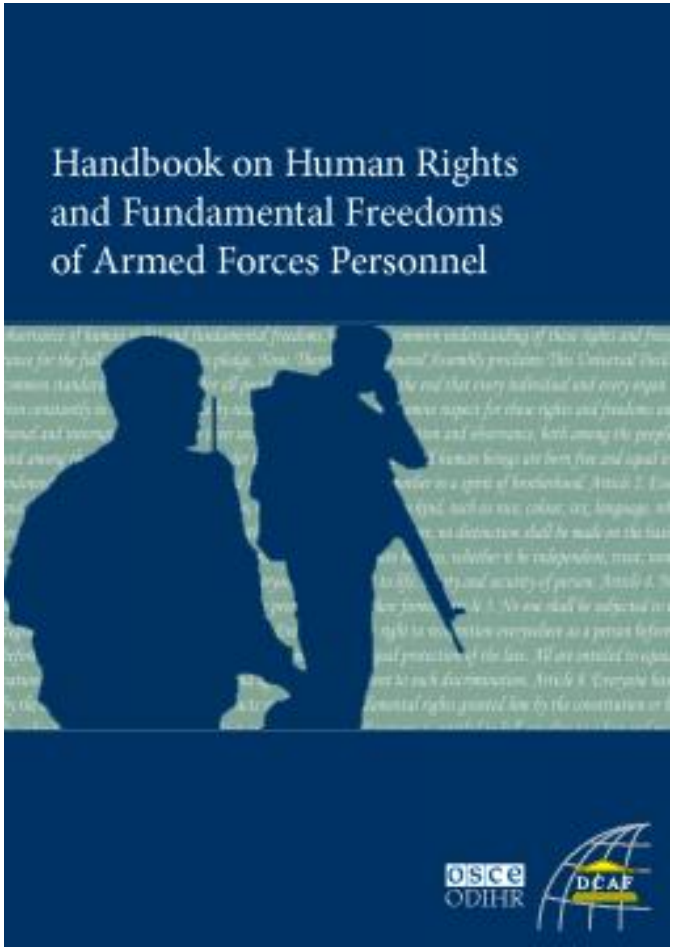
Jonna Naumanen
Human Rights Officer, Gender & Security

Recent Developments of Human Rights Jurisprudence in relation to the Armed Forces

Bruges, 19 September 2019



Organization for Security and Co-operation in Europe

Office for Democratic Institutions and Human Rights
OSCE ODIHR

“Citizens in Uniform”

“54. … the Convention applies in principle to members of the armed forces and not only to civilians. It specifies in Articles 1 and 14 that ‘everyone within (the) jurisdiction’ of the Contracting States is to enjoy ‘without discrimination’ the rights and freedoms set out in Section I. …

“Nevertheless. .. the Court must bear in mind the particular characteristics of military life and its effects on the situation of individual members of the armed forces.”

Engel v. Netherlands, ECtHR, 1976.

OSCE ODIHR


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)

OSCE Code of Conduct on Politico-Military Aspects of Security

- Regulates participating States' armed forces at both the domestic and international levels, in peacetime and in war.
- Relevant provisions:
  1. Recruitment and conscription practices are to be consistent with human rights commitments.
  2. Domestic legislation shall reflect the human rights of members of the armed forces
  3. Participating States will ensure the enjoyment and exercise of human rights by members of the armed forces, including appropriate legal and administrative procedures to protect their rights.
  4. The Armed Forces shall be politically neutral

OSCE ODIHR

Council of Ministers Recommendation CM/Rec (2010) 4

Human rights of members of armed forces should be respected in national policy and legislation.

Follows a ‘citizens in uniform’ approach.

87 specific recommendations covering main civil, political economic and social rights, enforcement, dissemination and training.

OSCE ODIHR

OSCE Code of Conduct

"while providing for the individual service member's civil rights, each state will ensure that its armed forces are politically neutral"

Political Participation

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

Council of Europe, Recommendation CM/Rec(2010)4, *op. cit.,* note 21, paras. 38 and 39.

