

OSCE
Office for Democratic Institutions and Human Rights

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

**Civil and Political Rights of Armed Forces Personnel
(23 October 2014, Vienna)**



Disclaimer

This report should neither be interpreted as presenting official OSCE recommendations based on a consensus decision, nor as presenting the opinion of the OSCE Office for Democratic Institutions and Human Rights or of any particular OSCE participating State. The content of this report reflects opinions expressed by participants in the meeting on the Civil and Political Rights of Armed Forces Personnel on 23 October 2014 and no additional information has been included since then. The reader should therefore refer to other sources for updates on this topic. 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 have committed to protect the human rights of armed forces personnel in the OSCE Code of Conduct on Politico-Military Aspects of Security. In principle, as other citizens, servicemen and servicewomen are entitled to exercise their civil and political rights among other individual freedoms and fundamental rights.

The OSCE Office for Democratic Institutions and Human Rights (ODIHR) organized a one-day event on the Civil and Political Rights of Armed Forces Personnel on 23 October 2014. This was the fourth event in the on-going ODIHR Human Rights Discussion Series for Representatives of the Forum for Security Co-operation. The event focused on balancing the requirements of service with the protection of the freedoms of expression and association of men and women who serve in the armed forces, taking into account that any restrictions imposed on such rights should be necessary, lawful, and proportionate.

The event panelists included independent experts, as well as representatives of the Council of Europe (CoE), the European Organisation of Military Associations (EUROMIL), armed forces, national military trade unions and professional associations, NGOs and media.

Analyzing recent research, international and regional human rights standards, OSCE commitments, European Court of Human Rights (ECtHR) case law, national legislation and practice, as well as information available in the media, speakers outlined what constitute permissible restrictions versus infringements upon the freedoms of expression and association of military members.

Speakers pointed to solutions that governments found in order to be able to respect the rights of armed forces personnel when exercising their freedom of expression and when using social media. The use of social media by military personnel and the military itself to reach out to the public is a new phenomenon and its regulation is at a nascent stage. Among other issues, a gap that remains to be addressed is the use of non-discriminatory messaging and images about women in the armed forces.

With regard to freedom of association, experts explained the various types, functions and the value of professional associations that represent the interests of both men and women who serve. While associations have been able to achieve a great deal on behalf of their members through collective bargaining in some OSCE participating States, the activities and the very existence of such associations have been challenged in other States.

There was overall agreement that there is no inherent contradiction between upholding the rights of armed forces personnel to express themselves or to form and join associations and fulfilling the requirements of service. The exchange of best practices and lessons learned that ODIHR offers via the on-going Human Rights Discussion Series for the FSC continues to be a useful tool for analyzing the human dimension of security in the OSCE.

Background

This report provides a summary of the deliberations during the meeting on the Civil and Political Rights of Armed Forces Personnel, organized by ODIHR on 23 October 2014 in Vienna.

Since 2008, ODIHR has informed and provided support to the FSC to ensure that human rights and gender perspectives are taken into account in security related discussions. Human Dimension commitments are interpreted together with the Code of Conduct on Politico-Military Aspects of Security, a document originating primarily in the Politico-Military Dimension of the OSCE, in order to assist representatives of participating States to address better issues and challenges relevant to service members. This work goes to the heart of the OSCE's comprehensive approach to security, which focuses on preserving the security of states, as well as the security and rights of individual men and women.

Civil and political rights form an extensive body of rights and fundamental freedoms which should be enjoyed by all members of society including those who serve in the armed forces. A discussion specifically focused on the freedoms of expression and association of military personnel was deemed timely since there have been several developments towards the protection of these rights in recent years. The CoE has issued recommendations on these topics and the ECtHR has most recently issued a judgment finding that a blanket ban on military personnel forming or joining an association was in violation of the European Convention on Human Rights and Fundamental Freedoms (ECHR).¹ Several participating States in the OSCE region have demonstrated that it is possible to strike a balance in practice between upholding these rights for military personnel while maintaining the political neutrality of armed forces, the requirements of service, and national security.

OSCE commitments enshrine the principle that every person has the right to freely express opinions and impart information individually or in association with others.² This applies as well to those who serve in the military, whose rights are protected by Article 32 of the Code of Conduct.³ OSCE commitments state that any limitations placed on the rights of men and

¹ *Matelly v. France* (4 Oct 2014).

² Copenhagen 1990.

³ Budapest 1994.

women must be provided for in law and must be consistent with other international obligations.⁴ It should be noted that the Code of Conduct does require the armed forces to remain politically neutral while members exercise their civil and political rights.⁵ Furthermore, OSCE participating States urged each other to increase the participation of women in public life, including in the armed forces.⁶

Other applicable legal obligations are outlined in the International Covenant on Civil and Political Rights (ICCPR) and the ECHR and were analyzed in detail by experts during the meeting.

This event was the fourth in a human rights series that ODIHR has organized for the benefit of FSC members since 2013. There were 51 participants (14 women and 37 men) at the event. The event panelists included independent experts, as well as representatives of the Council of Europe (CoE), the European Organisation of Military Associations (EUROMIL), armed forces, national military trade unions and professional associations, NGOs and media. Prior events in this on-going initiative have focused on the following topics: women's equal access to all positions in the military, including combat positions, the role of ombuds institutions in protecting the human rights of armed forces personnel, and upholding the economic and social rights of all military members. The purpose of this series is to analyze current issues of concern to both servicemen and servicewomen and to inform the on-going deliberation process that takes place at the FSC. The event and future events in this series provide FSC members with the opportunity to freely exchange views, focus on analyzing the lessons learned from national level policymaking, and derive practical examples for consideration and implementation in their respective countries.

