

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

*(Adopted by the Committee of Ministers on 24 February 2010
at the 1077th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its member states, *inter alia*, by promoting the adoption of common rules;

Bearing in mind notably the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5), in the light of the relevant case law of the European Court of Human Rights, the European Social Charter (ETS No. 35) as well as the Revised European Social Charter (ETS No. 163), taking into account the relevant case law of the European Committee on Social Rights, and the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

Taking into consideration the relevant United Nations instruments, in particular the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the observations and decisions of the monitoring bodies established under the aforementioned instruments;

Taking into account the Committee of Ministers' Recommendation No. R (87) 8 regarding conscientious objection to compulsory military service, as well as the Parliamentary Assembly's Recommendations 1742 (2006) on "Human rights of members of the armed forces", 1714 (2005) on the "Abolition of restrictions on the right to vote", 1572 (2002) on the "Right to association for members of the professional staff of the armed forces", 1518 (2001) on the "Exercise of the right of conscientious objection to military service in Council of Europe member states" and 1380 (1998) on "Human rights of conscripts";

Having regard to the "Handbook on human rights and fundamental freedoms of armed forces personnel", published by the Organisation for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the Centre for the Democratic Control of Armed Forces (DCAF) in 2008,

Recommends that the governments of the member states:

1. ensure that the principles set out in the appendix to this recommendation are complied with in national legislation and practice relating to members of the armed forces;
2. ensure, by appropriate means and action, including, where appropriate, translation, a wide dissemination of this recommendation among competent civil and military authorities and members of the armed forces, with a view to raising awareness of the human rights and fundamental freedoms of members of the armed forces, and to providing training aimed at increasing their knowledge of human rights;
3. examine within the Committee of Ministers the implementation of this recommendation two years after its adoption.

1. This recommendation concerns the enjoyment of human rights and fundamental freedoms by members of the armed forces in the context of their work and service life.

General principles

2. Whilst taking into account the special characteristics of military life, members of the armed forces, whatever their status, shall enjoy the rights guaranteed in the Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter, "the Convention") and the European Social Charter and the European Social Charter (revised) (hereafter, "the Charter"), as well as other relevant human rights instruments, to the extent that states are bound by them.

3. According to Article 15 of the Convention and Article 30 of the European Social Charter, in time of war or other public emergency threatening the life of the nation, states may derogate from certain of their obligations under the Convention and the Charter to the extent strictly required by the exigencies of the situation and provided that such measures are not inconsistent with their other obligations under international law.

4. Derogations under Article 15 of the Convention shall not be permitted in relation to the following rights: the right to life, except in respect of deaths resulting from lawful acts of war, the prohibition of torture and inhuman or degrading treatment or punishment, the prohibition of slavery and servitude, the principle that no punishment can be inflicted without a law and the right not to be tried or punished twice.

5. The following rights and freedoms should be respected and implemented in accordance with the accompanying principles:

A. Members of the armed forces have the right to life.

6. Members of the armed forces should not be exposed to situations where their lives would be avoidably put at risk without a clear and legitimate military purpose or in circumstances where the threat to life has been disregarded.

7. There should be an independent and effective inquiry into any suspicious death or alleged violation of the right to life of a member of the armed forces.

8. Member states should take measures to encourage the reporting of acts which are inconsistent with the right to life of members of the armed forces and to protect from retaliation those reporting such acts.

9. Members of the armed forces should never be sentenced to death or executed.

B. No member of the armed forces shall be subjected to torture or to inhuman or degrading treatment or punishment.

10. Member states should take measures to protect members of the armed forces from being subjected to torture or inhuman or degrading treatment or punishment. Particular attention should be given to more vulnerable categories such as, for example, conscripts.

11. Where members of the armed forces raise an arguable claim that they have suffered treatment in breach of Article 3 of the Convention, or when the authorities have reasonable grounds to suspect that such treatment has occurred, there should promptly be an independent and effective official investigation.

12. Member states should take measures to encourage the reporting of acts of torture or ill-treatment within the armed forces and to protect from retaliation those reporting such acts.

13. Members of the armed forces, notably when deprived of their liberty should be treated with humanity and with respect for the inherent dignity of all human beings.

C. Members of the armed forces shall not be used for forced or compulsory labour.

14. Military service or service exacted instead of compulsory military service should not be considered as constituting forced or compulsory labour. The nature and duration of service exacted instead of compulsory military service should not be punitive, disproportionate or unreasonable compared to that of military service.

