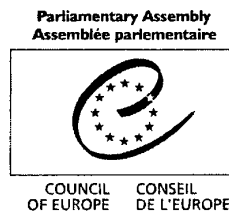


# Parliamentary **Assembly** **Assemblée** parlementaire



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## **Human rights of members of the armed forces**

Report  
Committee on Legal Affairs and Human Rights  
Rapporteur: Mr Alexander Arabadjiev, Bulgaria, Socialist Group

### *Summary*

Following on from Recommendation 1380 (1998), the Parliamentary Assembly renews its request to the Committee of Ministers that guidelines be drawn up rapidly concerning the human rights of members of the armed forces.

These guidelines should 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, 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.

## A. Draft recommendation

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 on 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 liberties, including those set out in the European Convention on Human Rights and the European Social Charter, 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 operations, the Assembly resolutely promotes the 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 Court 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 and 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. Access to military duties and to specific posts in the armed forces, career structures and equal rights: all these issues are relevant to discrimination against women which also require in-depth consideration.

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, in particular former Soviet countries.

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 to:

9.1 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 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 military duties;

- 9.3 remove existing restrictions on the electoral rights of members of the armed forces;
- 9.4 authorise members of the armed forces and military personnel to join legal political parties;
- 9.5 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 Court, including military codes and internal military regulations which should clearly set out the rights and obligations of armed forces personnel;
- 9.6 lift any remaining reservations to the application of Articles 5 and 6 of the European Convention on Human Rights;
- 9.7 introduce into their legislation the right to be registered as a conscientious objector at any time, namely before, during or after implementation of military service, as well as the right of career servicemen to obtain the status of conscientious objector;
- 9.8 adopt, where necessary, the requisite urgent 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 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, 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 its status - conscripts, volunteers or career servicemen – should include at least the following rights:
  - 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;
    - 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 and voting rights;
    - 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:

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

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

10.4.3. the right to health protection and work security;

10.4.4. 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. reconsiders 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 examines the situation of women in the armed forces;

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

**B. Explanatory memorandum**  
by Mr Arabadjiev, Rapporteur

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Appendix: Programme of the hearing held in Strasbourg on 28 April 2005

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**I. Introduction**

1. In March 2004, the Committee on Legal Affairs and Human Rights had referred to it a motion for a recommendation presented by Mr Jurgens and others<sup>1</sup>, the authors of which noted that the Committee of Ministers had, over a six-year period, taken no appropriate practical follow-up action to Assembly Recommendation 1380 (1998) on the human rights of conscripts. They called on the Assembly itself to draw up guidelines on the treatment of conscripts with a view to guaranteeing both recognition and implementation of their civil, political and socio-economic rights.

2. On 7 June 2004, the Committee on Legal Affairs and Human Rights appointed me rapporteur on this subject.

3. On 18 November 2004 I presented the preliminary results of my work and proposed that the committee extend the scope of the report to cover the situation of all types of personnel in the armed forces, whatever their status. The ending of conscription in several countries and the professionalisation of the armed forces, with as a corollary increased use of contract-based service, require us to widen the scope of our discussions.

4. Several widely publicised cases, such as the Deepcut case in the United Kingdom<sup>2</sup> and the complaint about sexual harassment made by 1 072 servicewomen in Spain in 2002, offer a reminder of how important it is to consider the situation of professional service personnel as well, and no longer solely the situation of conscripts.

5. The committee also decided to hold a hearing, to be attended by representatives of the most active NGOs in this field. The hearing took place in Paris on 28 April 2005<sup>3</sup>. I would like once again to thank the speakers at this event for helping to fuel this report.

6. This report begins by looking back over the previous stages of the Parliamentary Assembly's discussions on this issue. It then gives a brief overview of the situation in the armed forces in Europe, which has changed appreciably since the last report on the subject presented to the Assembly, in 1998. Finally, it contains draft guidelines on the human rights of members of the armed forces. I would invite readers also to

<sup>1</sup> Doc. 10081.

<sup>2</sup> Four new recruits to the armed services, including two 17-year-olds, were found dead from bullet wounds between 1995 and 2002. The UK Ministry of Defence itself acknowledges that 188 firearms deaths and another 1 748 non-combat deaths occurred between 1990 and 2002. The suicide figure for the years 1984-2002 was 446. It is to the credit of the UK authorities that they show a degree of transparency, for statistics of this kind are, in contrast, confidential in most other European countries.

<sup>3</sup> The programme of the hearing is reproduced in the Appendix. The minutes of the hearing (AS/Jur (2005) 24) have been declassified and are available on request from the Secretariat of the Committee.

refer to the analyses set out in the 1998 Assembly report on the human rights of conscripts, which remain largely relevant.