Overview of Civil and Political Rights of Armed Forces Personnel

1. The discussion on 23 October 2014 began with an overview of civil and political rights as they apply in the military context. This being a vast and detailed subject for discussion, two expert speakers explained the main international and regional standards in the area of freedom of expression and freedom of association, as well as permissible restrictions that can be imposed upon these rights.
2. Article 19 of the ICCPR outlines the right of everyone, including members of the armed forces, to express their opinions and to receive information.⁷ This includes expressing one's dissenting views and applies to a range of means of expression. It is important to note that this right can be limited, but only in order to respect "the rights or reputations of others" and maintain "national security or [...] public order (*ordre public*), or [...] public health or morals."⁸

⁴ Copenhagen 1990.

⁵ Art. 23.

⁶ MC Decision 7/09.

⁷ ICCPR, art. 19.

⁸ *Ibid.*, art. 19(3).

3. Article 10 of the ECHR protects the right to freedom of expression. In 1997, the ECtHR acknowledged that military personnel are free to express their views recognizing that “Article 10 does not stop at the gates of army barracks.”⁹ The Court has also acknowledged that soldiers are free to voice concerns about their own rights or working in dangerous conditions. However, this right does not apply when one is divulging military secrets and information concerning national security. The armed forces may restrict such communication.¹⁰
4. Article 22 of the ICCPR protects the right to form and to join a trade union and allows for the imposition of lawful restrictions on members of the armed forces in the exercise of this right.¹¹ Trade union rights are also delineated in the International Covenant on Economic, Social and Cultural Rights (ICESCR).¹² However, there is a difference between trade unions, which are usually independent and have collective bargaining rights, and professional military associations, which may belong to the military and do not engage in collective bargaining. Thus, applying the ICCPR and ICESCR provisions can cause debate if in a particular jurisdiction armed forces personnel are only allowed to form and join professional associations and not trade unions. Jurisprudence arising under treaties of the International Labour Organization (ILO)¹³ indicates that when dealing with associations in the armed forces, membership restrictions can be placed on soldiers but not on civilian employees. They should not be restricted at all in the exercise of this right and should be free to join professional associations *and* trade unions.
5. Article 11 of the ECHR protects everyone’s right to freedom of association with others, including the right to form and to join trade unions. The ECtHR has noted that military professional associations should not be defined as trade unions and has confirmed that armed forces personnel can form and join professional associations, but they have no right to strike. Recent ECtHR case law indicates that the armed forces are not allowed to absolutely prohibit their personnel from joining a group that was formed to protect their occupational and non-pecuniary interests. An absolute ban would constitute an undue restriction on their freedom of association.¹⁴
6. While not the main focus of discussion, experts mentioned that soldiers and officers also have the right to vote and to run for office, which is provided for in Article 25 of the ICCPR.¹⁵ Article 3 of Protocol No. 1 to the ECHR includes the right to vote, which the ECtHR has extended to all members of the armed forces. The Court distinguishes between “active” and “passive” electoral rights, namely between the right to participate in an election as a voter and the right to stand as a candidate for election. “Passive” electoral rights enjoy a lesser degree of protection than “active” rights.¹⁶

⁹ *Grigoriades v. Greece* (25 November 1997).

¹⁰ *Hadjianastassiou v. Greece* (16 December 1992).

¹¹ *Ibid.*, art. 22(2).

¹² ICESCR, art. 8(1)(a).

¹³ ILO Conventions 1948, 1949 and 1981.

¹⁴ *Matelly v. France* (4 Oct 2014).

¹⁵ ICCPR, art. 25.

¹⁶ See http://www.echr.coe.int/Documents/FS_Free_elections_ENG.pdf.

7. Article 23 of the OSCE Code of Conduct¹⁷ states that members of armed forces can exercise their civil and political rights, but the armed forces are to remain politically neutral. Three approaches¹⁸ with regard to what level of participation in political processes is allowed for members of the armed forces have been identified in the OSCE region: a highly restrictive one, whereby the armed forces separate their members completely from political life in order to guarantee neutrality; a more moderate approach, whereby military personnel can participate in politics but not in uniform in order not to affect the public confidence's in their combat readiness; and a minimally restrictive approach, whereby political rights are largely guaranteed and only proportionate restrictions are imposed.
8. States can limit the rights of armed forces personnel due to their position and responsibility in society. In general terms, all of the permissible restrictions must be prescribed by law, applied proportionately, and imposed with a legitimate aim, otherwise they become infringements upon the freedoms of expression and association of military members.

Freedom of Expression in Practice and Social Media

9. Speakers and participants shared various experiences of how freedom of expression is exercised by soldiers and officers in their armed forces within the OSCE region. With the advent of social media, new challenges arise with respect to how and when military members can use various online sites. Furthermore, the armed forces themselves are using the media to advertise and to recruit new members. However, the challenges posed are not insurmountable and freedom of expression can be preserved. Some armed forces, such as those of Germany and Denmark, have issued guidelines on permissible speech and modes of communication, as well as personal use of social media. However, this is a rapidly evolving field and more remains to be done especially when it comes to appropriate and non-discriminatory portrayal of women in the armed forces.

Protected Speech

10. Freedom of expression as exercised by servicemen and servicewomen can take many forms. This is a freedom that they should be able to enjoy while also still being able to fully perform their military duties. There are many forms of expression and avenues for communication that should be protected and in which personnel can partake, such as publishing newssheets, posting information on social media sites, filing complaints, and joining in public dissent. The armed forces can issue restrictions with respect to the form and content of speech used, but these restrictions must be proportionate in nature.
11. There is a difference between a service member expressing his or her own opinion as a private person or as a representative of the State. Discretion is granted to individuals and

¹⁷ Budapest 1994.