15. Members of the armed forces should not be used to perform tasks incompatible with their assignment to the national defence service, with the exception of emergency and civil assistance carried out in accordance with the law.

16. The authorities should not impose on professional members of the armed forces a length of service which would constitute an unreasonable restriction on their right to leave the armed forces and would amount to forced labour.

D. Military discipline should be characterised by fairness and procedural guarantees should be secured.

17. Each member state is competent to organise its own system of military discipline and enjoys a certain margin of appreciation in the matter. However, only conduct likely to constitute a threat to military discipline, good order, safety or security may be defined as a disciplinary offence. The severity of any punishment should be proportionate to the offence.

18. Collective punishment should be prohibited.

19. The acts or omissions by members of the armed forces which constitute disciplinary offences, the procedures to be followed at disciplinary hearings, the types and duration of punishment that may be imposed, the authority competent to impose such punishment and any right of appeal should be provided for in law.

20. Any allegation of infringement of the disciplinary rules by a member of the armed forces should be reported promptly to the competent authority, which should investigate it without undue delay.

21. Members of the armed forces charged with disciplinary offences should be informed promptly, in detail, of the nature of the accusations against them. Where Article 6 of the Convention applies, they should have the right to a fair hearing. They should also be given the opportunity to appeal to a higher and independent body.

E. Members of the armed forces enjoy the right to liberty and security.

22. No member of the armed forces should be deprived of his or her liberty except in cases provided for under Article 5, paragraph 1, of the Convention, and in accordance with a procedure prescribed by law.

23. For as long as recruitment of persons under the age of 18 into military service continues, these persons should be detained only as a measure of last resort and for the shortest possible appropriate period of time. Furthermore, if detained, they should be held separately from adults, unless this is against their best interests.

24. Members of the armed forces who are arrested or detained should be informed promptly of:

- the reasons for their arrest or detention;
- any charge against them;
- their procedural rights.

25. When members of the armed forces are arrested or detained in relation to a criminal offence, they should be brought promptly before a judge or other official authorised by law to exercise judicial power and be entitled to trial within a reasonable time or to release pending trial.

26. Members of the armed forces who are deprived of their liberty should be entitled to take proceedings by which the lawfulness of the detention should be decided speedily by a court and their release ordered if the detention is not lawful.

27. Any disciplinary penalty or measure which amounts to deprivation of liberty within the meaning of Article 5, paragraph 1, of the Convention should comply with the requirements of this provision.

F. Members of the armed forces enjoy the right to a fair trial.

In criminal matters

28. The guarantees of a fair trial should apply to all proceedings that qualify as criminal under the Convention on account of the nature of the offence and the seriousness of the potential penalty as well as its purpose, be they qualified as disciplinary or criminal in national law.

29. In order to safeguard the independence and impartiality of judicial authorities acting in criminal proceedings, there should be a clear separation between the prosecuting authorities and those handing down the court decision.

30. Members of the armed forces charged with a criminal offence should be given full access, to the same extent as in criminal proceedings against civilians, to the criminal case file and have the right to present their defence.

31. Members of the armed forces who are found guilty of an offence should, to the same extent as in criminal proceedings against civilians, be able to appeal to a competent and independent higher authority which ultimately should be an independent and impartial tribunal that fully complies with the requirements of Article 6 of the Convention.

In civil matters

32. Any exclusion of the right to have access to a tribunal for the determination of members of the armed forces' civil rights and obligations should be expressly provided for by law and should also be justified on objective grounds in the public interest.

Procedural safeguards of military courts

33. The organisation and operation of military courts, where they exist, should fully ensure the right of everyone to a competent, independent and impartial tribunal at every stage of legal proceedings.

34. Members of the armed forces should have the right to a public hearing at a competent court. The holding of sessions in camera should be exceptional and be authorised by a specific, well-grounded decision the lawfulness of which is subject to review.

G. Members of the armed forces have the right to respect for their private and family life, their home and correspondence. Any interference by a public authority with the exercise of this right shall comply with the requirements of Article 8, paragraph 2 of the European Convention on Human Rights.

35. Where states rely on national security in order to impose restrictions on the right to respect for private and family life, they should only do so where there is a real threat to national security.

36. Members of the armed forces should not be subjected to investigations into the most intimate aspects of their private life unless there is a suspicion of a criminal offence having been committed or it is required for the purposes of highest-level security clearance.

37. Conscripts should as far as possible be posted near their family and home. Postings of professional members of the armed forces far from those close to them and their homes should not be imposed as a disciplinary punishment, but only for reasons of operational effectiveness.