## II. Promotion by the Council of Europe of human rights of members of the armed forces

### i. The Parliamentary Assembly

7. The Parliamentary Assembly has constantly shown its interest in this issue. In general terms, in 1998 it adopted Resolution 1166 (1998) and Recommendation 1380 (1998) on the human rights of conscripts<sup>4</sup>, while in respect of certain specific points, it has looked at the subject of professional servicemen's right of association and<sup>5</sup>, of course, the right of conscientious objection to military service, regarded as a fundamental component of the right to freedom of thought, conscience and religion<sup>6</sup>.

8. In Resolution 1166 (1998), the Parliamentary Assembly posited the principle that conscripts, like all members of the armed forces, should be regarded as "*citizens in uniform*", and should therefore "*enjoy the same rights and fundamental freedoms, in particular those conferred by the European Convention on Human Rights, and enjoy the same legal protection as ordinary citizens*".

9. The Assembly noted at the time that, in several countries, conscripts did not enjoy their fundamental rights in the same way as ordinary citizens, and that many of these restrictions, particularly relating to the application of certain articles of the European Convention on Human Rights, were unacceptable. The Assembly did not, however, exclude the possibility of States' providing for restrictions on the exercise of these freedoms, if these were justified by specific circumstances or by the need to maintain military discipline, and if they were applied in strict compliance with the Convention.

10. At the same time, the Assembly adopted Recommendation 1380 (1998). In its reply to the Assembly<sup>7</sup>, the Committee of Ministers, while acknowledging that member States "*have a responsibility for ensuring the effective protection of the human rights of persons undergoing compulsory military service, a group potentially in need of particular attention*", declares itself "*confident that the European Convention on Human Rights and the case-law of its control machinery already provide guidelines concerning the protection of the human rights of conscripts*". This reply is unsatisfactory, and the Assembly cannot subscribe to the Committee of Ministers' minimalist approach.

### ii. The Commissioner for Human Rights of the Council of Europe

11. Nevertheless, within the Council of Europe, the Assembly is not the only body taking action. The Commissioner for Human Rights of the Council of Europe has also taken the view that respect for human rights within the armed forces is a subject that merits in-depth examination. Two seminars on human rights and the armed forces have been held at his initiative, the first in Moscow on 5 and 6 December 2002, and the second on 15 and 16 September 2003, in Madrid<sup>8</sup>.

12. As mentioned in the conclusions to the first of the two seminars on "human rights and the armed forces", the "*armed forces represent both mirrors and standard bearers for the values democratic societies are based on.*" We cannot expect the armed forces to respect humanitarian law and the human rights of the civilian population and other combatants in conflicts and external operations on the ground unless respect for human rights is guaranteed within the army ranks, members of the armed forces are made aware of the need to respect human rights, their own rights are respected and they see such rights as being relevant to themselves: "*respect for human rights by and of military personnel are two sides of the same coin, to be promoted simultaneously. (...) The defence of democratic societies, regardless of the nature of the threat,*

<sup>4</sup> See Doc. 7979.

<sup>5</sup> See Doc. 9512 and Resolution 1572 (2002), as well as Resolution 903 (1988) on the right to association for members of the professional staff of the armed forces.

<sup>6</sup> The most recent relevant texts of the Council of Europe being Assembly Recommendation 1518 (2001) on the exercise of the right of conscientious objection to military service in Council of Europe member states, and Recommendation No. R (87) 8 of the Committee of Ministers regarding conscientious objection to compulsory military service.

<sup>7</sup> Adopted on 15 November 1999 – See Doc. 8589.

<sup>8</sup> See the conclusions of the 2002 seminar [CommDH(2002)22] and the 2003 seminar [CommDH(2003)9], as well as an information document [CommDH(2003)21], which may be found on the Commissioner for Human Rights' web site: [http://www.coe.int/T/E/Commissioner\\_H.R/Communication\\_Unit/](http://www.coe.int/T/E/Commissioner_H.R/Communication_Unit/)

*cannot be secured at the expense of the values and rights on which democratic societies are based and which the member States of the Council of Europe are bound to uphold."*

13. The approach preferred by the Commissioner for Human Rights is an interesting one: identifying the challenges to be met in order to ensure both respect for servicemen's human rights and respect of others' human rights by the armed forces during military operations. The two are inextricably interlinked: strict respect for the dignity and human rights of members of the armed forces in practice makes a huge contribution to the professionalism, responsibility and effectiveness of the armed forces. The conclusions of the 2003 seminar highlight three main points:

- Identification of the shortcomings in both legislation and regulations, and the need to ensure that legislation and servicemen's own regulations are compatible with the rights derived from the European Convention on Human Rights;
- servicemen's awareness of their rights;
- commanders' sensitivity to their subordinates' rights.

