafts or input to the respective bodies.
38. A number of associations provide legal assistance to their members. They advise on a number of issues including labor, social insurance and disciplinary issues, and represent association members in lawsuits in civil and labor cases connected with the service. There are also examples of associations taking the ministry of defense to court on the issue of pensions.
39. Military associations also provide material and financial support to association members and their families, including in emergency situations. The needs of veteran members are considered particularly important. In addition to such support, associations engage in information-sharing to enhance the soldiers' level of knowledge of relevant laws, rules and any other useful information.
40. Some military associations in the region have their own website open to the public where online forums and discussions on relevant issues take place. This may include input or opinions on legislative issues, social and health topics. One association mentioned that they have a Facebook page with a moderator to ensure that the content is appropriate. This is to ensure that everything that is posted is topic-specific, professional and non-political. For example, there will not be criticism of the defense budget as such, but an emphasis on improving the conditions for the members of the armed forces in terms of equipment, clothes, salaries etc. This is one way to steer clear of what can potentially be labelled as political activities, which could contravene national legislation concerning the armed forces and military associations.
41. While many achievements of military associations benefit members and non-members alike, such as overall improvements to the conditions of service, certain successes benefit members

only. For instance, one association mentioned that that their members have a membership card with a barcode. The card entitles the members to discount on specific products such as gasoline.

Challenges of Military Associations

42. In a number of countries in the region varying degrees of restrictions on active service personnel to join or set up military associations remain in place. Hence, a common challenge is a restrictive legislative framework such as in Romania and Slovakia.
43. There are also examples of a situation where there is discrepancy in the legal framework and actual practice. As was noted earlier, in Slovakia, which national legislation prohibits military unions, associations with retired personnel are considered civilian, but can still work on military issues.
44. In Hungary recent changes to legislation, which affected the collection of membership fees and the cancellation of the military pension system, impacted significantly on the work and membership of the military association. The decrease in value of the salaries of service personnel for a number of years has been a particular challenge and issue of concern for the military association.
45. One key difficulty facing the associations in the Czech Republic is the change of government. It is difficult to achieve continuity, build sustainable working relationship and advance issues in such circumstances.
46. Participants recognized that integrating women in the armed forces, as well as in the associations, remains a challenge. Most associations are not fully aware of how to best represent the interests of all members including those specific to women. This needs to change given that the number of women in the forces has increased over the years. With further efforts in SSG/R in a number of participating States, evolving approaches to warfare and peace-building this number may well increase further.

Creating an Enabling Environment for Military Associations

Legislation and Standards

47. The right to freedom of association, along with other fundamental civil and political rights, needs to be fully reflected in national legislation, in line with international and regional human rights standards and obligations. To create an enabling environment for military associations, no restrictions should be placed on the exercise of this right other than what is considered necessary in a democratic society and what is prescribed by law.
48. Military associations can play an important role through participation in the legislative processes. For example, in Germany the employment of civil servants and military personnel is

regulated by law and not by collective agreements. Thus, the association is included in preparation of regulations concerning military personnel. This entails reviewing and commenting on drafts, as well as providing written statements and participating in talks with the Ministry of Defense. The military association also lobbies the Parliament.

49. A number of stakeholders, including non-governmental organizations, can help in the dissemination of information and awareness-raising on human rights standards and obligations. Military associations representing concerned individuals are often particularly well placed to conduct such work since they have insight into and knowledge about the relevant issues. In addition, associations can provide specific information and real examples of human rights issues, which can substantiate advocacy efforts and bring leverage to demands to amend legislation.

Learning from Others

50. There was broad agreement on the usefulness of this regional meeting and similar exchanges in order to facilitate a good working relationship between associations and authorities. Experiences of different states can provide useful guidance on how to practically implement international and regional human rights standards.
51. Military associations also cooperate with each other more formally both domestically and internationally to enhance their capacity and impact such as through EUROMIL. EUROMIL is the umbrella organization of 43 military associations and trade unions from 28 countries in Europe. Through its international secretariat in Brussels, EUROMIL facilitates the exchange of information, experiences and best practice among member associations.
52. EUROMIL is the primary forum for cooperation among military associations on issues of common concern. Its mission is to represent human rights and fundamental freedoms of military personnel in Europe. In doing so EUROMIL promotes the social and professional interests of military personnel of all ranks in Europe representing approximately 500,000 soldiers and their families. EUROMIL has consultative status at the United Nations Economic and Social Council (ECOSOC) and participatory status at the CoE.
53. Much can be learnt from countries where military associations operate independently and engage with the military administration. Most importantly, associations are not seen to conflict with operational tasks and military effectiveness. In some countries, good legislation has been put in place but there is limited implementation. Thus, there is scope for sharing experiences on the benefits military associations can bring. For instance, strong associations are important to attract talent to the service and to enhance the legitimacy of the armed forces.
54. ODIHR offers an online resource on freedom of association, which has been developed 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. AssociatiOnline is a living tool and users are encouraged to share relevant information with ODIHR.

