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OSCE Implementation Meeting 2007 Warsaw, Poland

Freedom of association for active military personnel

1. Co-operation between EUROMIL, the European Organisation of Military Associations, the Council of Europe and the OSCE.

Since 2005 EUROMIL has made progress in its efforts for the recognition of the freedom of association for active military personnel. Firstly, this is reflected in the Council of Europe Parliamentary recommendation 1742 (2005) on “human rights in the Armed Forces”, which recommends to ensure the protection of the freedom of association for military personnel. It considers that members of the armed forces are citizens in uniform who must enjoy the same fundamental freedoms within the limits imposed by the specific exigencies of military duties.

Several important international events show that international organisations and other stakeholders take stock of the importance to debate the social condition of military personnel in geographical Europe. Examples are, a conference in Berlin on the “citizen in uniform: implementing human rights in the Armed Forces” in September 2006 or a roundtable on “military unions and associations” in October 2006 in Bucharest organized in co-operation with the OSCE, the Geneva Centre for Democratic Control of the Armed Forces and the respective Ministries of Defence that have contributed to document the soon published OSCE ODHIR - DCAF Handbook on “Human Rights in the Armed Forces”. Additionally, the OSCE Office in Baku has shown strong commitment to the implementation of human rights in the Armed Forces as it organized on two occasions in February and July 2007 conferences on “welfare issues in the Armed Forces” by including several civil society actors and EUROMIL.

2. The legal status of the freedom of association for active military personnel

The freedom of association is in various participating Member States of the OSCE not granted to active military personnel. That is not only the case for some of the new Eastern European democracies and Central-Asian countries but also in EU Member States.

The freedom of association constitutes the working basis for the protection of the professional and social interests of military personnel in the armed forces.

The OSCE human dimension commitments allow for restrictions of the freedom of association if they are “prescribed by law” and “consistent with international standards”.

Article 11 of the European Convention on Human Rights (ECHR) allows not for a general exclusion of the freedom of association: Limitations are legitimate if they are

- in the interest of national security or public safety,
- for the prevention of disorder or crime,
- for the protection of health or morals, or
- for the protection of the rights or freedoms of others.

The European Court of Human Rights emphasized in his jurisprudence that these exceptions have to be “construed strictly” and, that only “clear and compelling” reasons can justify restrictions. They have to comply with the principle of proportionality, and there must be “relevant and sufficient” evidence with “decisions based on acceptable assessment of the relevant facts” before a restriction can be justified.

In particular, Council of Europe Parliamentary Assembly recommendation 1742 (2005) advises to guarantee the freedom of association for all “members of the Armed Forces”.

EUROMIL strongly supports this position and is an active part of the working group that prepares the formulation of a recommendation for adoption by the Council of Ministers that will render its conclusions in 2008.

3. Why is the international recognition of this right for military personnel so important?

During the past decade, an increasing number of OSCE participating states have transformed their military from a conscript-based system into volunteer-based professional forces. Therefore military personnel are increasingly becoming “regular” employees choosing to pursue a career in the armed forces. The question of the protection of their professional interests becomes more and more relevant as EUROMIL has experienced.

The “Internationalization” and “Europeanization” of military mandates and increasing interdependence of defence forces, very visible through the introduction of multinational concepts like the NATO Response Force or the EU Battlegroups will raise the comparability of social *conditions* of soldiers. This includes the factor, “how” military personnel is organized in military associations or trade unions.

EUROMIL’s practice has shown that those countries that successfully granted the freedom of association to their soldiers with an established social dialogue have developed strong and competent military associations and trade unions that work hand in hand with the political and military governance. More importantly, countries like Germany, the Netherlands, Denmark, Sweden, Norway, Belgium, Finland and Ireland that have an exemplary social dialogue have not experienced any loss of military efficiency or obedience.

Contrary to some misperceptions democratic military associations do not interfere in matters of domestic or foreign policy, neither do they comment operational decisions. Military associations do always respect the chain of command. A disruption of it would be contrary to the aim and purpose of military trade unions and associations and would also endanger the social and professional interests of the engaged soldier “at home” and “abroad”.

EUROMIL therefore calls all participation OSCE countries to fully recognize and implement the freedom of association for active military personnel according to existing international law.