14. In this respect, *"the formulation of clear guidelines (...) for the implementation of the rights set out in the European Convention on Human Rights with particular relevance to the armed forces would contribute significantly to improvements in all three of these areas"*. This offers encouragement for the Parliamentary Assembly to continue its action.

### **III. The situation of the armed forces in Europe**

#### *i. The phasing out of conscription in Europe*

15. Although conscription has been abolished in several countries since the Parliamentary Assembly adopted its previous report in 1998, many Council of Europe member states still rely for their defence on national military service and on young people's obligation to serve their country for a period laid down by law.

16. National military service still exists in a number of Council of Europe member states<sup>9</sup>: it lasts for 21 weeks in Switzerland (supplemented by periodical reservist service), six months in Croatia, "the former Yugoslav Republic of Macedonia" and the Slovak Republic, 8 months in Austria and Romania, between six and nine months in Bulgaria, nine months in Germany, Poland and Serbia and Montenegro, 10 months in Italy and Poland, 12 months in Albania, Latvia, Lithuania and Moldova. The period of service varies between eight to 11 months in Estonia, while it may be 6, 9 or 12 months in Finland, and ranges from 7½ to 20 months in Sweden, from 6 to 12 months in Norway, to a maximum 14 months in Denmark, from 8 to 15 months in Turkey, from 12 to 17 months in Greece, and from 18 months (army and air force) to 2 years (navy) in Ukraine. Azerbaijan and Georgia require 18 months of service, while the term is 2 years in Armenia and Russia, and 26 months in Cyprus.

17. Many countries have opted to professionalise their armed forces and abandoned conscription, now using smaller, professional armies of servicemen who have volunteered for service. Military service has been done away with, or never existed, in Andorra, Belgium (abolished in 1992), the Czech Republic (conscription finished on 31 December 2004), France (abolition came in 2001), Hungary (abolishing in November 2004), Iceland, Ireland, Liechtenstein, Luxembourg, Malta, Monaco, the Netherlands (conscription was abolished in 1996), Portugal (abolition came in 2003), San Marino, Slovenia (conscription came to an end in 2004), Spain (conscription finished in 2001), and the United Kingdom.

18. Italy has opted to change to a professional army with effect from 1 January 2007, and has already abolished conscription for young people born since 1985. Several countries of central and eastern Europe have, particularly because of their accession to NATO, decided to abolish compulsory military service (in 2006 in the Slovak Republic) or are considering doing so (Latvia, Romania). Romania is considering abolition for 2007, and Bulgaria for 2006 (air force and navy) and 2010 (army). Georgia is currently examining a reduction of the period of service to one year, or to six months for students. The authorities of the Russian Federation have also started to give thought to armed forces reform. The Russian Minister of Defence has announced his intention of halving the period of military service after 2008, bringing it down to one year<sup>10</sup>. The German Minister of Defence announced in 2004 that conscription would come to an end in 2010.

<sup>9</sup> The information provided here is subject to confirmation.

<sup>10</sup> At the same time, however, he has announced his intention both to eliminate students' option of delaying their service and to make greater use of contract-based service.

ii. *The situation of conscripts in member states*

19. Ill-treatment, bullying, brutality, torture, malnutrition, illness, over-exploitation, sometimes causing physical ill-effects or even resulting in death ... too many young conscripts in Europe suffer such fates during their military service. Six years after the Assembly's first report on conscripts' rights, it has to be said that the "tradition" of subjecting new recruits to various ordeals (*dedovshchina*) is still followed in the former members of the Soviet Union. It has never been eliminated. These "traditions" are inadmissible and need to be both condemned and combated. Seriously concerned with the continuation of *dedovshchina* in the armed forces, the Assembly will of course criticise the situation in certain member States in particular.

20. There are other disturbing features of the armies of former members of the Soviet Union: first and foremost among them corruption. Conscripts joining up in countries such as Azerbaijan and Russia are able to bribe their way to certain posts. Bribery of non-commissioned officers (NCOs) is also widespread, enabling conscripts to "buy" things like leave of absence or assignment to one of the regiment's civilian posts. Cases of forced prostitution are also frequently condemned by NGOs, especially in Russia.

21. In the framework of this report, I shall confine myself to quoting a few examples, giving a succinct description of the situation in certain countries. I shall, of course, not claim to be providing a full picture. It is necessary to proceed in this way in order to make clear how urgent and important it is to produce a statement of principle on this subject in the near future.

