

Human Rights of Armed Forces Personnel:

COMPENDIUM OF STANDARDS, GOOD PRACTICES AND RECOMMENDATIONS

This is an overview of national laws covered in Chapter 4 of HUMAN RIGHTS OF ARMED FORCES PERSONNEL: COMPENDIUM OF STANDARDS, GOOD PRACTICES AND RECOMMENDATIONS developed by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) together with the Geneva Centre for Security Sector Governance (DCAF) to safeguard and strengthen the rights of people working in the armed forces. For more information, see: osce.org/odihr/ArmedForcesRights

Civil and political rights

Equal opportunities and non-discrimination

Rights related to military life (e.g., working and living conditions)

Procedural rights (e.g., military justice and oversight mechanisms)

National Protection for the Human Rights of Armed Forces Personnel

National laws provide democratic control of the armed forces, and include constitutional provisions, parliamentary oversight and legislation specifying the role of the military and the rights of its personnel.

Constitutional provisions

Most constitutions treat armed forces personnel as citizens by not making specific reference to their rights. In other states, constitutions delve deeper into the specific rights of service personnel and establish oversight mechanisms. In such cases, constitutions may include the following:

- » restrictions on the rights of armed forces personnel;
- » information on the functioning of the military justice system, including the application of military law and the jurisdiction of military courts; and
- » provisions dealing with the role of oversight bodies in safeguarding the rights of service women and men, such as ombuds institutions, military police and prosecutors, and military courts.

Constitutional courts have been used in a number of states to challenge alleged violations of fundamental or constitutional rights, including in the context of the armed forces.

Parliamentary oversight

Parliaments help protect the rights of service personnel by:

- » approving legislation on the armed forces, military law, as well as complaints and redress mechanisms;
- » conducting inquiries to assess the armed forces' efforts to protect and respect human rights;
- » establishing independent oversight bodies, such as military ombuds institutions; and
- » receiving and debating reports from the armed forces and oversight bodies.

Example of parliamentary oversight: Bosnia and Herzegovina has a Parliamentary Military Commissioner responsible for investigating specific issues identified by the country's Parliamentary Assembly and the Joint Committee for Defence and Security. The Commissioner can also receive complaints from service personnel, conduct ad hoc inspections of military units, armed forces headquarters and units of the Ministry of Defence, and demand reports and information from the Ministry.

Legislation

Legislation can specify the civil, political and social rights of service personnel and their families, while ensuring that any limitations on those rights follow a legitimate aim and are necessary, proportionate and non-discriminatory. Legislation related to defence and the armed forces defines the role of the military and includes provisions on the military justice system (where relevant), legal redress and military discipline, among other issues.

It is important that any restrictions on the human rights of armed forces personnel are accompanied by legislative provisions safeguarding against the abuse or otherwise unjustified application of those restrictions.

In many states, service personnel do not fall under regular employment laws, or only to a certain extent. In some OSCE participating States, for example, provisions on working hours and salaries do not apply or are different for military employees, while in other states service personnel may be subject to provisions on neutrality, confidentiality, anti-corruption or conflicts of interest. In most states, discrimination laws apply to all professions, including the armed forces. Some states provide service personnel with the same healthcare as other professional groups, including maternity leave.

Good practices include:

- » Enacting constitutional rules or laws that establish which bodies exercise oversight of the armed forces, as well as the scope of their work and the mechanisms they apply;
- » Establishing control of the armed forces, both within the military and the executive, parliament, the judiciary and independent bodies, to ensure respect for the rule of law and the protection of human rights;
- » Creating oversight bodies that act in accordance with international standards and guidelines; and
- » Passing legislation concerning the armed forces that is consistent with international standards, clear and precise, and seeks to eliminate the abuse of discretion.

Example of legislation: The Russian Law on the Status of Military Personnel covers a wide range of rights, from freedom of religion and freedom of expression to housing and property rights.

Examples of employment provisions for service personnel:

Moldova's Labour Code establishes separate conditions for service personnel in relation to salaries and working facilities.

The Labour Code of the Czech Republic obliges employees of the armed forces to act impartially, maintain confidentiality, refuse gifts or benefits connected with their work and refrain from activities that may give rise to a conflict of interest.

