Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Recommendation 1742 (2006)[1]

Human rights of members of the armed forces

Parliamentary Assembly

1. The army is the institution which is responsible for protecting the state and defending the community. Combat is its raison d'être, the very purpose of its existence, and it is bound by the specific constraints of rules regarding unity, hierarchy, discipline and compliance with orders.

2. The Parliamentary Assembly recalls the many texts which it has adopted with regard to the promotion of human rights in the armed forces and notes their continued relevance and topicality. It considers that members of the armed forces are citizens in uniform who must enjoy the same fundamental freedoms, including those set out in the European Convention on Human Rights (ETS No. 5) and the revised European Social Charter (ETS No. 163), and the same protection of their rights and dignity as any other citizen, within the limits imposed by the specific exigencies of military duties.

3. With the ending of conscription and the professionalisation of the armed forces in several countries, at a time when armies in many member states are seeing action in the same theatres of operation, the Assembly resolutely promotes shared principles to be used to guide army action and govern the conditions under which they discharge their duties. Members of the armed forces cannot be expected to respect humanitarian law and human rights in their operations unless respect for human rights is guaranteed within the army ranks. It is therefore essential that the Council of Europe's efforts to lay down guidelines on human rights protection within the armed forces be accompanied by a policy in the member states of heightening human rights awareness among their own military personnel.

4. The Assembly notes that, despite its repeated requests to member states, the situation of members of the armed forces in some states vis-à-vis the rights which they enjoy under the European Convention on Human Rights and the case law of the European Court of Human Rights is far from satisfactory. It regrets that many restrictions to the exercise of their rights by members of the armed forces in certain member states exceed what is acceptable under the terms of the Convention.

5. It also regrets that scant attention has so far been paid to military justice and military disciplinary and criminal procedures, and considers that in view of the diversity of legal and judicial systems in the member states it would be useful to conduct a comparative law survey in order to promote the rights of the military to freedom, to safety and to a fair trial.

6. The Assembly considers that the Council of Europe should pay greater attention to the issue of the status of women in the armed forces. A great many female soldiers are subjected to sexual harassment. The issues of access to military duties and to specific posts in the armed forces, career structures and equal rights are all relevant to discrimination against women, a matter requiring in-depth consideration in itself.

7. The Assembly is horrified and appalled by the situation of servicemen in some member states' armies who are subjected to abuse, brutality, institutionalised bullying, violence, ill-treatment and torture, constituting extremely serious violations of their rights. This applies to the "initiation ordeals" (dedovshchina) which, despite periodical complaints from NGOs, remain common practice in the armed forces of certain countries.

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1. Assembly debate on 11 April 2006 (11th Sitting) (see Doc. 10861, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Arabadjiev). Text adopted by the Assembly on 11 April 2006 (11th Sitting).

8. The Assembly recalls that the right of conscientious objection is an essential component of the right to freedom of thought, conscience and religion as secured under the Universal Declaration of Human Rights and the European Convention on Human Rights.

9. The Assembly asks member states to ensure genuine and effective protection of the human rights of members of the armed forces, and in particular:

9.1. to authorise members of the armed forces to join professional representative associations or trade unions entitled to negotiate matters connected with remuneration and conditions of employment, and to set up consultative bodies at all levels involving the aforementioned associations or trade unions, representing all categories of personnel;

9.2. to introduce, where such a facility does not already exist, the autonomous civil institution of military ombudsman responsible for promoting the fundamental rights of members of the armed forces, ensuring respect for such rights, providing legal assistance to servicemen, and receiving complaints of violations of their rights, and to whom military personnel can turn in a confidential manner in cases of employment disputes or other questions arising out of the exercise of its duties;

9.3. to remove existing restrictions on the electoral rights of members of the armed forces;

9.4. to authorise members of the armed forces and military personnel to join legal political parties;

9.5. to adopt or modify legislation and statutory regulations in order to ensure their conformity with the European Convention on Human Rights and the case law of the European Court of Human Rights, including military codes and internal military regulations, which should clearly set out the rights and obligations of armed forces personnel;

9.6. to lift any remaining reservations to the application of Articles 5 and 6 of the European Convention on Human Rights;

9.7. to introduce into their legislation the right to be registered as a conscientious objector at any time, namely before, during or after military service, as well as the right of career servicemen to be granted the status of conscientious objector;

9.8. to urgently adopt, where necessary, the requisite measures to put an end to the scandalous situations and practices of bullying in the armed forces and to put an end to the conspiracy of silence in the armed forces which ensures impunity for such acts;

9.9. to ensure that every case of violation brought to the authorities' attention is thoroughly, openly and rapidly investigated, and that the perpetrators are prosecuted and brought to justice.

10. The Assembly recommends that the Committee of Ministers prepare and adopt guidelines in the form of a new recommendation to member states designed to guarantee respect for human rights by and within the armed forces, drawing on the European Convention on Human Rights and the case law of the European Court of Human Rights, the previous recommendations of the Committee of Ministers, the recommendations of the Parliamentary Assembly and those of the Commissioner for Human Rights of the Council of Europe. Guidelines on the rights of army personnel, whatever their status – conscripts, volunteers or career servicemen – should include at least the rights listed below.

10.1. Members of the armed forces must enjoy the following fundamental rights and freedoms:

10.1.1. the right to life (bearing in mind, however, the inherent dangers of the military profession);

10.1.2. the right to protection against torture and inhuman or degrading treatment or punishment;

10.1.3. the prohibition of slavery, servitude, employment in tasks incompatible with their assignment to the national defence service and forced or compulsory labour;

10.1.4. the right to legal protection in the event of violation of their rights, the right to freedom and safety, and the right to a fair trial by independent tribunals, as well as the right to appeal;

10.1.5. the prohibition of discrimination;

10.1.6. the right to freedom of thought, conscience and religion;

10.1.7. the right to full enjoyment of civic rights, particularly the right to vote;

10.1.8. the right to respect for property;

10.1.9. the right to marry and found a family.

10.2. Members of the armed forces must enjoy the following fundamental freedoms and rights which may, however, be subject to certain restrictions:

10.2.1. the right to freedom of expression;

10.2.2. the right to freedom of assembly and association, including the right to form trade unions and to belong to political parties;

10.2.3. the right to respect for private and family life, the home and correspondence.

10.3. Any restrictions on the exercise and enjoyment by members of the armed forces of the rights mentioned in paragraph 10.2 must fulfil the following specific criteria:

10.3.1. they must have a legitimate aim, be strictly justified by the needs and specificities of military life, discipline and training, and be proportional to the aim pursued;

10.3.2. they must be known, be provided for and strictly defined by law and comply with the provisions of the constitution;

10.3.3. they must not unjustifiably threaten or jeopardise the physical or mental health of members of the armed forces;

10.3.4. they shall respect limits established by the European Convention on Human Rights.

10.4. Members of the armed forces must also enjoy economic and social rights, including:

a. the right to decent and adequate housing/accommodation;

b. the right to receive fair remuneration and a retirement pension;

c. the right to health protection and work security;

d. the right to decent and sufficient nutrition

10.5. Members of the armed forces must be informed of their rights and receive training to heighten their awareness of human rights.

11. The Assembly further recommends that the Committee of Ministers:

11.1. reconsider its proposal to introduce the right to conscientious objection to military service into the European Convention on Human Rights by means of an additional protocol amending Articles 4.3.b and 9;

11.2. specifically examine the situation of women in the armed forces;

11.3. provide the Assembly with its full and firm support for the implementation of a zero-tolerance policy on bullying in the armed forces.