

“Civil and Political Rights of Armed Forces Personnel”



Remarks by Michael Georg Link

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CHECK AGAINST DELIVERY

Excellencies, Ladies and Gentlemen,

Dear Ambassador Giordan,

Thank you for the kind – and repeated – invitation to the Office for Democratic Institutions and Human Rights (ODIHR) to speak at the Forum for Security Co-operation (FSC). I am particularly pleased to address the members of this distinguished Forum only eleven weeks into my tenure as the Director of ODIHR. Through its uniquely designed Human Rights, Gender and Security programming, ODIHR has placed emphasis on addressing the protection of rights of men and women in the security sector and has worked across dimensions within the OSCE to accomplish this goal. I look forward to our continued fruitful co-operation in the years to come.

With the FSC being one of the OSCE's two main decision-making bodies and ODIHR the main institution in the human dimension, we stand much to benefit from regular exchange on a number of issues. The OSCE Code of Conduct on Politico-

Military Aspects of Security provides the framework for such engagement. Since 1994 the Code has provided a common language on human rights and security within the OSCE and beyond.

I am here today to underscore the importance ODIHR attaches to our common efforts to enhance security in all its facets for all people and participating States in the OSCE region. You are already well-aware of the on-going Human Rights Discussion Series for the FSC facilitated by ODIHR. On 23 October I invite you to take part in the fourth event in this series, which will discuss civil and political rights of armed forces personnel. This follows the event on economic and social rights we held in July of this year.

The significance of today's topic is far-reaching. Let us consider the practice and wisdom of the past. The Greek philosopher Aristotle characterised individuals as political beings who strive to achieve the common goals of a better life by living as citizens

in a state. In ancient Greece the concept of 'citizen' was largely synonymous with taking part in political activity. Soldiers were called citizen-soldiers as they not only served and protected the state's interests but also had a stake in the affairs of state by being part of its citizenry. Taking a sweeping view of the roles and abilities of today's citizen-soldiers across the OSCE region, we find that the 'citizen' is in many cases separated from the 'soldier'. Now, almost two and half millennia after Aristotle, we should be concerned with the divide between soldiers and their participation in the *polis* and consider existing good practices and approaches amongst ourselves to narrow this gap.

Civil and political rights encompass a wide range of rights. I cannot possibly touch on them all here. For instance, issues which merit further attention and discussion include the prevalence of torture and other cruel, inhuman, or degrading treatment or punishment, gender-based violence, harassment and bullying in the armed forces. The practices in several OSCE participating States with regard to conscientious

objection and alternative service are also not in conformity with OSCE commitments and other international standards.

The focus of my intervention today is primarily on limitations on human rights of members of the armed forces, which rights a number of participating States have deemed to interfere with the political neutrality, military discipline, hierarchy and effectiveness of the armed forces. Thus, my remarks today mainly concern freedom of association and of expression in the armed forces, which will be discussed in more detail in the upcoming event. Let us shed some light on these freedoms by revisiting first relevant OSCE commitments and international standards.

Human rights are embedded in the foundation of the OSCE – the Helsinki Final Act – as one of the ten guiding principles for our work. More specifically, the Final Act indicates that civil and political rights, and other rights and freedoms [*I quote*] “derive from the inherent dignity of the human person and are essential

for his free and full development” [*end of quote*]. These rights were reaffirmed by OSCE participating States in Madrid in 1983 and in Vienna in 1989. Over the years, participating States have also strengthened their resolve to include women in public life, including in conflict prevention and political processes (MC Decision 14/05).

Let me also remind you of more specific commitments on freedom of expression and of association. In accordance with the Copenhagen Document from 1990 everyone has the right to freedom of expression, including [*I quote*] “freedom to hold opinions and to receive and impart information and ideas without interference by public authority” [*end of quote*]. In the same Document participating States also committed to ensure that everyone can impart such information or ideas individually or in association with others. These rights are firmly rooted in major international human rights instruments such as the International Covenant on Civil and Political Rights (ICCPR)

and the European Convention on Human Rights and Fundamental Freedoms (ECHR).