OSCE ODIHR

Political Participation

Separation of requirements that may be imposed

A. on the eligibility to stand for election to parliament (the “passive” aspect) and

B. the eligibility to vote (the “active” aspect)

Changing “landscape”

Previously wider margin of appreciation on restrictions justified on “national security”

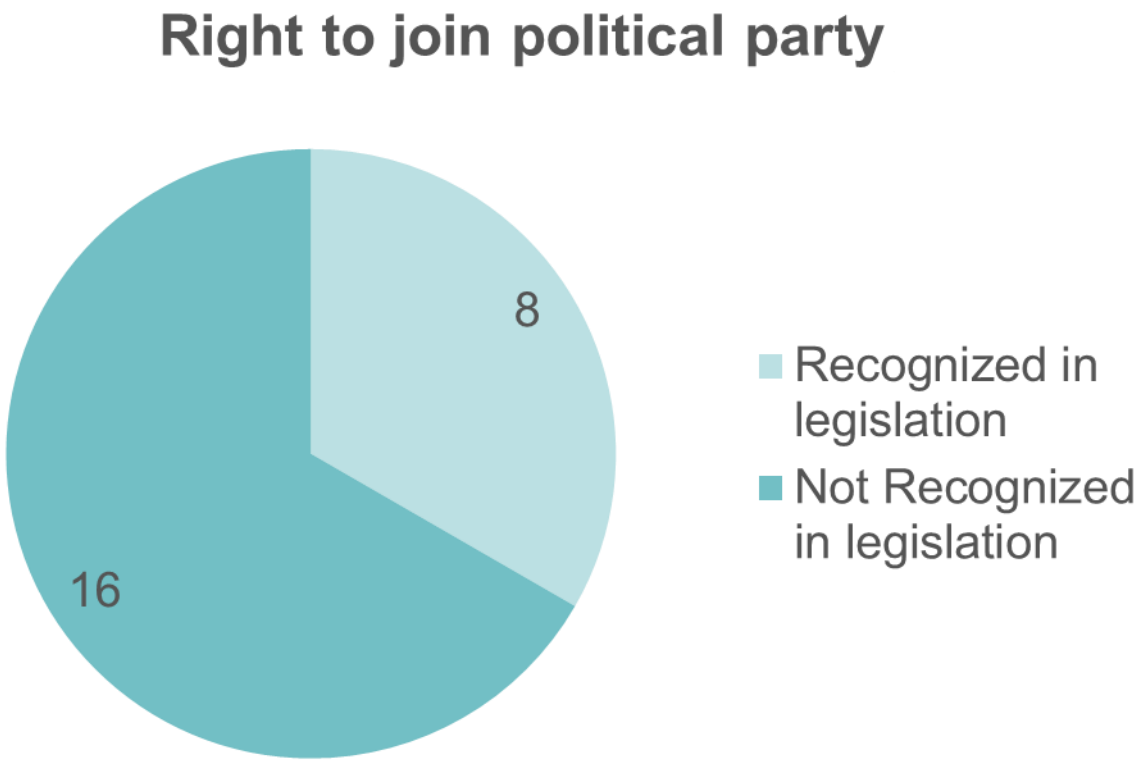
Legally Grounded, Necessary and Proportional
E.g. *Erdell vs Germany*

Lessening of restrictions: e.g. participation of military personnel to local politics, code of conduct restricting *public identification,* relaxing restrictions for those who have left the service

