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Mindia Vashakmadze

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About the Author

Mr. Mindia Vashakmadze, M. jur., is a doctoral candidate at the Institute of International Law, University of Göttingen, Germany.

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The Role of the Military in Elections

Mindia Vashakmadze

Introduction

Periodic and genuine elections based on universal and equal suffrage are a fundamental component of democratic society.¹ It is recognised by the international community that all human beings should have the right to vote and to stand for election.² Moreover, everyone has the right of equal access to public service. The inequality or discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status should be prohibited.³

Do the universal standards apply to soldiers' participation in elections? The position of the military with regard to elections is a special one. On the one hand, the military is made up of individual soldiers – human beings entitled to democratic elections. On the other hand, it is an institution on which, because of its special character and missions, can be imposed certain limitations which could not be applied to civilians.

This article examines the rights of military personnel in elections and is based on the materials submitted by the defence officials and diplomats of 19 countries to the Geneva Centre for the Democratic Control of Armed Forces (DCAF). Therefore, the article illustrates the perspective of the executive branch of government regarding the involvement of the military in elections. This article, in general, concentrates on a review of the respective legislative basis and does not address the question of their effectiveness in practice - the materials submitted to DCAF do not contain any reference to the irregularities or to the relevant statistics regarding soldiers' involvement in elections. The author examines soldiers' active and passive electoral rights, their involvement in the election campaign, their participation in the voting procedures and in the technical organisation of elections as evidenced by the materials submitted to DCAF.

The Role of the Military in Society

The role of the military in society has a direct impact on soldiers' involvement in elections. There are two approaches to the role of the military in society in the countries under consideration. According to the concept of “the citizen in uniform”, soldiers are an integral part of society and bear the political responsibility for the democratic order and rule of law within the state as every citizen does, they contribute to the functioning

¹ Universal Declaration of Human Rights, Article 21, Article 25 of ICCPR.

² Venice Commission, Guidelines on Elections, adopted by the Venice Commission at its 51st Session (Venice, 5-6 July 2002), available at [http://www.venice.coe.int/docs/2002/CDL-AD\(2002\)013-e.asp](http://www.venice.coe.int/docs/2002/CDL-AD(2002)013-e.asp).

³ Article 26 of ICCPR.

of the military through their independent thinking and do not pose any threat to democracy. Moreover, the military should be included in the democratic processes of the respective country. Military personnel enjoy political rights and freedoms as every citizen does. Furthermore, the state encourages and supports the political activities of soldiers by legislative and executive means. However, some degree of political neutrality of soldiers should be guaranteed.⁴ Generally, the political neutrality of soldiers, and the restrictions of their individual rights which are based on their political neutrality, should ensure that the armed forces remain effective. However, in certain countries under examination, the effectiveness of the armed forces does not preclude soldiers' engagement in politics, and, in particular, in exercising passive electoral rights by standing for elected public offices. This is especially the case in Germany and Denmark where the military enjoys a wide range of political rights.

In contrast to this approach, the situation is different in the countries where the military does not enjoy such a solid civil status. The armed forces are strictly controlled by the respective defence authorities and their political activities are limited so as to exclude them from holding any elective public offices on the national or regional level (Turkey, France, Spain, Poland, Armenia, Estonia, Luxembourg).

Military in Public Offices

The arguments for and against military involvement in public offices vary in the countries under study. Generally, the restrictions imposed on the ability of soldiers to hold public posts should aim at ensuring the effectiveness of the armed forces, their service duty and service discipline. However, the effectiveness of the armed forces should not be seen only in terms of their military strength and interoperability. Their effectiveness should be based on strong public support for the army and its activities. Therefore, those activities which may undermine public confidence in the army can also be restricted or prohibited by the state. The restrictions on soldiers' electoral rights have been justified, on the other hand, by the principle of separation of powers and rules of incompatibility since the military represents an integral part of the executive branch of government. It is argued that the political activities of the military do not correspond to the principle of democratic accountability of armed forces.

Limits of the State's Authority to Restrict Soldiers' Electoral Rights

The state can restrict the political rights, including the electoral rights, of soldiers. However, the powers of the state to limit the political rights of soldiers should be also limited. This has been required particularly by the International Covenant on Civil and Political Rights and the European Convention of Human Rights (ECHR), which set minimal standards on the permissible restriction of human rights applicable to soldiers.