¹⁸ H. Born and I. Leigh, Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel, (OSCE Office for Democratic Institutions and Human Rights and the Geneva Centre for the Democratic Control of Armed Forces), p. 60-63. <http://www.osce.org/odihr/31393>

armed forces must train soldiers and commanders on how to exercise their freedom of expression responsibly and articulate their views socially or in a public or political setting.

12. Generally, a service member does not have to state any disclaimer if it becomes clear from the context of an interview or a blog that she or he is expressing a view or opinion as a private person and not as a representative of his or her armed forces or of the government. As a “citizen in uniform,”¹⁹ a soldier or an officer can also exercise his or her freedom of speech and criticize the armed forces. This actually reinforces an image of credibility, honesty and transparency for the armed forces and the government as a whole.
13. If a service member wants to speak or write in his or her official capacity this requires an approval from superiors or press officers within his or her rank. With approval, armed forces personnel can use the knowledge acquired during service and write articles in professional or other publications. Whenever a member of the military expresses his or her opinion, whether private or public, he or she cannot disclose facts which are classified or are official business, unless a prior permission from superiors is obtained.
14. In a number of OSCE participating States, service members have the right to submit petitions and complaints against any public and state institutions. They can criticize state authorities so long as these critiques are not contrary to national security interests. Service members can also submit complaints challenging the actions of their commanders. In certain OSCE participating States, national legislation and internal military regulations require members of the military to report cases of corruption or cases where the public interest is harmed.

Social Media

15. Social media are an avenue for communication that has a large scope of distribution and allows for more casual language, as well as for a multitude of opinions which can be exchanged at rapid speed. Increasingly, military members use Facebook and other social media sites and can instantly post opinions. This can pose certain challenges. However, experts indicated that one of the measures that can be observed in the OSCE region in response to this development is the issuing of advisory guidelines on what can be said and shared.
16. Special requirements apply during active deployment or missions. A soldier or officer can write emails and participate in blogs or on-line chats, but he or she must be careful not to put the security of the operation at risk by disclosing sensitive information such as their location or other facts related to the mission. Soldiers should be briefed on appropriate use of social media before they are deployed.

¹⁹ The concept of “citizen in uniform” indicates that armed forces personnel are entitled to all rights and freedoms as regular citizens and these rights can only be restricted as prescribed by law, in a proportionate manner, and with a legitimate aim.

Recruiting via Media

17. Appealing to a broader audience, the armed forces are increasingly using social media, websites and regular media to advertise and recruit new members. Participants at the event discussed how such advertising must be done in order to portray appropriate images, ensure gender sensitivity, and fill the ranks with prepared and motivated men and women in equal measure.
18. As part of security sector reform efforts, armed forces in some OSCE participating States have incorporated measures to gender mainstream their various institutions. For example, in Serbia, such a process is underway and the Ministry of Defense posts information and images about women joining the armed forces on its website. The information and imagery issued by the Ministry is vetted and, generally, it provides respectful and gender-sensitive messages. However, there is a possibility for the public to post comments on the various pages of the website and such comments are not moderated, leaving space for potentially discriminatory comments.

Freedom of Association in Practice and Professional Associations

19. In practice, military members can assert their freedom to associate by joining professional associations and trade unions, but are usually prohibited to strike. Professional associations are to be distinguished from trade unions. Trade unions have collective bargaining power and are independent from the military structure while professional associations represent professional and non-pecuniary interests of armed forces personnel and can be part of the military structure. Certain OSCE participating States allow service members to belong to both types of organizations, others only professional associations and others restrict this type of membership altogether. An absolute ban is seen as a disproportionate restriction on freedom of association.²⁰

Activities and achievements of military associations

20. The European Organisation of Military Associations (EUROMIL) is the umbrella organization of 43 military associations and trade unions from 28 countries in Europe. As such, it 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. It was founded in 1972 and represents 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.
21. Experts indicated that there are well regulated negotiation systems whereby military associations exercise collective bargaining over the course of many years with authorities in Austria, Belgium, Denmark, Finland, Germany, Hungary, Ireland, the Netherlands, Norway, Switzerland, and Sweden.

²⁰ See *Matelly v. France* (4 Oct 2014).

22. Associations play an important role to enhance the well-being and performance of individual service members in the armed forces. In Denmark, the military association is a trade union and has had a long track record of successfully bargaining on behalf of its members. The head of the association has direct access to the Minister of Defense in order to be able to lobby on behalf of association members. The association is responsible for acting reasonably in line with all of the freedoms and responsibilities it has been empowered with. For example, its collective bargaining does not interfere with active operations. There is a relationship of mutual trust between the association and the armed forces in Denmark. If it were to abuse its freedoms and status, the union would risk losing its communication line with the military leadership.
23. In Cyprus, there are three military associations that represent the interests of service members. For example, they have been engaged in discussions with national authorities to amend the law governing the armed forces. The proposed amendment would stipulate that the working week for service members shall be 37.5 hours with flexible hours available for guard duty during the weekend.

Female Staff Associations

24. Associations can also represent the interests of particular service members and groups. For example, female staff associations can provide an avenue for advocacy tailored to the needs of its members. In most OSCE participating States, there are few women in the ranks and associations can assist with increasing their numbers by reviewing recruitment and promotion processes from a gender perspective and setting realistic goals for achieving gender balance. Such associations can also address stereotypes and any potential and actual discrimination against female employees. They can also bring the armed forces added value by providing for a diverse group of opinions represented from across the service.
25. For members, female staff associations provide networking opportunities as well as opportunities for education, training, and career development. More importantly, such associations can assist in an overall process of reform in order for security institutions to be able to adjust to having women work within their institutions.