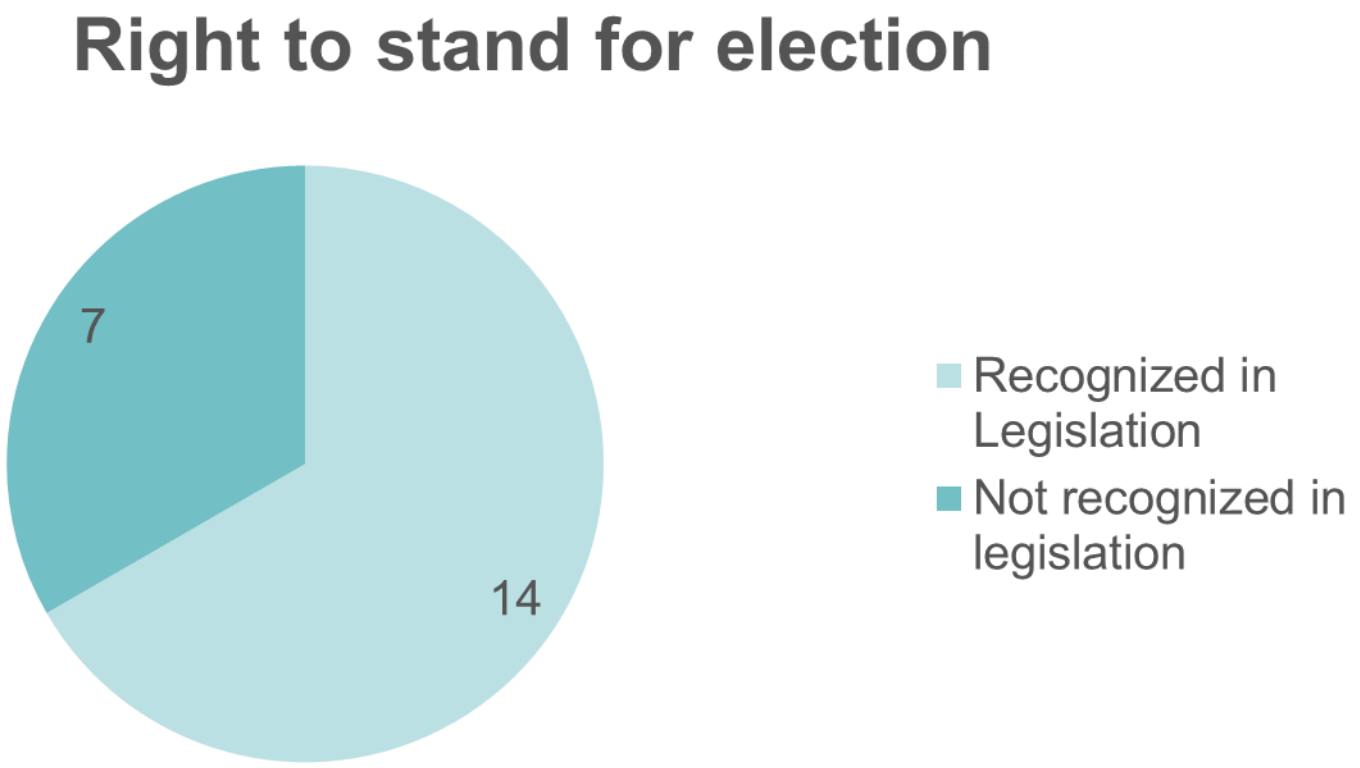
ODIHR Questionnaire

9 States reported applying restrictions on service in the armed forces for individuals holding extremist views. (views that, if enacted, would undermine the established democratic or constitutional order)

