



Ministry of Defence of
Romania



OSCE Office for
Democratic Institutions
and Human Rights



Geneva Centre for the
Democratic Control of
Armed Forces



European Organisation
of Military
Associations

Roundtable on Military Unions and Associations Bucharest, 30-31 October 2006 Summary Report

Introduction

A roundtable entitled “Military Unions and Associations” was held in Bucharest on 30-31 October 2006. Forty-eight participants from across the OSCE region participated in the roundtable, including representatives from ministries of defence and foreign affairs, armed forces, parliament, military trade unions and associations and NGOs.

The conference was hosted by the Romanian Ministry of Defence and jointly organized by the OSCE Office for Democratic Institutions and Human Rights (ODIHR), the Geneva Centre for the Democratic Control of Armed Forces (DCAF) and the European Organisation of Military Associations (EUROMIL). The roundtable was the second in a series of events aimed at providing an opportunity for OSCE participating States to explore different approaches to the protection of the human rights of armed forces personnel. The goal of this roundtable was to discuss how the rights of military personnel to the freedom of association and assembly can be respected while at the same time meeting the needs and legitimate concerns of the military, given the unique function that the military is expected to fulfill.

Welcome and Opening Session

The roundtable was opened by **His Excellency Mr. Corneliu D.V. Dobritoiu**, State Secretary and Chief of Department for Policy of Defence and Planning of the Romanian Ministry of Defence. Mr. Dobritoiu expressed Romania’s support for the joint ODIHR-DCAF project to produce a handbook on human rights of armed forces personnel, which he said would be a relevant tool for Romania, which was in transition from a conscription-based army to an all-volunteer force.

In his welcome address, **Mr. Toralf Nordbo**, ODIHR First Deputy Director, gave a brief presentation of ODIHR’s activities with regard to human rights and the armed forces, the main component of which is the joint ODIHR-DCAF project to develop a handbook on human rights and fundamental freedoms of armed forces personnel. In introducing the topic of the roundtable, Mr. Nordbo acknowledged that there existed many different approaches to the professional representation of armed forces personnel in the OSCE region, but that in imposing limitations on the freedom of association, states should be aware that there are certain minimum requirements that needed to be met. He emphasized that the increasing professionalisation of armies in Europe and greater cooperation and integration between European armed forces only reinforced the need for common standards.

In his keynote speech, **Mr. Alexander Arabadjiev**, Member of the Bulgarian National Assembly and Member of the Parliamentary Assembly of the Council of Europe (PACE) described the armed forces as “mirrors and standard-bearers for the values democratic societies are built on”, arguing that members of the armed forces cannot be expected to respect human rights in their operations without their own rights being protected: these were two sides of the same coin. Mr. Arabadjiev spoke about the PACE’s numerous resolutions and recommendations on this subject, which all emphasize that conscripts are citizens in uniform with the same rights and freedoms as all other citizens. One of these recommendations, 1742 (2006) calls upon member states to “allow members of the armed forces and military personnel to organize themselves in representative associations with the right to negotiate on matters concerning salaries and conditions of employment”. Mr. Arabadjiev concluded by saying that political declarations are important as such but need to be translated into policy action. Combined efforts were necessary and Mr. Arabadjiev hoped that the roundtable would provide inspiration and ideas for reform.

In the discussion that followed, the point was made that given the size and the great variety that exists amongst countries composing the Council of Europe, there are great differences in the extent to which the European Convention on Human Rights is implemented in practice and that not all countries could be expected to move at the same pace. There was also some discussion on the issue of which groups are covered by the term ‘armed forces’ and a participant suggested that the term ‘armed services’ might be more appropriate.

Session 1: The Human Rights Context, chaired by Mr. Toralf Nordbo.