Recommendations

26. From the above considerations, the meeting concluded with four concrete recommendations for OSCE participating States and OSCE structures and institutions:
- A) Given the positive impact and value of military associations, OSCE participating States are urged to permit all members of the armed forces to join a professional association or trade union representing their interests.

- B) The armed forces of all OSCE participating States should redouble their efforts to further integrate women in the ranks and to better draw on the talents and contributions they bring including through female staff associations.
- C) The armed forces of all OSCE participating States should develop guidelines and clear regulations on appropriate social media conduct in order to enable their members to freely express themselves via various social media outlets without impeding upon operational effectiveness.
- D) ODIHR is encouraged to continue the Human Rights Discussion Series for representatives of the OSCE Forum for Security Co-operation into 2015.

Annex I



ODIHR Human Rights Discussion Series for the Forum for Security Co-operation

CIVIL AND POLITICAL RIGHTS OF ARMED FORCES PERSONNEL

Background Paper¹

A number of OSCE participating States provide information on how they respect and ensure the civil and political rights of armed forces personnel through the annual Information Exchange on the Code of Conduct on Politico-Military Aspects of Security.² This information is mainly provided in response to Question 4.4 in the Questionnaire on the Code of Conduct³ about the individual service member's exercise of his or her civil rights within the understood general concept that a country's armed forces are to be politically neutral. The responses, as well as information from other sources including the Council of Europe (CoE), reveal different approaches both in terms of legislation and actual practice in the OSCE region. In a number of participating States the limitations currently placed on members of the armed forces practically exclude them from participating in public life.

It is timely to discuss the grounds for these restrictions and relevant international human rights standards while taking into account legitimate concerns regarding the political neutrality, military discipline, hierarchy and effectiveness of the armed forces. The experience of a number of participating States demonstrates that comprehensive protection of human rights of armed forces personnel is possible and compatible with respecting the requirements of service, maintaining political neutrality, and effectively addressing national security concerns. Thus, it is timely to analyze best practices and re-emphasize the fact that human rights are universal, inalienable, indivisible, interdependent and interrelated. In other words, human rights do not stop at the army gates.

Civil and political rights encompass a wide range of entitlements for individuals and obligations to protect on the part of governments. Some of the key human rights issues relevant for members of

¹ On 23 October 2014, ODIHR hosted an event on "Civil and Political Rights of Armed Forces Personnel" at the Hofburg in Vienna. This background paper identified and provided an overview of the main issues that were presented and discussed at the event.

² FSC.DEC/2/09.

³ Ibid.

the armed forces include: torture and ill-treatment, harassment and bullying, gender-based violence, lack of recognition of conscientious objection and access to alternative service, restrictions on assemblies, associations, political affiliation and activities and freedom of expression. This paper will discuss primarily the freedoms of expression and association in the armed forces with a focus on: the justifications for imposing limitations on these freedoms, the approaches participating States take to uphold these freedoms for service personnel, and the role and impact of social media and military associations in this regard.

OSCE commitments and international standards

In accordance with the OSCE Helsinki Final Act of 1975, civil and political rights, as well as other rights and fundamental freedoms “derive from the inherent dignity of the human person and are essential for his free and full development”. These rights were reaffirmed by participating States in a number of OSCE commitments. More specifically related to OSCE commitments on freedom of expression and of association, the Copenhagen Document (1990) affirms that everyone has the right to freedom of expression, including “freedom to hold opinions and to receive and impart information and ideas without interference by public authority”. In the same Document, participating States also committed to ensure that everyone can impart such information or ideas individually or in association with others. In MC Decision 7/09 participating States strengthened their resolve to include women in public life, including in the armed forces, and thus their presence among the ranks warrants that they benefit from the same rights and protections as their male counterparts.

These political commitments reinforce the legal obligations undertaken by OSCE participating States that have ratified applicable international and regional 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).

Article 32 of the OSCE Code of Conduct on Politico-Military Aspects of Security (Budapest 1994) outlines the general commitment of participating States to ensure the enjoyment and protection of human rights and fundamental freedoms of service personnel, but indicates 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. Article 23 makes it clear that while providing for the individual service member’s exercise of his or her civil rights, each participating State will ensure that its armed forces as such remain politically neutral. This may provide grounds for certain limitations on civil and political rights, although Article 20 of the Code with its call for integrating the armed forces with civil society affirms the commonly shared values and principles across a democratic society that members of the armed forces can participate in public life.

The 2010 CoE Committee of Ministers Recommendation⁴ to member States on the human rights of members of armed forces (*hereafter Recommendation*) provides guidance on how to better ensure that individuals serving in the armed forces enjoy their human rights to the fullest extent

⁴ Recommendation CM/Rec(2010)4 of the Committee of Ministers to member states on human rights of members of the armed forces.

possible in the context of their daily work and life. The Recommendation contains principles based on existing international legal instruments, the ECHR, case law of the European Court of Human Rights (ECtHR), as well as conclusions and decisions of the European Committee of Social Rights. Articles 47 and 48 of the Recommendation concern the right to freedom of expression and the restrictions that can be imposed particularly if there is a threat to military discipline or political impartiality of the armed forces. In Articles 53 through 57 the right to freedom of peaceful assembly and freedom of association of armed forces personnel, as well as grounds for restrictions on these freedoms, are laid out. Crucially, Article 54 says:

“Members of the armed forces should have the right to join independent organizations representing their interests and have the right to organize and to bargain collectively. Where these rights are not granted, the continued justification for such restrictions should be reviewed and unnecessary and disproportionate restrictions on the right to assembly and association should be lifted.”