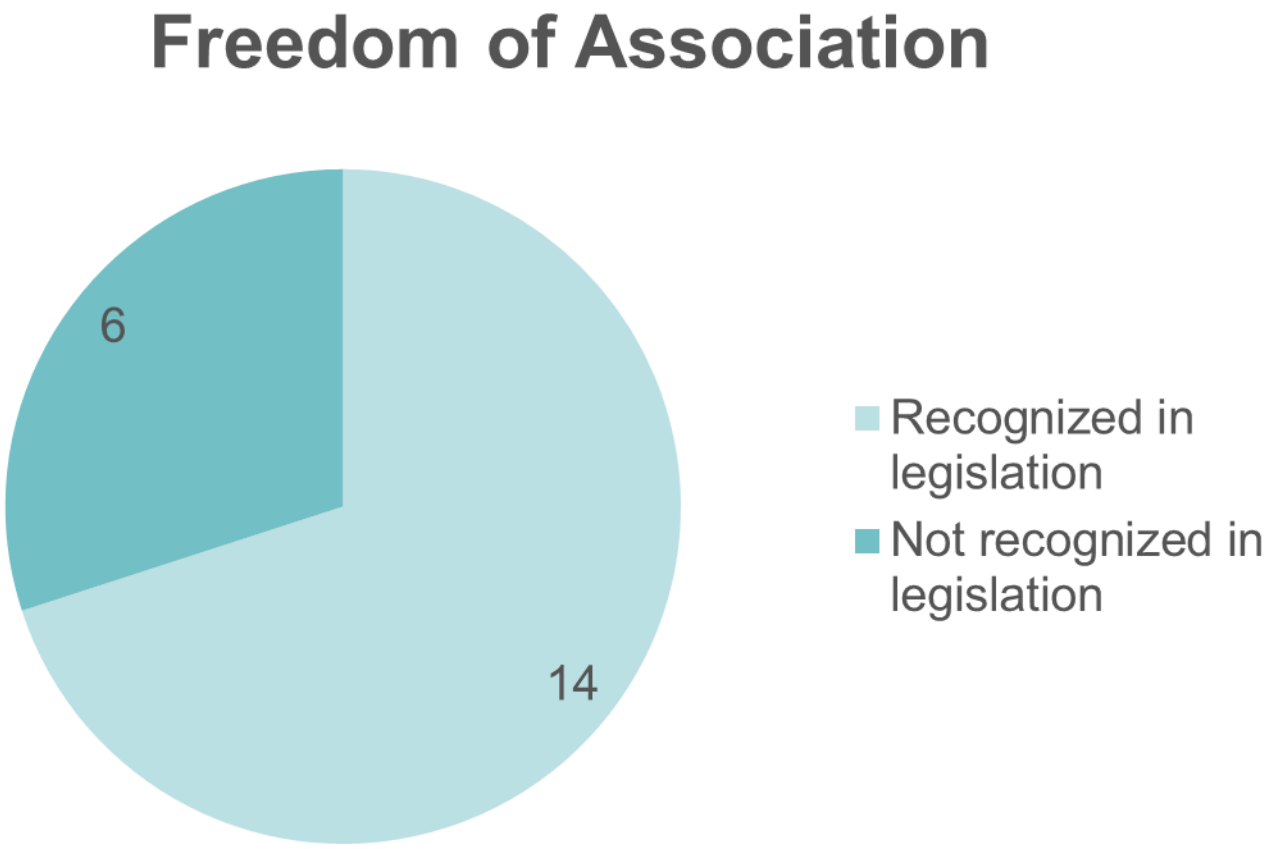
ODIHR Questionnaire



ODIHR Questionnaire



ODIHR Questionnaire



ODIHR Questionnaire - Examples

- Service personnel in Romania may not join or actively support political parties, organizations and candidates. They are also not allowed to stand in local, parliamentary or presidential elections.
- In Finland, service personnel are prohibited from joining a political party or engaging in party politics. Military personnel can stand for local elections as an independent candidate but not participate in political activities, election advertising or demonstrations while in uniform. No restrictions apply to civilian employees or to conscripts performing armed or unarmed national service

OSCE ODIHR

ODIHR Questionnaire - Examples

- In the United Kingdom, personnel are prohibited from holding political office but not from joining a political party.
- The Netherlands allows, under certain circumstances, demonstrations to be held at military installations or the participation of personnel in uniform in public meetings.
- In Germany, service personnel are not permitted to publicly advocate support for a political party, such as by giving speeches or distributing pamphlets, but may otherwise join political parties and participate in political party events out of uniform

OSCE ODIHR

Military Associations

Variations:

(a) to the extent to which they are autonomous,

- Financed by membership fees (Sweden, Germany) or MoD budget (Poland)

(a) their links with external professional unions or federations, and

- E.g. Finland, Sweden, Denmark and Netherlands

(a) whether they are legally permitted to engage in collective action

- e.g. most OSCE Ps prohibit strike action

Recent Jurisprudence

The right to organise in the armed forces can be restricted but not completely suppressed.

Matelly v. France, no. 10609/10, 2 October 2014; *ADEFDROMIL v. France*, no. 32191/09, 2 October 2014.

Strikes can be prohibited but not association with a national labour congress or direct participation in pay negotiations.

EUROMIL v. Ireland, Complaint 112/2014 ESC, European Committee of Social Rights, 12 February 2018.