In his presentation **Prof. Ian Leigh**, Professor of Law at the University of Durham, briefly outlined the position of international law with regard to the freedom of assembly of armed forces personnel. A valuable source of guidance is the approach taken by the European Court of Human Rights. While reaffirming that armed forces personnel enjoy the same rights and freedoms as all other citizens, when applying the rules of the Convention in cases involving armed forces personnel, the Court has taken into account the particular characteristics of military life, such as military discipline, the hierarchical structure of the armed forces and the protection of morale, in its decisions. However, in recent cases the Court has shown a more sceptical approach to limitations on rights, requiring that any restrictions would have to satisfy a number of legal requirements. Prof. Leigh highlighted two distinct problems posed by the freedom of association with regard to armed forces personnel. The first is the question of military discipline and possible interference with the *esprit de corps*. The second relates to issues of allegiance and outside influence. In order to meet these objections to some extent, in some countries where representative bodies are permitted certain constraints have been placed to limit their membership to members of the armed forces or restrict their powers, for instance forbidding strikes or other forms of industrial action. Whereas restrictions on the freedom of association are expressly recognized in international human rights law, recent jurisprudence supports a proportionate approach to the imposition of restrictions rather than an outright ban on the establishment of military representative bodies. The proportionality test employed by the Convention system requires consideration of the nature and extent to which a restriction of rights is justified by a legitimate objective. Prof. Leigh concluded that the Convention approach was a potentially fruitful one in resolving the paradox posed by the freedom of association with regard to armed forces personnel.

In her presentation on the situation in Europe regarding the right to association of armed forces personnel, **Ms. Wiebke Warneck**, researcher at ETUI-REHS explained that although it is a basic human right which should apply to all groups in society, freedom of association is severely restricted for members of the armed forces. The relevant international and European legal provisions permit states to determine through national legislation the extent to which the right is to be restricted for members of the armed forces. The European Charter of

Fundamental Rights is the only text without any restrictions on the right of association for armed forces personnel. It is however not a legally binding instrument. Despite recommendations from the Parliamentary Assembly of the Council of Europe calling on states to enable armed forces personnel to establish, join and actively participate in specific associations for workers, including the right to negotiate on matters concerning salaries and conditions of employment, this issue had not been taken up by the Council of Europe's Committee of Ministers to date. The right of armed forces personnel to freedom of association is only granted in 22 out of 39 countries of the Council of Europe; out of these only seven allow the right to collective bargaining and none afford the right to collective action.

During the discussion session, one participant noted that in many countries, although armed forces personnel are allowed by law to enjoy the right of association, they are not given the right to participate in decisions that affect them. He emphasized that unless the 'right of participation' is granted, the freedom of association will not be realized. Another participant noted that having internal arrangements within the armed forces to deal with questions such as collective bargaining did not constitute the freedom of association as such.

Answering a question on why the European Convention on the Protection of Human Rights and Fundamental Freedoms was so restrictive when it came to the rights of armed forces personnel, Prof. Leigh recalled that although the convention was highly innovative for its time, it was over 50 years old and dates to the infancy of human rights protection. Leigh pointed out that there are however, hopeful signs that the longer the convention system goes on, the less restrictive the Court is likely to be. There is no insistence on uniformity and rights can be protected through different means. If a state claims an alternative means of protecting this right however, it would have to provide an assurance that it will be effective.

One participant noted that the problem should be approached from the angle of the political framework of each country. The extent to which the armed forces were allowed rights and freedoms depended on the extent to which the political elite in the country realized that it was necessary for its armed forces to be free. The move away from conscription and the greater integration and cooperation between armed forces in Europe meant that in order to be efficient, soldiers should be treated according to common standards.

Another participant expressed the opinion that the issue of the refusal of rights seems to be an over-simplification of reality. Associations that may not officially have the right to associate may still take up issues relating to armed forces personnel.

Session 2: **Military Unions and Associations: arguments pro and contra**, chaired by **Ms. Christine Jakob**, EUROMIL Officer for Security Policy.

In his presentation, **Mr. Lars Fresker**, Chairman of the Swedish Association of Military Officers (SAMO) gave a synopsis of the work of his association and the history of trade unions in Sweden. Sweden's first association for military personnel was established almost a hundred years ago. One of the main reasons for Swedish military officers to organize themselves in trade unions was to get the opportunity to have an influence on their working conditions and to be treated like any other citizen. As a result of the establishment of military trade unions, the employee's isolation from the rest of society was avoided. SAMO, founded in 1995 has a membership of 9 500 officers of all ranks. The association promotes the interests of military officers by taking part in the process of decision-making, which influences the working conditions for officers. It also focuses on training for its members and other areas of interest. Collective agreements on all issues affecting military personnel are negotiated every 1-3 years. Strikes or other offensive actions are only allowed during the negotiation period and not while an agreement is still valid. SAMO also co-operates at the governmental level on general defence issues (however not on political matters such as foreign policy or the national budget). According to Mr. Fresker, the most important

advantage of the Swedish model is that officers feel more satisfaction with their work because of the knowledge that their concerns are being addressed. Furthermore, discussions take place before decisions are made, reducing the possibility of disagreement and conflict. According to Mr. Fresker, involving all parties in the decision-making creates a sense of ownership and shared responsibility. Mr. Fresker concluded by saying that in the Swedish experience there was no contradiction between membership of a trade union and serving in a military organization with a straight chain of command.