On the issue of limitations of human rights, OSCE participating States have agreed that any such limitations must be provided for in law and must be consistent with other international obligations (Copenhagen 1990). In accordance with international and regional standards including the ICCPR (art. 22) and the ECHR (art. 11.2) the enjoyment of freedom of association may be restricted for military personnel.

Overall, the ECtHR has tended to give states a wide margin of appreciation⁵ in cases involving restrictions of civil and political rights of service personnel. In part, this is due to a generally deferential attitude to claims of national security. Nevertheless, the Court indicates that if a state is unable to show that a restriction has a legal basis, it would be unable to impose these restrictions. The proportionality test employed by the ECtHR requires consideration of the nature and extent to which a restriction on rights is justified by a legitimate objective.

In essence, it is for the authorities and the military of participating States to demonstrate that it is necessary to restrict the rights of armed forces personnel. It is paramount that the principles of proportionality and necessity apply in all circumstances. For instance, overly broad provisions of national legislation or unduly restrictive interpretations of such provisions would tend to be disproportionate and give rise to concern. Crucially, if service personnel have limited opportunities to associate and express themselves, they will, in turn, have limited opportunities to speak out on any other infringements or violations of their human rights and fundamental freedoms.

Freedom of expression and social media

The exercise of freedom of expression carries with it particular duties and responsibilities. It also poses specific challenges, but also opportunities, in the military context. With regards to challenges, these relate for instance to filing complaints about conditions of service, publishing newsheets in the barracks, public dissent from military orders or voicing criticism in the media.

⁵ H. Born and I. Leigh, Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel, (OSCE Office for Democratic Institutions and Human Rights and the Geneva Centre for the Democratic Control of Armed Forces), p. 58. <http://www.osce.org/odihr/31393>

Military discipline implies some limit on freedom of expression. Whereas some form of expression may be unregulated in the case of civilians, restrictions may be imposed upon serving members of the armed forces. For example, national security concerns justify constraints on disclosing military secrets.

In accordance with the 2013 report on the implementation of the Recommendation, several CoE member States indicated that their service personnel do not face any particular restriction in the enjoyment of the right to freedom of expression. Other States provided examples of possible restrictions on grounds of military discipline or confidentiality. In most cases, the freedom of expression of service personnel does not allow them to divulge information known because of their service, whether classified or not, for reasons of secrecy and national security. Furthermore, many States reported to restrict their service personnel's freedom of expression as to holding political opinions, recalling political neutrality, during or outside service.⁶

When considering the restrictions on freedom of expression for members of the armed forces, it is also useful to reflect on the form and extent of restrictions imposed. For instance, there are examples of participating States that are primarily concerned with the subject matter of speech rather than how or in which way it is conveyed. In some cases, restrictions operate according to the manner of expression: members of the armed forces are prohibited from making political statements while in uniform.⁷

The ECtHR ruling in the *Engel* case is instructive:

“The freedom of expression guaranteed by Article 10⁸ applies to servicemen just as it does to other persons within the jurisdiction of the Contracting States. However, the proper functioning of an army is hardly imaginable without legal rules designed to prevent servicemen from undermining military discipline, for example by writings.”⁹

While the above case can be taken as an example of the considerable leeway the ECtHR grants States in determining restrictions of rights for members of the armed forces, the Court has demonstrated a more skeptical approach in two other free speech cases involving members of the armed forces. In the first case, the Court found that a magazine distributed by soldiers was not a threat to discipline since, although sometimes critical, it contained information about complaints and appeals procedures and did not recommend disobedience to orders.¹⁰ In the second case, the Court found that a junior officer's freedom of expression as guaranteed by Article 10 of the ECHR

⁶ Report on the implementation of the Committee of Ministers' Recommendation CM/Rec(2010)4 on the human rights of members of the armed forces.

⁷ H. Born and I. Leigh, Handbook Human Rights and Fundamental Freedoms of Armed Forces Personnel, (OSCE Office for Democratic Institutions and Human Rights and the Geneva Centre for the Democratic Control of Armed Forces), p. 63. <http://www.osce.org/odihr/31393>

⁸ Article 10 of the European Convention on Human Rights provides the right to freedom of expression and information, subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society". This right includes the freedom to hold opinions, and to receive and impart information and ideas.

⁹ *Engel v. Netherlands*, *op. cit.*, note 29, para. 100.

¹⁰ *Vereinigung Demokratischer Soldaten Österreichs and Gubi v. Austria*, *European Court of Human Rights*, 18 December 1994, *European Human Rights Reports*, Vol. 20, 1995, p. 56.

had been violated when in response to sending a long letter of complaint to his superior (which was not otherwise published) he was sentenced to three months' imprisonment for insulting the armed forces. Accordingly, the ECtHR deemed that his prosecution was not "necessary in a democratic society" as required by Art. 10.2.¹¹

New technology including social media offers new opportunities for exercising freedom of expression. At an individual level members of the armed forces can use mobile phones with cameras to document instances of human rights violations. In this way service personnel can communicate their situation to their families, friends or other contacts through phone calls, text messaging, videos, and photos. This information can be shared with or reported to the media or human rights organizations. There are also examples of members of the armed forces who have started to blog, often anonymously, providing regular updates from first-hand experiences. Various types of national website platforms exist where a person can report instances of mistreatment of armed forces personnel.¹² Thus, the ability to exercise one's freedom of expression is also closely tied to the possibility to report any malpractice, misconduct, ill-treatment or other forms of human rights violations. The enjoyment of this freedom only gains greater significance in traditionally closed institutions such as the armed forces. Human rights violations are more likely in institutions and environments shielded from the public eye and with limited independent monitoring. Such environments are fertile breeding grounds for further violations, mismanagement and impunity.