Within our OSCE context, the Code of Conduct embeds human rights firmly within the realm of the security sector and the Politico-Military Dimension. As such, it links the enjoyment and protection of human rights of armed forces personnel with security sector governance and civilian control of the armed and security forces. Articles 20, 23 and 32 offer particularly valuable inputs and insights for today's discussion on civil and political rights of members of the armed forces.

Article 32 obliges participating States to ensure the enjoyment and protection of human rights and fundamental freedoms of service personnel. However, it is worth noting that Article 20 with its call for integrating the armed forces with civil society reinforces Article 32. Firstly, Article 20 reinforces the view that the armed forces are not an exclusive, but integral part of society. Secondly, by doing so the article implies that all

servicewomen and servicemen should enjoy the same fundamental rights as all citizens. In short, they are “citizens in uniform”, or modern-day citizen-soldiers, which is the spirit of Article 32.

Yet, the Code also stipulates certain limitations on the enjoyment of human rights of members of the armed forces. Article 32 makes it clear that limitations on rights may be imposed in conformity with OSCE commitments, international law, relevant constitutional and legal provisions, and as demanded by the requirements of service. Moreover, in Article 23 participating States commit to ensure the political neutrality of their armed forces. This is an objective that is recognised in international human rights law and practice.

While the Code of Conduct identifies key elements that states need to consider in determining human rights in the armed forces, other OSCE commitments and international standards

provide more detailed guidance in determining the necessity of any restrictions on rights.

Excellencies, Ladies and Gentlemen,

Let me remind you that OSCE participating States have agreed that any limitations on human rights must be provided for in law and must be consistent with other international obligations (Copenhagen 1990). Any restrictions on human rights should be exceptional, applied consistently, and implemented in strict proportionality with the aim of the law.

We can note that in accordance with international standards, including the ICCPR (art. 22) and, where applicable, the ECHR (art. 11.2) the enjoyment of freedom of association may be restricted for military personnel. In the ECHR restrictions can also be imposed on freedom of assembly for armed forces personnel (art. 11.2). Overall the European Court of Human Rights has tended to give states a wide margin of appreciation

in cases involving restrictions on civil and political rights of service personnel. However, any such restrictions would largely be limited to cases where the exercise of the right would pose a threat to national security or jeopardise the professed neutrality of the military. In other words, restrictions may be imposed but the enjoyment of these rights by service personnel may not be banned.

The onus to show that it is necessary to restrict the rights of armed forces personnel therefore lies firmly with the authorities and the military. It is paramount that the principles of proportionality and necessity apply in all circumstances. For instance, overly broad provisions of the law or unduly restrictive interpretations of such provisions would tend to be disproportionate and give rise to concern. Let us also consider the following: if service personnel have limited opportunities to associate and express themselves, they will in turn have limited opportunities speak out on any other infringements or violations of their human rights and fundamental freedoms.

Unfortunately, we see this happening in a number of participating States. This renders not only service personnel more vulnerable to human rights violations, but also a considerable segment of the population practically quarantined from public life. We know from experience that human rights violations are more likely in closed institutions and environments shielded from the public eye. We also know that this is a fertile breeding ground for further violations, mismanagement and impunity.

In an institution founded on principles such as discipline, hierarchy and secrecy, freedom of expression in the armed forces comes with challenges but also opportunities. This brings up questions such as: to what extent can military personnel make statements in the public, about what and how? Can members of the armed forces distribute magazines containing information about complaints and appeals procedures amongst themselves? Or, if a junior officer sends a letter of complaint to

his or her superior, is this an act of disobedience and is it punishable? Or, if the military chooses to exercise its collective freedom of expression and advertise in the media, how are women in the armed forces portrayed?