Mr. Maxime Jacob, an independent expert, presented the situation in France regarding the professional representation of armed forces personnel, where the membership of political parties and professional associations in the armed forces are prohibited by law. The French system of professional participation takes place through institutions at three levels: at the department of defence, the level of the armed forces, and at the unit-level. At the Department of Defence level participation is achieved through a High Council, composed of members selected at random by the members of the seven armed forces councils. The High Council's core competence is to advise on conditions of service and on statutes or regulations pertaining to conditions of service. The councils at the level of the armed forces are responsible for studying questions relating to working conditions and to give the point of view of the personnel of the forces on the topics submitted to the High Council. The representative bodies at unit level deal with the day-to-day work of the unit, in particular work organization, the conduct of exercises and addressing individual questions.

The ensuing discussion focused on the advantages and shortcomings of having an 'internal' system of representation as compared to an 'external' one. It was proposed that the main advantage of the 'internal' system was that groups such as retired personnel were included and could therefore give an external perspective and had access and influence in parliament and government. The main drawback of the 'internal' system was found to be its lack of independence, whereas this was seen as the main advantage of the 'external' system, which it was claimed allowed it more influence and lobbying power.

Session 3: Military unions and associations in the OSCE region: national experiences, chaired by Major General (r) Mihail Ionescu, president of Institute for Political Studies of Defense and Military History (ISPAIM), Romania

Brigadier General Tudor Munteanu, deputy of State Secretary and Chief of the Department for Parliamentary Liaison and Public Information, explained that although the Romanian constitution guarantees the freedom of association for all citizens, military personnel are not allowed to set up trade unions, which are considered to interfere with unit command as determined by military regulations. Brig. Gen. Munteanu was however optimistic that the situation would change in the coming years, as the draft of a new statute on the status of armed forces personnel to be submitted to parliament by the end of this year provides the possibility of professional associations and trade unions of armed forces personnel in active duty at local and central level representing them in relations with state authorities concerning social, professional or related issues. Brig. Gen. Munteanu considered that the organization of this roundtable in Bucharest will have a strong favorable influence on the concept of trade unions for armed forces personnel in Romania.

In his presentation, the Chairman of the Bulgarian Officers Legia "Rawkowski" trade union, **Cpt. Ivan Milov**, described the main tasks of his organization as being: the unification of servicemen in order to realize national goals, the protection of the professional and social interests of members, improving the image of the military profession and increasing the position of the military in Bulgarian society. Cpt. Milov explained that while tensions had existed in the past, since 2002, when a new paragraph of military law was adopted giving military personnel the right of association, Legia Rawkowski works in partnership with the

Ministry of Defence for the professional development of servicemen, improving social service, healthcare and insurance, housing, retirement and professional opportunities for servicemen.

Lt. Col. Ferenc Kovacs, Mission Expert, gave a brief overview of the Hungarian trade union of military servicemen (HOSZ). The provisions for the operation of interest representation within the armed forces is stipulated in the military service law from 1996, which regulates the rights and duties of servicemen and determines allowances and fixed professional representation rights of armed forces personnel. Although military personnel do not have the right to strike, they can organize mass demonstrations and meetings in support of their interests. With 12.000 members and strong popular support, HOSZ has established a constructive partnership with the Ministry of Defence, which has had an unambiguous positive effect in improving the processes both within the defence forces as well as improving the acceptance and prestige of the armed forces in Hungarian society.

Mr. Oleg Schvedkov, President of the All-Russian Professional Union of Servicemen (ITUS) began his presentation by pointing out that the level of democracy in the armed forces reflects the overall level of democracy in society. ITUS was set up in 1992 a period during which the army was undergoing many challenges brought about by the disintegration of the Soviet Union. ITUS concentrated its initial efforts on the establishment of regional organizations and is now represented in 70 out of 80 national regions. Through a number of bilateral agreements with the appropriate ministries and other administrative bodies, ITUS managed to start practical cooperation at the State level on the promotion of the social, legal, economic and the professional interests of armed forces personnel. Many of its members are active in various levels of parliament, government and public administration. One of ITUS' major achievements has been the provision of protection and assistance to families of military personnel who died during their missions.