A number of participating States and their armed forces also see the opportunities and benefits that social media can offer. This is most evident in the way social media and the internet are used actively to promote recruitment in the armed forces and to portray service as a career path¹³ for both women and men such as in Serbia¹⁴ and Croatia.¹⁵ Another benefit can be to utilize social media such as blogs and websites to help families to share information with their deployed relatives as well as with support groups. A guide developed by the British Armed Forces provides this type of information, but also calls for applying sensible security precautions, and provides advice on how to communicate safely in order to protect all parties involved.¹⁶ The U.S. Army has a Social Media Handbook,¹⁷ which offers detailed media guidance for service personnel and families alike. In this Handbook social media also are seen to be a powerful tool to transmit

¹¹ *Grigoriades v. Greece*, European Court of Human Rights, 25 November 1997, *European Human Rights Reports*, Vol. 27, 1997, p. 464.

¹² Expert Meeting on Human Rights Monitoring in the Armed Forces, Warsaw, 4-5 March 2013. See report:

<http://www.osce.org/odihr/108775>

¹³ https://www.facebook.com/forsvarsmakten/app_158515114199477; <http://theundercoverrecruiter.com/how-the-swedish-army-use-social-media-to-recruit-video/>;

¹⁴ http://www.vs.rs/index.php?women_in_saf=true;

¹⁵ <http://www.morh.hr/hr/karijera-u-morh-u.html>;

¹⁶ British Armed Forces, *A guide for the families of deployed Regular Army Personnel* (2011).

http://www.army.mod.uk/documents/general/20110308_PDF_Families_Deployment_guide_March2011.pdf

¹⁷ The United States Army Social Media Handbook (2013). Report:

[http://www.nationalguard.mil/Portals/31/Resources/SocialMedia/US%20Army%20Social%20Media%20Handbook%20\(Jan.%202013\).pdf](http://www.nationalguard.mil/Portals/31/Resources/SocialMedia/US%20Army%20Social%20Media%20Handbook%20(Jan.%202013).pdf)

messages across the various parts of the army¹⁸ deployed globally, as well as communicate critical information during times of crisis including environmental disasters.

The use of social and online media also poses a number of challenges at different levels. In general and beyond the armed forces, the most frequent complaints concern violations of privacy and inaccuracies.¹⁹ Private information is now readily accessible online to anyone such as regular individuals, journalists, companies and the general public. Social media can also be used for sharing confidential information that persons have gained access to through their work or from other sources, which brings up the issues of plagiarism, copyright infringements and unethical behavior. Conversely the use of social media by service personnel to post particular opinions, photos or even operational details on Facebook or Twitter may have direct negative implications for troop morale, military discipline or national security. For instance, the Danish Army called on its troops to use common sense when posting on social networking sites when they deployed on international missions to Lebanon²⁰ and Afghanistan.²¹ This response from the Danish Army came when service personnel inappropriately commented on Facebook causing embarrassment to their country's military. Nevertheless, no ban on the use of Facebook and other social networking sites was imposed on service personnel, as such online media sites were seen to be important for the troops' well-being and communication with families and friends.

The exercise of the right to freedom of expression, and especially now in the age of social media, has a gender dimension with implications for both women and men in the armed forces, and their human rights. As mentioned earlier, armed forces in the OSCE region increasingly have an internet presence for various purposes including for recruiting more women into the armed forces. In turn, civil society organizations, think tanks, policy institutes, veteran blogs and others make full use of social media to bring their messages across on a number of issues including: the promotion of women's access to combat positions,²¹ the need to effectively address assault cases, banning discriminatory legislation, and identifying Facebook pages²² that portray women in uniform in a sexist manner. As an example of a further gender dimension to the interplay between the military and the media in 2008, an army sergeant, who revealed that he was gay in an interview with a national news magazine, was imprisoned.²³ These highlighted examples serve to shed light on the multiple ways that freedom of expression, but also freedom of the media and the use of social media, are connected to the issues of non-discrimination and access to equal opportunities in the armed forces.

¹⁸ The U.S. Army also has a Uniform Code of Military Justice, which the service personnel using social media must abide by at all times. It stipulates what is appropriate media conduct and what is punishable under the Code. <http://www.slideshare.net/USArmySocialMedia/social-media-roundup-social-media-and-the-uniform-code-of-military-justice>

¹⁹ A. Hulin and M. Stone, *The Online Media Self-Regulation Guidebook* (Vienna: OSCE Representative on Freedom of the Media, 2013), p. 95.

²⁰ <http://www.icenews.is/2010/08/19/danish-army-calls-for-social-networking-sense/>

²¹ <http://www.alarabiya.net/articles/2009/07/17/79025.html>

²¹ <http://csis.org/event/women-combat-arms-conversation-colonel-ingrid-gjerde>

²² <http://servicewomen.org/>

²³ <http://www.theguardian.com/commentisfree/2008/jun/16/gayrights.brazil>

Freedom of association and professional associations

The raising of collective grievances on the part of members of the armed forces has traditionally been viewed as challenging military order or discipline, interfering with the *esprit de corps*, catering to possible outside influence or challenging the operational effectiveness of the armed forces. While in a number of participating States limitations on association rights on military personnel are justified on such grounds, in other States minimal restrictions are imposed. As a consequence, the enjoyment and exercise of the right to freedom of association varies significantly across the OSCE region.

Three main approaches to the protection of freedom of association of armed forces personnel can be identified in the OSCE region.²⁴ The first approach focuses on the chain of command to promote the interests of armed forces members. In accordance with this approach the military commander is to ensure the welfare of those serving under him or her. Consequently grievances of individual members of the armed forces are only referred through the chain of command and no avenues are provided for collective grievances. It also follows that the rights of individual members of the armed forces to associate are restricted. A key disadvantage with this approach comes particularly to the fore if the individual serviceperson has a problem with his or her commander. In such circumstances where direct representation of the interests of members of the armed forces is not possible, indirect representation may take place through veterans' groups, retired service members, or families of active servicemen and servicewomen. Alternatively, cultural groups that service personnel are permitted to participate in assume the role prohibited to military associations.