22. The situation of the **Russian armed forces** is extremely worrying. In the view of both NGOs and conscripts themselves, young recruits live through real torment, a nightmare. Every year, deaths occur among young conscripts who have been ill-treated, subjected to initiation rites, suffered accidents, committed suicide or suffered untreated illnesses. Between 50 and 80% of all conscripts and young servicemen are said to be subjected to physical violence, initiation rites, beatings, rape or humiliation on the orders of superiors or their peers. *Dedovshchina* is unfortunately still very widely practised, and the authorities still seem unable to gauge the extent of the problem.

23. Human Rights Watch, an international human rights NGO, published a report on 20 October 2004 condemning yet again ill-treatment and physical and psychological cruelty in the Russian armed forces<sup>11</sup>. According to this report, hundreds of thousands of young recruits run the risk of abuse and ill-treatment by former conscripts during their first year of military service in the Russian forces. *Dedovshchina* results in dozens of deaths every year, and inflicts on thousands of other conscripts serious, and sometimes permanent, damage to their physical and mental health. Hundreds of recruits commit suicide or attempt to do so every year, and thousands more desert.

24. According to the Russian NGO *Mother's Right*, 3 000 servicemen die every year. In 2005, this foundation received 6 083 letters from mothers announcing the deaths of their sons during military service. In 35% of cases the authorities explained the serviceman's death by suicide, and in 15% of cases by murder or the result of abuse. According to the NGO one third of these "suicides" were actually murders and another third suicides prompted by the "initiation ordeals". 23% of such soldiers died in road accidents. In a further 11% of cases the servicemen died "as the result of illness". The NGO specifies that the illnesses quoted are ones that are quite easy to treat in civilians. Lastly, ten per cent of the letters announced the serviceman's death without providing an explanation<sup>12</sup>.

25. The Russian general public has been devastated by media revelations of particularly despicable cases, and has a very negative image of its armed forces. A recent poll by the Levada Research Centre shows that over 80% of those polled consider ill-treatment to be endemic in the army.

26. The Russian army and government continue to minimise the phenomenon and have made no serious efforts to put a stop to these abuses. The Defence Minister, Sergei Ivanov, has stated that 80% of the armed forces have never seen any problems of abuses or bullying. The great majority of officers choose to ignore abuses or even encourage them, regarding *dedovshchina* as a useful way of maintaining discipline in the ranks. The authorities have adopted none of the requisite measures for a resolute attempt to stop

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<sup>11</sup> *The Wrongs of Passage: Inhuman and Degrading Treatment of New Recruits in the Russian Armed Forces* <http://hrw.org/reports/2004/russia1004/>

See also the response to the report from the Russian Ministry of Defence.

<sup>12</sup> Information provided by the President of the Foundation, Valentina Marchenko, in a conference on 12 February 2006 (<http://www.humanrightshouse.org/dlvis5.asp?id=2962>)



these practices<sup>13</sup>. Proper investigations are seldom ordered into such cases, and the victims are often put under severe pressure if they declare their intention of making an official complaint. In July 2005, Vladimir Lukin, the Human Rights Ombudsman, published a special report on abuse in the armed forces which recommended the adoption of certain measures.

27. The tragic case of a 19-year-old conscript, Andrei Sychyov, has once again drawn the attention of the Russian and international media to the situation in the Russian armed forces. On 31 December 2005, Mr Sychyov was bullied, beaten and tortured by several drunken soldiers while on service at the Cheliabinsk military school. He had to have his legs, genital organs and a finger amputated and to undergo a kidney operation after having been left without treatment for several days, because his superiors and the military medical officers had not realised the seriousness of his injuries. Reacting to this case, President Putin announced the setting up of a military police corps. This measure is one of the proposals put forward by Vladimir Lukin, who has denounced and condemned *dedovshchina* on several occasions. The NGOs doubt the public authorities' will to implement effective measures to put an end to such tragic situations.

28. In November 2003, the Russian Minister of Defence stated that 337 servicemen had died other than in combat situations since the start of that year, one-third of these deaths being suicides. For 2004, the official figure was 954 non-combat deaths, while for 2005 it was 1 064, including (only?) 16 servicemen who died as the result of bullying, 276 accidents and 276 suicides.

29. Furthermore, Russian servicemen live in appalling conditions. Severe cold<sup>14</sup>, malnutrition and diseases such as tuberculosis, hepatitis and HIV are commonplace<sup>15</sup>. Cases of forced prostitution have also been condemned by NGOs. Other conscripts have suffered veritable slavery, being used for private, non-military purposes such as work in the fields or factories, where they form an exploited sub-proletariat. They may also be forced to pay up when their NCOs demand money from them.