38. Where members of the armed forces are posted abroad, they should, as far as possible, be able to maintain private contacts and reasonable means should be provided to this end. Where those close to them accompany the members of the armed forces who are posted abroad, assistance programmes for them should be organised before, during and after deployment.

39. Members of the armed forces who are parents of young children should enjoy maternity or paternity leave, appropriate childcare benefits, access to nursery schools and to adequate children's health and educational systems.

H. Members of the armed forces have the right to freedom of thought, conscience and religion. Any limitations on this right shall comply with the requirements of Article 9, paragraph 2 of the European Convention on Human Rights.

40. Members of the armed forces have the right to freedom of thought, conscience and religion, including the right to change religion or belief at any time. Specific limitations may be placed on the exercise of this right within the constraints of military life. Any restriction should however comply with the requirements of Article 9, paragraph 2, of the Convention. There should be no discrimination between members of the armed forces on the basis of their religion or belief.

41. For the purposes of compulsory military service, conscripts should have the right to be granted conscientious objector status and an alternative service of a civilian nature should be proposed to them.

42. Professional members of the armed forces should be able to leave the armed forces for reasons of conscience.

43. Requests by members of the armed forces to leave the armed forces for reasons of conscience should be examined within a reasonable time. Pending the examination of their requests they should be transferred to non-combat duties, where possible.

44. Any request to leave the armed forces for reasons of conscience should ultimately, where denied, be examined by an independent and impartial body.

45. Members of the armed forces having legally left the armed forces for reasons of conscience should not be subject to discrimination or to any criminal prosecution. No discrimination or prosecution should result from asking to leave the armed forces for reasons of conscience.

46. Members of the armed forces should be informed of the rights mentioned in paragraphs 41 to 45 above and the procedures available to exercise them.

I. Members of the armed forces have the right to freedom of expression. Any restrictions on the exercise of this freedom shall comply with the requirements of Article 10, paragraph 2, of the European Convention on Human Rights.

47. The right to freedom of expression includes freedom to hold opinions and to receive and impart information and ideas. The exercise of these freedoms by everyone, including members of the armed forces, carries with it duties and responsibilities. It may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and necessary in a democratic society in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority or impartiality of the judiciary. Such measures should be proportionate, should not be arbitrary and should be reasonably foreseeable.

48. Any restrictions on freedom of expression which are imposed where there is a real threat to military discipline, given that the proper functioning of the armed forces is not possible without legal rules designed to prevent members of the armed forces from undermining it, should respect the above-mentioned requirements. These restrictions may concern, for example, how military duties are performed or whether the political impartiality of the armed forces is affected.

J. Members of the armed forces have the right to have access to relevant information.

49. Potential recruits should be provided with full and detailed information about all aspects of recruitment, the induction process and the specific nature of the commitments involved in enlisting in the armed forces. In the case of potential recruits who are under the age of 18, this information should also be provided to their parents or legal guardians.

50. Former and current members of the armed forces should have access to their own personal data, including medical records, upon request.

51. Current and, where applicable, former members of the armed forces should have access to information with regard to their exposure during service to situations, either past or present, which were or are potentially hazardous to their health.

52. Access to information may however be restricted if the documents requested are objectively considered to be classified, or if the restrictions aim to protect national security, defence or international relations. Such restrictions should be duly justified.

K. Members of the armed forces have the right to freedom of peaceful assembly and to freedom of association with others. Any restrictions placed on the exercise of this right shall comply with the requirements of Article 11, paragraph 2 of the European Convention on Human Rights.

53. No restrictions should be placed on the exercise of the rights to freedom of peaceful assembly and to freedom of association other than those that are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

54. Members of the armed forces should have the right to join independent organisations representing their interests and have the right to organise 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.

55. No disciplinary action or any discriminatory measure should be taken against members of the armed forces merely because of their participation in the activities of lawfully established military associations or trade unions.

56. Members of the armed forces should have the right to join political parties, unless there are legitimate grounds for certain restrictions. Such political activities may be prohibited on legitimate grounds, in particular when a member of the armed forces is on active duty.

57. Paragraphs 53 to 56 should not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces.

L. Members of the armed forces enjoy the right to vote and to stand for election.

58. Any restrictions on the electoral rights of members of the armed forces which are no longer necessary and proportionate in pursuit of a legitimate aim should be removed.

59. Member states may impose restrictions on membership in the armed forces during a member's candidacy or, following election, during the term of office.