Lieutenant Colonel Martin Berg, Head of the Department of Participation Rights in the German Federal Armed Forces Association (DBwV), explained that German soldiers have had the right to be members of trade unions and professional associations since the re-establishment of the armed forces in 1955. With 210,000 members representing all ranks and status groups, the Association represents the general, ideological, social and career interests of its members, as well as their families. The union is represented at the level of every barracks, battalion, regional executive boards and at the federal level. It is politically and financially independent of any authority and of any political party and is financed solely from members' fees. Being the authoritative organisation for service personnel, it is consulted by parliament and elected government when preparing any legislation affecting the interests of servicemen, their families and their surviving dependents. The Association also maintains close contact with the political parties, parliament, parliamentary groups and committees as well as the Minister of Defence. Its main focus today is to take care of the interests of armed forces personnel sent on international missions.

Session 4: The future of military unions and associations in OSCE participating States, moderated by Christine Jakob

Mr. Hans-Bernhard Weisserth, General Secretariat, Defence Aspects, Council of the European Union discussed the EU's adaptation to security issues and how it is developing a capacity to respond in an integrated way to international crises. He also discussed the main principles, goals and operations of the recently established European Security and Defence College. Mr. Weisserth also noted the mainstreaming of human rights and gender aspects in EU security and defence policy.

In his presentation on the role of military associations in a time of professionalisation and multinationalisation of armed forces, **Dr. Willem F. van Eekelen**, member of the DCAF Advisory Board and the SIPRI Advisory Board, compared the role of the military in the past to the current more internationalized operations environment and noted that more attention is needed for the working conditions of the military, who should enjoy full respect for their human rights in line with European human rights law. Recognition of the rights of armed forces personnel is likely to be a function of the maturity of the democracy in the country concerned, removing the risk of a military take-over or undue pressure on the government.

In his presentation on the current status and prospects of military unions and associations in Europe, **Mr. Emmanuel Jacob**, President of EUROMIL, argued that soldiers must be treated as citizens in uniform, and should, under normal circumstances, be able to exercise the same human rights and fundamental freedoms as their fellow citizens. Mr. Jacob noted that the citizen in uniform concept is more relevant today than ever before, as deployment in foreign crisis regions requires soldiers who are mediators of democracy and human rights during the full spectrum of their activities. This requires that the social and legal aspects for military personnel must be of the highest possible standard. Furthermore, increased cooperation in multinational missions requires that there be social equality between the soldiers from the different countries. Mr. Jacob explained that the situation in Europe regarding the freedom of association of armed forces personnel was that almost 50% of countries denied this right to active military personnel. Even in countries where the right is legally recognized, it is not being fully implemented because the political and military authorities are not willing to put these rights into practice. Finally, Mr. Jacob emphasized that studies conducted on the functioning of unions or associations in the armed forces had shown that there was no evidence of the right to association being a problem for the proper functioning of the armed forces and called for it to be extended to all European nations.

The importance of access of soldiers to both internal and external complaints mechanisms was raised during the discussion session. In this regard, the role of the ombudsman institution was mentioned to be of central importance.

It was also noted that more international cooperation means more comparison between soldiers regarding their social conditions, therefore highlighting the need for standardization of social protection of armed forces personnel. It was pointed out that this issue was likely to gain in importance in the future, especially in view of the establishment of EU battlegroups.

Finally, it was pointed out that rather than debating the advantages and disadvantages of trade unions as compared to associations, it is more important how the right to association is implemented. An association can do just as good a job as a union in protecting members' rights and therefore what mattered was the practical work that they do.

Concluding Remarks

In his concluding remarks, **Mr. Nordbo** reiterated that the freedom of association is a basic human right which should apply to all groups in society, including armed forces personnel. He acknowledged that from the presentations made during the roundtable it was evident that there were many different approaches on this issue across the OSCE region. He noted that although there was no requirement of uniformity, it was important to keep in mind that although restrictions on the freedom of association for military personnel were permitted in international law, countries should take a proportionate approach to the restriction of rights of armed forces personnel. Mr. Nordbo also noted that merely passing laws or making political declarations was not enough: unless associations are allowed to participate and are involved in decisions affecting their conditions, the right will not be fulfilled.

Brig. Gen. Munteanu pointed out that what is important is to give real effect to human rights principles, not to their exceptions. He noted that Romania is trying to improve its legislative framework to improve the situation regarding the right to association for armed forces personnel. Brig. Gen. Munteanu expressed his conviction that a Romanian military association would be able to join EUROMIL in the near future.