30. Cases of desertion are legion. Many young people attempt to escape from their military obligations. Human rights NGOs, especially the Committees of Soldiers' Mothers, complain of other kinds of violations of conscripts' rights, such as the enforced calling up of some young people. Common violations include the forcible conscription of young people who have been granted deferment, forcible conscription of young people unfit for health reasons and who would normally have been declared exempt on medical grounds, a refusal to accept appeals against decisions of the conscription boards, and the rounding up of recruits by the military police. The Russian NGO *Soldiers' Mothers* reports that some 50 000 servicemen apply for their assistance every year. The vast majority of conscripts are from humble to poor backgrounds. Corruption is widespread and bribes are commonly paid by people wishing to evade military service and have themselves declared unfit for service.

31. Sadly, Russia is not an isolated case.

32. In **Ukraine**, as well, the situation of conscripts gives cause for concern. The 2003 US Department of State report (published in February 2004) echoes the findings reported by local NGOs and mentions the extremely harsh conditions under which conscripts live during their military service and the continuing cases of violence and ill-treatment, in breach of the existing legislation for the protection of conscripts' rights. In the first four months of 2003, 32 servicemen died from non-natural causes. Eleven other servicemen committed suicide<sup>16</sup>. Any members of the armed forces who die as a result of being subjected to violence or initiation

<sup>13</sup> See also the Assembly's reports on the *Honouring of obligations and commitments by the Russian Federation* (rapporteurs: David Atkinson and Rudolf Bindig): Doc. 10568, of 3 June 2005, paragraphs 295 ff. and Doc. 9396, of 26 March 2002, paragraphs 64 ff.

<sup>14</sup> In January 2004, there was great public upset about an incident when more than 50 soldiers were left all night at a Siberian airfield in extremely cold temperatures and then had to be taken to hospital with severe respiratory problems or pneumonia. One of them died.

<sup>15</sup> See the Human Rights Watch report of November 2003, *To serve without health? Inadequate Nutrition and Health Care in the Russian Armed Forces* <http://www.hrw.org/reports/2003/russia1103/>

<sup>16</sup> The US Department of State "Country Reports on Human Rights Practices 2003" - <http://www.state.gov/g/drl/rls/hrrpt/2003/27871.htm> - further reported that "the beating of conscripts in the army by fellow soldiers was common and at times resulted in death" (...). The report takes the example of conscript Oleh Tkachuk who, on 20 January 2003, allegedly committed suicide by jumping out of a second-floor window. Relatives believe he was beaten to death and thrown out of the window. Wounds on his body demonstrated that he had been subject to violent abuse. However, a military investigation into the incident concluded that Tkachuk's death was a suicide.

rites are recorded by the authorities as suicides. The official statistics for 2002 reveal 29 suicides among servicemen, 13 of whom were conscripts.

33. Local NGOs report that military prosecutors usually fail to investigate complaints of physical harassment and initiation rites. Military officials play the situation down, reporting that there have been no deaths due to physical violence. Human rights NGOs, including the Committees of Soldiers' Mothers, reported that violent harassment was still widespread. They reported that in 2002, the prosecutor opened 129 criminal cases pertaining to initiation rites. However, it was unknown how many of those resulted in convictions.

34. As also mentioned in the US Department of State report, conscripts are subject to bribery. Senior conscripts or military officers forced recruits to give up money and gifts that they received from their family. Ukrainian NGOs also described as compulsory labour the common use of army conscripts for farm work or for refurbishing and building private houses for army and government officials<sup>17</sup>.

35. In **Armenia**, NGOs continue to condemn the infliction of violence and initiation rites on young conscripts. The situation of conscripts in the armed forces has been monitored by the rapporteurs of the Assembly's Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe<sup>18</sup>. In 2003, the Chief of Staff of Armenia's Armed Forces acknowledged that around 10 cases of *dedovshchina* still occurred each year. The Ministry of Defence admitted 56 non-combat deaths in 2001, and 33 during the first half of 2002<sup>19</sup>. NGOs report 64 deaths for 2003. The US Department of State *Country Reports on Human Rights Practices 2003* mentions official figures according to which 35 soldiers died in the army in 2003; 9 of these deaths resulted from hazing. Moreover, young conscripts who are homosexual<sup>20</sup>, Yezidi and Jehovah's Witnesses reported that they were singled out for harassment or abuse by officers and other conscripts<sup>21</sup>. Refusal to serve is a widespread phenomenon: material and living conditions in the armed forces are very poor, and, moreover, conscripts may be sent to Nagorno-Karabakh or neighbouring regions.