The second approach is through non-autonomous arrangements where the state provides the legal machinery for representation of the interests of members of the armed forces. This can include for example bargaining over pay or negotiating changes to conditions of service, and pensions. This may take the form of councils, which study any question related to the conditions of service or to the organization of work in the forces, and represent the viewpoint of armed forces personnel on the topics submitted to the councils. While this approach provides a mechanism for raising collective grievances, non-autonomous arrangements may suffer from several disadvantages. They can be perceived to have less credibility or legitimacy in representing the interests of members of the armed forces since they are not created by the members themselves, but by the authorities. Thus, the close affiliation with state structures undermines such arrangements as they may not be seen as accountable to those whose interests they represent. Ultimately, this may weaken their authority to speak on behalf of members of the armed forces.

The third approach observed in the OSCE region is the creation of authorized but autonomous military associations. In countries following this third approach, members of the armed forces are not legally restricted from joining military associations. Some associations of this kind are long-standing, such as those in the Netherlands, Belgium, and Sweden. These military associations

²⁴ H. Born and I. Leigh, Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel, (OSCE Office for Democratic Institutions and Human Rights and the Geneva Centre for the Democratic Control of Armed Forces), p.70. <http://www.osce.org/odihr/31393>

enjoy autonomy and accountability to their members and are able to speak with authority on their behalf. They may be recognized by their respective ministry of defense for negotiation purposes and some have very high rates of participation by eligible members of the armed forces. Military associations in Denmark are one successful example of such a situation. In other participating States such as in Germany the main military association plays an important role in the legislative review process.

Within the Council of Europe, 19 out of 42 member States, which have active armed forces do not guarantee the right to freedom of association to their military personnel, and 35 of these countries do not guarantee their right to collective bargaining.²⁵ According to the responses to the questionnaire to member States on their implementation of the Recommendation, freedom to join established trade unions is recognized in 21²⁶ of the responding States. In the majority of the remaining 12 States that replied, the right to join associations other than trade unions is recognized. A number of countries indicated some limitations particularly in terms of political affiliation or activities, while others indicated that some of these restrictions will probably be reviewed in the future.

When discussing the implementation of the CoE Recommendation on the rights of armed forces personnel, the Steering Committee for Human Rights emphasized the importance of protecting the freedom of association.²⁷ In line with Article 54 of the Recommendation on lifting unnecessary and disproportionate restrictions on freedom of association of armed forces personnel, the Steering Committee encouraged those States, which do not provide for this right and which have not yet reconsidered their national law in this respect, to do so.²⁸

In general, practice shows that states in the OSCE region, which allow members of the armed forces to join associations, have defined a framework of their work in order to avoid any external influence by civilian trade unions. In addition, there is usually a prohibition against strikes or other forms of industrial action that could potentially disrupt military effectiveness or threaten national security. In a number of participating States where there is permissive legislation there often exist well-functioning military associations, which act on behalf of their members' interests. Associations may pursue grievances, partake in negotiations with military authorities on the conditions of service, comment on draft laws, and provide legal and other services to their members and their families.

In this context, female staff associations within the armed forces, which are less prevalent than in the police, can play an important role both for their members and for the armed forces.²⁹ It can only be assumed that the prominence and influence of such associations will grow in tandem with

²⁵ http://www.echr.coe.int/Documents/Press_Q_A_Matelly_ENG.pdf

²⁶ Substantive replies were received from 33 out of 47 Council of Europe member States.

[http://www.coe.int/t/dghl/standardsetting/cddh/CDDH-DOCUMENTS/CDDH\(2013\)003_EN.pdf](http://www.coe.int/t/dghl/standardsetting/cddh/CDDH-DOCUMENTS/CDDH(2013)003_EN.pdf)

²⁷ Ibid.

²⁸ In this context it is worth noting the case of *Matelly v. France* (2014) where the ECtHR held that there had been a violation of freedom of association. It concluded that, while the exercise by military personnel of freedom of association could be subject to legitimate restrictions, a blanket ban on forming or joining a trade union is contrary to the Convention. This was the first time that the Court considered the issue with specific regard to armed forces.

²⁹ <http://www.dcaf.ch/Publications/Female-Staff-Associations-in-the-Security-Sector-Agents-of-Change>

the increasing number of women in the armed forces in a number of OSCE participating States. The armed forces will benefit from a positive image for having troops that more accurately represent the community they serve and associations can support women to advance through the ranks to decision-making positions, as well as to represent their grievances. Looking beyond the armed forces, it has been documented that through their activities, female staff associations have been able to fight for fairer working conditions for women in male-dominated environments. They have also influenced policies and practices of security sector institutions such as on recruitment, maternity leave and working regimes. Such changes have primarily come about either through participation in formal policymaking processes or through advocacy.³⁰

Lastly, military associations cooperate with each other internationally to enhance their capacity and impact. The European Organisation of Military Associations (EUROMIL)³¹ promotes the social and professional interests of military personnel of all ranks in Europe. EUROMIL is the umbrella organization of 43 national military associations and trade unions and has member associations from 28 countries from the Russian Federation in the East to Ireland in the West, and from Finland in the North to Cyprus in the South. Through the international secretariat in Brussels, EUROMIL facilitates the exchange of information, experiences and best practice among member associations.

Discussion points for the event

How can militaries deployed around the world use technology to improve the communication, working conditions, morale and performance of their staff?