M. Members of the armed forces have the right to marry.

60. Members of the armed forces should have the right to marry and to form civil partnerships in accordance with the rights of civilians.

N. All members of the armed forces enjoy the right to protection of their property.

61. The property of members of the armed forces, in particular conscripts, retained upon joining the armed forces should be returned at the end of military service.

O. Members of the armed forces should be provided with accommodation of an adequate standard.

62. Where accommodation is provided for members of the armed forces and their families, in particular sleeping accommodation, this should allow, as far as possible, for some privacy. It should also meet basic requirements of health and hygiene.

P. Members of the armed forces should have the right to receive fair remuneration and a retirement pension.

63. Professional members of the armed forces should receive remuneration for their work such as will give them a decent standard of living. This remuneration should be paid on time.

64. Men and women in the armed forces should be entitled to equal pay for equal work or work of equal value.

65. Full-time professional members of the armed forces should be entitled to an adequate retirement pension, which should be paid on time, without any discrimination.

Q. Members of the armed forces should have the right to dignity, health protection and security at work.

66. Members of the armed forces should have the right to the protection of their dignity at work, including the right not be subjected to sexual harassment.

67. Members of the armed forces should be entitled to periods of rest. Periods of rest should, as far as possible, also be included in military training and planning of operations. Professional members of the armed forces should be entitled to paid holiday.

68. Where members of the armed forces may or have been exposed to epidemic, endemic or other diseases, appropriate measures should be taken to protect their health.

69. Member states should take appropriate measures to prevent accidents and health problems arising out of, linked with or occurring in the course of members of the armed forces' work, particularly by minimising the causes of hazards inherent in the military working environment.

70. Members of the armed forces should enjoy access to health care and the right to receive medical treatment.

71. Medical care should be provided as quickly as possible to members of the armed forces during military operations.

72. Where members of the armed forces are injured in service, adequate health care and, where appropriate, allowances should be provided to them. There should also be a system of compensation and, where appropriate, allowances in cases of death in service of members of the armed forces.

73. An appropriate compensation scheme should be available to persons leaving the armed forces who have been injured or become ill as a result of service.

74. Professional members of the armed forces leaving the armed forces should be provided with appropriate benefit packages and programmes preparing them for civilian life.

R. Members of the armed forces should have the right to decent and sufficient nutrition.

75. Members of the armed forces should be provided with an appropriate diet that takes into account as far as possible their age, health, religion, and the nature of their work.

76. Clean drinking water should be available to members of the armed forces at all times.

S. Members of the armed forces enjoy rights and freedoms without any discrimination.

77. In the context of the work and service life of members of the armed forces, as well as with respect to access to the armed forces, there should be no discrimination in relation to their human rights and freedoms based on any grounds such as sex, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. The principle of non-discrimination will not be violated if the distinction between individuals in analogous situations has an objective and reasonable justification in the pursuit of a legitimate aim, such as maintaining combat effectiveness, and if the means thus employed are reasonably proportionate to the aim pursued.

78. Members of the armed forces should have the right to bring allegations of discrimination in relation to their rights and freedoms before the relevant national authorities.

T. Special attention should be given to the protection of the rights and freedoms of persons under the age of 18 enlisted in the armed forces.

79. States should ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces. Where member states recruit persons under the age of 18 they should maintain safeguards to ensure, as a minimum, that:

- such recruitment is genuinely voluntary;
- such recruitment is carried out with the informed consent of the person's parents or legal guardians;
- such persons and their parents or legal guardians are fully informed of the duties involved in such military service;
- such persons provide reliable proof of age prior to acceptance into national military service.

80. Persons under the age of 18 within the armed forces should have the right to such protection and care as is necessary for their well-being and may make representations about their welfare, including the conditions of their employment or military service.

81. Every person under the age of 18 within the armed forces should have the right to maintain on a regular basis a personal relationship and direct contact with both of his or her parents or legal guardian(s).

82. Member states should take all feasible measures to ensure that members of the armed forces who have not attained the age of 18 do not take part in combat situations.

U. Members of the armed forces should receive training on human rights and international humanitarian law.

83. Members of the armed forces should receive training to heighten their awareness of human rights, including their own human rights.

84. During training, military members of the armed forces should be informed that they have a duty to object to a manifestly unlawful order amounting to genocide, a war crime, a crime against humanity or torture.

V. Members of the armed forces should have the possibility of lodging a complaint with an independent body in respect of their human rights.

85. Members of the armed forces who claim to have been victims of harassment or bullying should have access to a complaint mechanism independent of the chain of command.