36. In 2004 the **Azerbaijani** press reported on four cases of conscripts dying as a result of bullying. Military service is unpopular because the armed forces are notorious for their very poor material conditions. According to NGOs more than 5 000 soldiers are thought to have died since 1994 from accidents, sickness, malnutrition or bullying. There are also allegations of the exploitation of conscripts for forced work. Refusal to serve is widespread.

37. The situation seems to be similar in **Georgia**, where refusal to serve is equally widespread. In 2001 the military prosecutor investigated 2 498 cases of desertion. There have been recent media reports of a dozen or so conscripts belonging to the Azerbaijani and Armenian minorities deserting because of the bullying and racism of their fellow conscripts.

38. It would be quite wrong to believe that initiation ordeals, bullying and ill-treatment are confined to the armed forces of the former Soviet Union. Cases of such abuse have also been uncovered in France and Poland, and also recently in the **United Kingdom**. In November 2005 British television broadcast hidden-camera images filmed six months previously of forty or so young Royal Marines who were forced to take part, naked, in a particularly violent and humiliating initiation rite. One witness affirmed that the young soldiers

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<sup>17</sup> In August 2002 two conscript soldiers who were digging sand for the construction of a private garage for a military officer in Lviv Oblast died in a quarry landslide.

<sup>18</sup> See Doc. 10027, particularly paragraphs 171-175 and paragraphs 156 ff. on the fate of conscientious objectors.

<sup>19</sup> The 2003 Human Rights Watch report quotes the case of Artyom Sargsian, aged 22, leader of a student protest movement complaining in November 2001 about the withdrawal of deferments. He was reported to have been beaten to death in February 2002 in the Vanadzor regiment, to which he had been called up two months earlier. The trial of 15 people accused in this case took place in February 2003.

<sup>20</sup> "Special treatment" is reserved for homosexuals and other persons deemed to be homosexual by their fellow conscripts and superiors. The Armenian press recently reported on the ordeal of an 18-year-old conscript who had been continually raped and beaten up by his comrades and one officer over a six-month period.

<sup>21</sup> There is also a problem in respect of conscientious objectors in Armenia. Despite repeated appeals and warnings from the Assembly, the Armenian authorities continue to prosecute and convict those who object to military service on grounds of conscience. It is estimated that between 100 and 150 young conscientious objectors, mostly Jehovah's Witnesses, were tried and sentenced to imprisonment between 2000 and 2003. Even larger numbers are reported to have deserted. At 19 January 2006, 33 young conscientious objectors, all of them Jehovah's Witnesses, were serving prison sentences of between 1 and 3 years, while another 18 were awaiting trial (14 being held on remand and 4 under house arrest).

had also, during their training, been subjected to electric shocks to their genitals and forced to crawl naked through thorn bushes and take part in head-butting fights with their hands tied behind their backs. A video was also broadcast in September 2005 that provided evidence of abuse in the army. The House of Commons Selection Committee Defence had not awaited the revelation of these facts to tackle the problem, adopting a full report in March 2005 setting out a whole series of proposals<sup>22</sup>.

### iii. *Conscientious objection in Europe*

39. This report will not go into detail on a matter which has already been thoroughly addressed by the Assembly [see Recommendation 1518 (2001) on the exercise of the right of conscientious objection to military service in Council of Europe member States, and also Resolution 337 (1967) and Recommendation 816 (1977) on the right of conscientious objection to military service] and which was the subject of Committee of Ministers Recommendation No. R (87) 8 on conscientious objection to compulsory military service.

40. In its Recommendation 1518 (2001) on the exercise of the right of conscientious objection to military service, the Assembly invited member states to include in their legislation "the right for permanent members of the armed forces to apply for the granting of conscientious objector status". Conscientious objection is not exclusively the right of conscripts and may also apply to career servicemen and reservists. The right of conscientious objection is granted to conscripts in most member States, with the notable exceptions of Azerbaijan and Turkey (as well as Georgia, where the relevant legislation exists but is not applied). Only two European States - Germany and the United Kingdom - have procedures enabling professional soldiers to request demobilisation from the armed forces on grounds of conscientious objection. Seven member States - Croatia, Denmark, Finland, Germany, Netherlands, Sweden and Switzerland - make it possible for already serving conscripts and reservists to plead conscientious objection.

41. In April 2005 the *Quaker Council for European Affairs* published a full and extremely well documented report on this issue, including a description of the situation in all 46 member States<sup>23</sup>.