The armed forces could increasingly develop and publicize websites that adhere to the needs of men and women who are deployed and address issues such as combat related stress, cultural appropriate behavior in the countries where they are deployed, and support newsletters that seek to improve staff morale and support their ability to communicate with each other.

How can the armed forces best achieve a balanced and gender-sensitive presence in the social media?

A number of participating States have a stated goal of increasing the number of women in the armed forces. For this to become a reality, the armed forces need to ensure that they develop and implement the necessary policies, mechanisms and facilities to accommodate both male and female employees in the armed forces. It is also important that a military communicates coherently and comes across as an equal opportunity employer. Thus, any media messaging can and should be reviewed by women's rights advocates and experts to ensure that no gender bias is portrayed and that the armed forces are an attractive employer for women who, often times, have different priorities and responsibilities than men.

³⁰ <http://www.dcaf.ch/Publications/Female-Staff-Associations-in-the-Security-Sector>

³¹ http://www.euromil.org/index.php?option=com_content&view=category&layout=blog&id=110&Itemid=112

To what extent are military associations able to represent the needs the members of the armed forces, which are becoming increasingly diverse?

Military associations primarily serve their members although the results and achievements of their activities may also benefit non-members. With the armed forces of participating States becoming increasingly diverse, it is important that the associations are better able to represent the interests and concerns of everybody in the forces.

What means of redress are available to armed forces personnel when their rights to express themselves, use social media, and join associations are disproportionately restricted?

Increasingly armed forces personnel can take advantage of both internal and external oversight mechanisms to file formal complaints when their rights are infringed. Internal oversight includes the authority of commanders and superiors who are part of the chain of command and who are responsible for soldiers, as well as internal investigative mechanisms within human resources or an internal oversight office in the lead. External oversight includes civilian authorities, such as a ministry of defense or Parliament, who have the authority to inquire and know about what is happening to military personnel. External oversight also includes ombuds institutions and national human rights institutions that can investigate individual complaints and report on the status of rights of the armed forces at the national level.

Annex II



CIVIL AND POLITICAL RIGHTS OF ARMED FORCES PERSONNEL

VIENNA, HOFBURG, SEGMENTGALERIE I
23 October 2014

AGENDA

- 09:30-10:00** **Registration of Participants**
- 10:00-10:15** **Opening Remarks**
- Mr. Omer Fisher**, *Deputy Head, Human Rights Department, OSCE Office for Democratic Institutions and Human Rights (ODIHR)*
Ambassador Claude Giordan, *Chairperson, OSCE Forum for Security Co-operation (FSC)*
Lt. Col. Detlef Hempel, *Co-ordinator for the Code of Conduct on Politico-Military Aspects of Security, OSCE Forum for Security Co-operation (FSC)*
- 10:15-11:15** **Introduction**
- The speakers will provide an overview of civil and political rights and relevant concerns in exercising and enjoying these rights in the armed forces. Some of the main limitations on these rights imposed by participating States, as well as approaches particularly on the freedoms of expression and association will be discussed.*
- Moderator: **Mr. Omer Fisher**, *Deputy Head, Human Rights Department, OSCE Office for Democratic Institutions and Human Rights (ODIHR)*
- Speakers:
- Mr. Ian Leigh**, *Professor of Law, Durham University, United Kingdom*
Mr. Matthias Kloth, *Administrator, Directorate General of Human Rights and Rule of Law, Council of Europe (CoE)*

Discussion

11:15-11:30

Coffee break

11:30-13:00

Panel 1: Freedom of Expression and Social Media

The speakers will look into the differing approaches of participating States to freedom of expression of armed forces personnel. The panelists will touch on form and content restrictions, as well as the impact, opportunities and challenges social media present, as they affect the freedom of expression of women and men serving in the armed forces.

Moderator: **Ms. Andreea Vesa**, Human Rights Officer, OSCE Office for Democratic Institutions and Human Rights (ODIHR)

Panel members:

Dr. iur. Katharina Ziolkowski, International and Operational Law Branch Federal, Ministry of Defence, Germany

Mr. Alexandru Postica, Attorney at Law, Human Rights Program Director "Promo LEX" Association, Republic of Moldova

Ms. Tamara Skrozza, Journalist of Vreme newsmagazine & member of the Serbian Press Council

Discussion

13:00-14:30

Lunch

14:30-15:15

Panel 2: Freedom of Association and Professional Associations

The speakers will present on various approaches of participating States to the enjoyment and protection of freedom of association in the armed forces. The panelists will discuss the ability to form and join military associations, including female staff associations, as well as the experiences with associations partaking in collective bargaining with military authorities.

Moderator: **Mr. Ian Leigh**, Professor of Law, Durham University, United Kingdom

Panel members:

Mr. Emmanuel Jacob, President, European Organisation of Military Associations (EUROMIL)

Mr. Andreas Gennaris, Defence Policy and International Affairs Directorate, Ministry of Defence, Cyprus

15:15-15:30

Coffee break

15:30-16:45 **Panel 2: Freedom of Association and Professional Associations [cont.]**

Moderator: **Mr. Emmanuel Jacob**, *President, European Organisation of Military Associations (EUROMIL)*

Panel members:

Ms. Ruth Montgomery, *Pyxis Consulting Group Inc. & Senior Advisor, International Centre for Criminal Law Reform and Criminal Justice Policy*

Mr. Flemming D. Vinther, *Elected Chairman, Danish Trade Union of Enlisted Privates and Corporals of the Danish Army (HKKF)*

Discussion

16:45-17:00 **Closing Remarks**

Mr. Omer Fisher, *Deputy Head, Human Rights Department, OSCE Office for Democratic Institutions and Human Rights (ODIHR)*