ODIHR Questionnaire - Examples

Range of questions covered by collective consultation in selected OSCE participating States:

- Health and Safety: 17 Ps
- Pay: 12 Ps
- Promotion Procedures: 7 Ps
- Housing: 13 Ps
- Other social benefits: 11 Ps
- Drafting of Regulations: 10 Ps

ODIHR Questionnaire - Examples

Majority of states that responded allow armed forces personnel to join military trade unions (with exception of 5: “the welfare of subordinates rests on military hierarchy”)

In case of non-autonomous arrangement the state provides the legal machinery for representing the interests of armed forces members. Questions of credibility / legitimacy

Austria, Finland, Germany, Malta, Norway, Slovenia, Sweden allow members of the armed forces also to join general trade unions

ODIHR Questionnaire - Examples

In states that permit membership in military unions and associations, the following limitations usually apply:

- The union or association must be comprised exclusively of armed forces personnel and cannot be linked to other trade unions (to counter the concern of outside influence)
- Strikes or other forms of industrial action that could disrupt operations or threaten security are forbidden.

ODIHR Questionnaire - Examples

Swedish Association of Military Officers (SAMO); 9,500 officers of all ranks, has concluded a series of agreements with the armed forces on matters concerning working time, travel and lodging regulations, the employment of officers in the reserve etc. Has agreed, through a collective agreement of limited duration, not to use strike action.

The German Armed Forces Association is a professional association of approx 200 000 members. Does not negotiate collective agreements but rather engages in direct advocacy with members of the German Parliament for issues of common concern to military personnel.

Thank you for your attention and participation!

Contact details:

Jonna Naumanen

Human Rights Officer

OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR)

Jonna.Naumanen@odihr.pl

“Recent” Developments

OSCE Commitments and European Jurisprudence

The Right to Life

Everyone's right to life shall be protected by law. ….

Article 2, ECHR 1950

OSCE MC - Helsinki 2008

"We stress that everyone has the right to life, liberty and security of person; no one shall be held in slavery, and no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment."

Recent Jurisprudence:

Duty to prevent bullying leading to suicide.

Yilmaz v. Turkey Application no. 21899/02 (ECtHR, 17 June 2008;

Mosendz v. Ukraine Application no. 52013/08 (ECtHR, 17 January 2013);

Perevedentsevy v. Russia Application no. 39583/05 (ECtHR, 24 April 2014)

An effective investigation into suspicious or unexplained deaths.

Jordan v UK (2001) 37 EHRR 52

Procedural Aspects

An effective investigation by the authorities:

Must investigate alternative possible causes of death

Be independent of the chain of command

Involve relatives

Be prompt and thorough

Be open to public scrutiny

Shevchenko v Ukraine Appl no. 32478/02, 4 April 2006; *Babayev v Azerbaïdjan*. Appl no.30500/11, 1 June 2017; *Perevedentsevy v. Russia* Appl no. 39583/05, 24 April 2014.

OSCE ODIHR

OSCE MC – Kyiv 2013

The Ministerial Council calls on the participating States […] to ensure the right of **all individuals** to profess and practice religion or belief, […], and to manifest their religion or belief through teaching, practice, worship and observance, including through transparent and non-discriminatory laws, regulations, practices and policies [and to] refrain from imposing restrictions inconsistent with OSCE commitments and international obligations on the practice of religion or belief by individuals and religious communities".

OSCE ODIHR

Right to Freedom of Religion or Belief

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

Article 9 ECHR.

Recent Jurisprudence

Recognition of Conscientious Objection must not discriminate between beliefs

Löffelmann v. Austria App 42967/98, 12 March 2009.

Failure to allow for alternative service to conscription for conscientious objector violated Article 9.

Bayatyan v. Armenia, App No 23459/03, 7 July 2011

Procedures must be fair and impartial.

Papavasilakis v. Greece, App. 66899/14, 15 September 2016.

OSCE ODIHR

Equality and Non-Discrimination

"The Ministerial Council […] calls on the participating States to […] consider taking measures to create **equal opportunities** within the security services**, including the armed forces** […], to allow for balanced recruitment, retention and promotion of men and women".

(Athens 2009)

Equality and Non-Discrimination

Violation of Article 14 of the ECHR (non-discrimination) in conjunction with Article 8 (family life)

Konstantin Markin v Russia Appl.30078/06 (2012)

Thank you for your attention and participation!

Contact details:

Jonna Naumanen

Human Rights Officer

OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR)

Jonna.Naumanen@odihr.pl