55. ODIHR provides legislative assistance to OSCE participating States, upon request, by reviewing their legislation for compliance with relevant international standards, including OSCE commitments. This includes legislation touching on freedom of association, mostly relating to NGOs and political parties. ODIHR and the Venice Commission of the Council of Europe are currently drafting a joint set of Guidelines on Freedom of Association, which will also reflect issues of relevance to associations of military personnel.
56. Moreover, ODIHR discusses freedom of association issues regularly with authorities, civil society and other relevant stakeholders in its work at national and regional levels. This work draws on the *Handbook on the Human Rights and Fundamental Freedoms of Armed Forces Personnel* developed by ODIHR and the Geneva Centre for Democratic Control of Armed Forces (DCAF). The Handbook covers a wide variety of human rights issues including civil and political rights, and military unions and associations.

Establishing Dialogue and Co-operation

57. Cooperation between military associations and the military administration should be formalized to ensure acknowledgement, effective participation, clarity and continuity. For example, in Germany, in accordance with an agreement from 1996, the main association has top level talks with the military administration twice of year. Talks at a technical level take place more frequently.
58. Creating an enabling environment for military associations is very much connected with the wider issue of social dialogue. In this context, the situation in Denmark offers an interesting experience and lesson learnt. In Denmark, there are three main principles or basic pillars for social dialogue: dialogue, cooperation and collective bargaining agreements and negotiations. There is an agreement on cooperation at various levels. Management and staff are to cooperate on work and personnel matters, and joint consultation committees must be set up at all workplaces in the public sector, including in the armed forces. Consultations can be raised higher up in case of disagreement or if otherwise deemed necessary. Only association members can have influence at the table.
59. There are three main unions in the Danish armed forces: for the officers, the non-commissioned officers and enlisted privates and corporals in the navy and air force, and for enlisted privates and corporals in the army. There are several unions for civilian staff and a spokesperson system for conscripts. Unions are independent from the government and the Ministry of Defense. They are also independent from the political parties and any religious organizations. Unions are not competing for the same members, as they are set up according to the position, education and specialization of the members of the armed forces. There is a very high level of membership (90%) and volume usually translates into influence.

Recommendations

60. The discussions generated a number of recommendations:

- A) States should create an enabling environment to ensure that individual servicemen and servicewomen can join a professional association representing their interests.
- B) Any restrictions on freedom of association should be: prescribed by law, necessary in a 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 and political administration should engage in social dialogue with military associations in a formalized, structured and participatory manner on issues concerning the conditions of service of members of the armed forces.
- E) No disciplinary action should be taken against members of the armed forces in connection with their participation in activities of military associations.
- F) Armed forces of all OSCE participating States should increase their efforts to further integrate women in the ranks and to better draw on the talents and contributions they bring, including through military associations.

Annex 1: Meeting Agenda



The Role of Military Associations in Protecting Human Rights of Armed Forces Personnel in Central and Eastern Europe

**Danubius Hotel Arena, Budapest, Hungary
10 September 2014**

AGENDA

09.00-09.15	Registration of meeting participants
09.15-09.45	Opening Remarks
09.45-10.45	Session 1: International Standards and Good Practices Concerning Human Rights of Armed Forces Personnel
10.45-11.00	<i>Coffee Break</i>
11.00-12.30	Session 2: Freedom of Association and the Status of Military Associations in Central and Eastern Europe
12.30-14.00	<i>Lunch</i>
14.00-15.30	Session 2 [<i>continued</i>]: Freedom of Association and the Status of Military Associations in Central and Eastern Europe
15.30-15.45	<i>Coffee Break</i>
15.45-17.15	Session 3: Creating the Conditions for Military Associations to be Effective in Safeguarding Human Rights
17:15-17:30	Closing Remarks