### iv. *Minors in military service: "child soldiers"*

42. The Assembly might also show concern about the presence in the armed forces of certain European countries of young people under the age of 18. Irrespective of the obligations of military service, there are several European countries (in particular the United Kingdom<sup>24</sup>) where youngsters may lawfully volunteer to join up before reaching the age of majority. In most cases, legislation provides that such young people may not be deployed in situations of armed conflict. Even more numerous are the young people educated at military schools (cadets), establishments regarded in certain countries as fully part of the armed forces. It would be useful to check whether the situation in Europe complies with the existing international conventions in this regard. At all events, at a time when the Council of Europe is launching an Action Programme on "Building a Europe for and with Children" geared to promoting children's rights in the field of combating all forms of violence against children, it is vital that we adopt a position of principle and abolish any regulations enabling young persons under the age of eighteen to join the armed forces in Europe, whatever the military status.

### v. *Women in the armed forces*

43. This is a genuinely vital issue which, in my view, merits a separate report by the Assembly's Committee on Equal Opportunities between Women and Men. The submission in 2002 of a complaint regarding sexual harassment by 1 072 women soldiers in Spain and the disclosure in a British Royal Air Force report in January 2005 that nearly half of all RAF women had been subjected to sexual harassment are only the tip of the iceberg. Access to military duties, access to specific posts in the armed forces, careers and equal opportunities are issues which raise problems of discrimination, necessitating in-depth analysis. We shall confine ourselves here to the cases which emerged in the United Kingdom and Germany about five years ago of two women members of the armed forces who had demanded access for women to all military posts. Their demands were rejected by both the countries concerned and so they took their cases to the

<sup>22</sup> <http://www.parliament.the-stationery-office.co.uk/pa/cm200405/cmselect/cmdfence/63/6302.htm>

<sup>23</sup> *The right to conscientious objection in Europe: a review of the current situation*, Quaker Council for European Affairs, April 2005 (<http://qcea.quaker.org/coreport/index.html>)

<sup>24</sup> There are reported to be between 6 000 and 7 000 under-18s in the British armed forces. See also the *Morris v. the United Kingdom* judgment of 26 February 2002 in a case where a 16-year old who had run away in order to escape bullying by his comrades had been court-martialled for desertion.

Court of Justice of the European Communities. In the *Sirdar and Kreil* judgments, the Court found that "it is for the member States, which have to adopt appropriate measures to ensure their internal and external security, to take decisions on the organisation of their armed forces. It does not follow, however, that such decisions must fall entirely outside the scope of Community law". The Court therefore decided that Community law was in principle applicable to the armed forces and that sex discrimination was therefore prohibited.

vi. *Mercenaries*

44. In January 2005, a motion for a resolution tabled by Mrs Hägg and others<sup>25</sup> was referred to the Committee on Legal Affairs and Human Rights. This document called on the Council of Europe member States to ratify the 1989 United Nations Convention against the Recruitment, Use, Funding and Training of Mercenaries. The authors of the motion expressed their concern about the responsibilities of mercenaries and security firms in current conflicts worldwide and also as regards the jurisdiction of the ICC (International Criminal Court) vis-à-vis prospective proceedings relating to crimes committed by mercenaries. They proposed considering the expediency of a Council of Europe Convention against the recruitment, use, funding and training of mercenaries.

45. Mercenaries are "hired soldiers" who are motivated by financial gain, or else by altruistic, ideological or religious considerations. They are recruited by governments, opposition groups, national resistance movements and criminal organisations. Mercenaries go into action in three different types of situation: international armed conflicts, including national liberation wars, internal armed conflicts, and situations where there is no armed conflict (action to destabilise or overthrow a constitutional government, attempted coups d'état, assassinations, acts of sabotage, intimidation, etc).

46. Mercenaries are not entitled to combatant or prisoner of war status, which deprives them of the corresponding special protection and treatment secured under international humanitarian law. The first definition of a mercenary set out in international law appeared in the 1977 Protocol Additional to the 1949 Geneva Convention, and relating to the Protection of Victims of International Armed Conflicts. Article 47 of this Protocol defines a mercenary as any person who:

(a) is specially recruited locally or abroad in order to fight in an armed conflict;

(b) does, in fact, take a direct part in the hostilities;

(c) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party;

(d) is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict;

(e) is not a member of the armed forces of a Party to the conflict; and

(f) has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.