There are no simple or straightforward answers to these questions. What I can say here are two things. Firstly, the answers to the above questions require due consideration in each case. International human rights law, OSCE commitments, and, where applicable, the case law of the European Court provide guidance in this regard. Secondly, in practice a number of participating States have approached freedom of expression of armed forces personnel by considering form and content restrictions, which we will be discussed more in the upcoming event.

As for freedom of association, practice shows that states which allow members of the armed forces to join associations have defined a framework of their work to avoid any external

influence of civilian trade unions or associations. Moreover, states forbid strikes or other form of industrial action that could potentially disrupt operational effectiveness or threaten national security.

Thus, where there is permissive legislation we can observe well-functioning military associations acting on behalf of their members' interests. Associations may pursue grievances and partake in negotiations with military authorities on the conditions of service. Here female staff associations can play an important role to bring attention to the needs, contributions and perspectives of female service personnel. In this endeavour military associations are partners and not adversaries of the armed forces.

In light of the above international human rights standards, including OSCE commitments, I would urge states to permit all members of the armed forces to join a professional association or trade union representing their interests. This would

demonstrate the citizen in uniform approach to the fullest extent. And to go back to ancient Greece again: the soldier today is more of a citizen than the citizen-soldier then.

Clearly there is no one-size-fits-all-solution and there may be country-specific reasons why restrictions are warranted. What is needed is sensitivity and acute reasoning as to when the exercise of one's human rights challenges the requirements of military duty. Equal importance should be placed on detecting instances when restrictions on rights become excessive. Restrictions should be contextual and less restrictive policies are more easily defended. The approach in a number of states demonstrates that comprehensive protection of human rights of armed forces personnel is compatible with the requirements of service, political neutrality and national security concerns. In the context of civil and political rights in the armed forces, it is also clear that the citizen in uniform approach favours service personnel who are able to think and make reasoned judgments for themselves. Let me illustrate this point with a brief example.

The women and men we send to serve in peacekeeping operations need to have real experience with human rights for themselves. In many cases they need to carry out civilian tasks but in uniform and often in direct engagement with civilians and political actors. This requires intellectual capacity, good judgement and the ability to understand right from wrong. How else to assist in rebuilding politically fractured countries if personnel themselves do not know the meaning and application of human rights and other fundamental values and principles underpinning any democratic society?

Excellencies, Ladies and Gentlemen,

We started by laying out the commitments with a particular emphasis on relevant articles and principles in the Code of Conduct. I believe the practice around the OSCE region amply demonstrates the continued validity of the principles laid down in the Code of Conduct also when it comes to human rights in

the armed forces. I think we all see that treating members of the armed forces as citizens in uniform clearly favours integrating the military into society and that this does not need to call into question military discipline or national security.

I admit we are dealing with a difficult subject matter and we must take into account the particularities of each participating State. Nevertheless, human rights are universal, inalienable, indivisible, interdependent and interrelated. We have a duty to ensure that no effort is spared to protect human rights in the OSCE region. We also have tools and resources at our disposal to achieve this, and address the issues and complexities at hand.

I would like to conclude by urging you all to consider and draw benefit from the vast potential for exchanging information and learning between OSCE participating States. As an example, last week ODIHR co-organised an event with the European Organisation of Military Associations on The Role of Military

Associations in protecting Human Rights of Armed Forces Personnel in Central and Eastern Europe. You can certainly count on ODIHR's support in these endeavours. In turn we count on your support to continue this important work.

Finally, let me again thank Ambassador Giordan and the current FSC Chairmanship of the Permanent Mission of the Principality of Monaco to the OSCE for inviting me to speak here today. The cooperation between the FSC and ODIHR could not be better. My thanks also go to the FSC Co-ordinator for the Code of Conduct, Mr. Detlef Hempel, and the Co-ordinator on Matters Relating to UNSCR 1325 within the FSC, Ms. Ms Neval Orbay, as well as the Conflict Prevention Centre FSC Support Section and Mr. Fabian Grass for their excellent cooperation.

I thank you for your attention.