47. The United Nations Convention against the Recruitment, Use, Financing and Training of Mercenaries, which was adopted by the General Assembly on 4 December 1989, complements the 1977 Protocol with the principle that the recruitment, use, funding and training of mercenaries are offences and that employing mercenaries is an offence which must be subject to "appropriate penalties". The text requires States Party to adopt legislation against the use of mercenaries. The Protocol came into force on 20 October 2001 and has only been ratified by seven Council of Europe member States, namely Azerbaijan, Belgium, Croatia Cyprus, Georgia, Italy and Ukraine. Germany, Poland, Romania and Serbia and Montenegro have all signed it.

48. A number of criticisms have been levelled against this Convention, *inter alia* from the United Nations Special Rapporteur on the Use of Mercenaries, who has stressed its numerous flaws. The definition of mercenaries in the Convention currently appears imperfect and outdated because it does not take account of the more recent types of mercenaries.

49. Paradoxically enough, the issue of mercenaries, and particularly the latest developments in this field, is germane to this report from the angle of the lack of recognition of any kind of protection of mercenaries' rights. With the dwindling size of military forces over the last few years, private security and military assistance firms have emerged, offering their services to governments for public security, military and even peace-keeping operations. The clientele of such firms includes not only governments but also multinational corporations and humanitarian agencies which need protection on the ground. These private firms are

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<sup>25</sup> Doc. 10322

increasingly involved in a field traditionally monopolised by the State, but the fact is that their personnel is excluded from all existing international legal texts on mercenaries.

50. The UN General Assembly and Security Council have adopted many resolutions against the use of mercenaries, and have made their position on this issue very clear. The United Nations Commission on Human Rights is currently continuing the debate. A Working Group was set up in 2005 on the use of mercenaries as a means of violating human rights and impeding the exercise of the rights of peoples to self-determination, with a mandate to formulate and table proposals on new rules, directives or fundamental principles in this field, to study recent trends in the use of mercenaries and activities relating to mercenaries, and to study the human rights impact of the activities of private firms providing assistance, consultancy and security services in the military field.

51. In my view, therefore, any new instrument in this field should be formulated in the global UN framework rather than at the European level. The Committee of Ministers and the Assembly ought to monitor the future progress of the work on all these matters.

#### IV. Draft guidelines

52. As the Committee of Ministers has not taken positive follow-up action on the Parliamentary Assembly recommendation of 1998 calling on it to draw up strict guidelines guaranteeing the application of the Council of Europe's standards (European Convention on Human Rights and the case-law of the Court), the Assembly must consider drawing up a draft for subsequent submission to the Committee of Ministers. At a time when the armed forces of many member States are seeing action in the same theatres of operations, it is vital that we resolutely promote common principles as a frame for the action of the armed forces and for the conditions in which they carry out their assignments.

53. Members of the armed forces, whether conscripts, volunteers or career servicemen, are part of a hierarchy governed by the principle of compliance with orders and characterised by the opposition between individual freedom and their other rights, on the one hand, and specific military requirements, on the other. Yet they nonetheless remain citizens, citizens in uniform. They must be granted the same rights as civilians, without prejudice to the necessary military discipline.

54. All members of the armed forces, whatever their status, must enjoy certain inalienable fundamental freedoms and rights, in an absolute manner and without restriction. No derogation is possible to these freedoms and rights:

- **the right to life** (Article 2 of the European Convention on Human Rights); this right is also reinforced under Protocol 13 on the abolition of the death penalty in all circumstances, because soldiers can no longer be executed in wartime, even for desertion;

- **the right to protection against and the prohibition of inhuman or degrading treatment** (Article 3 of the European Convention on Human Rights). This means that servicemen must not suffer humiliating or degrading treatment during severe training, for instance, nor may they be subjected to torture, ill-treatment, brutality or other practices which may be deemed to be inhuman or degrading treatment or punishment;

- **the prohibition of slavery, servitude and forced or compulsory labour** (Article 4 of the European Convention on Human Rights). Conscripts must not be used to perform tasks incompatible with their assignment to the national defence service, nor be used for forced or compulsory labour.

55. Members of the armed forces, whatever their status, must enjoy the following fundamental freedoms and rights, given the lack of legitimate grounds for restricting them:

- the right to **legal protection** in the event of violations of their rights, the right to **liberty** and **security** (Article 5) and the **right to a fair trial** (Article 6) by an independent and impartial tribunal. The procedures for lodging official complaints, proceedings before military courts and, where applicable, the conditions of arrest and detention must be lawful and must comply fully with Articles 5 and 6 of the European Convention on Human Rights (existence of appropriate remedies, fairness of proceedings, impartiality and independence of the court, lawfulness of any arrest and detention suffered by conscripts). Thirteen member States with armies have made reservations to these Articles, which is unacceptable.

- **the right to respect for property** (Article 1, Protocol 1);

- **the right to marry and found a family** (Article 12);