⁴ G. Nolte (ed.), *European Military Law Systems*, 2003, p. 371.

a) The Principle of Legality

The first principle to be applied in this case is the principle of legality. The restrictions upon the electoral rights of soldiers should be provided by law, which should guarantee a degree of transparency and non-discrimination within the armed forces during elections. However, there is a wide range of legal acts which regulate soldiers' electoral activities in the countries under review. For example, in Poland and Spain the electoral rights of soldiers, specifically their right to stand for election, are restricted by the Constitution of the respective country. In addition, the Constitution of a state may contain provisions which indirectly limit soldier's right to stand for election.⁵ The role of the military during elections can also be defined by law. A significant degree of transparency in this respect can be guaranteed by parliamentary deliberations on these issues. If the electoral rights of soldiers are to a certain extent regulated by the administrative acts of the executive agencies of a state, they should be based on the statutory law. State practice in the countries under study is not uniform. However, the principle of legality can be viewed as a general principle. The states considered in this article adhere to this principle to a significant degree.

b) The Principle of Proportionality

Another principle which should be applied to the limitations on soldiers' electoral rights is the principle of proportionality. This means that the rights of soldiers to participate in elections or to stand for elected public positions can be limited only to the extent which is admissible in a democratic society - and necessary for and appropriate to defence purposes or specific needs of the armed forces. The defence purposes and specific needs of the armed forces, including the question of military discipline and effectiveness, are defined in the national legislation of the respective state.⁶ Thus, the state retains a primary margin of appreciation to decide what is as an admissible and proportional restriction of soldiers' electoral rights in the given situation. The question is how far the state can go while restricting the electoral rights of soldiers.

c) Practical Application

The powers of the state to limit the political rights of soldiers are far-reaching but not unlimited. In this respect, the decisions of the European Court of Human Rights in relation to soldiers' involvement in election are of crucial relevance to the European countries under review. According to the case law of the Court, "the Convention applies in principle to members of the armed forces and not only to civilians". Thus, soldiers should be able to enjoy fundamental rights, including electoral rights, which should not be limited by the state under any circumstances.

⁵ See the Hungarian Constitution which prohibits soldier's membership in political parties and their political activities.

⁶ See for example Hungarian Act XCV of 2001 laying down the applying to the legal status of professional and contracted soldiers in the Hungarian Army: "The limitation of the fundamental rights of personnel in relation to service relationship shall not lead to such disadvantage that is disproportionate to the legitimate interest to be asserted by means of such limitation. If several possible and suitable ways of limitation exist, the selected option shall ensure the desired result by causing the least possible disadvantage to the personnel concerned (Article 14, para. 1 and 2).

At the same time, the Court declared that certain restrictions can be applied to the military. “Nevertheless, when interpreting and applying the rules of the Convention..., 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”.⁷ The Court stressed that a system of military discipline by its very nature implies the possibility of restricting certain rights and freedoms of the members of armed forces which may not be imposed on civilians.⁸

Furthermore, the court recognised a special status of the armed forces in a democratic society. Because the armed forces have “special duties and responsibilities”, they may be to a significant extent barred from active political involvement in the electoral process.⁹ Therefore, the European Court of Human Rights establishes a far-reaching margin of appreciation for states to limit the political rights of soldiers.

The preconditions regarding the deprivation of the right to vote or to stand for elections have been provided also in the European Guidelines issued by the Venice Commission in 2002 which can be applied to the military. Deprivation of the right to vote and to be elected are based on such preconditions. Provision may be made for depriving individuals of their right to vote and to be elected, but only subject to the following cumulative conditions: a) it must be provided for by law; b) the proportionality principle must be observed; the conditions sufficient for depriving individuals of the right to stand for election may be less strict than for disenfranchising them; c) any such deprivation must be based on mental incapacity or a criminal conviction for a serious offence; d) furthermore, the withdrawal of political rights or a finding of mental incapacity may only be imposed by express decision of a court of law.¹⁰ Thus there are some general European standards which can be applied to the military’s involvement in elections.

Pre-electoral Activities of Soldiers

a) General Framework

Soldiers’ involvement in electoral campaigns is restricted in the countries under review. However, the “voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind”. Freedom of voters to form their own opinion with respect to the political parties and independent candidates must be guaranteed by law and should be applied to soldiers. This right is based on the freedom of expression and freedom of information. This is one of the pre-conditions for democratic elections.¹¹ Restrictions may be imposed if the security of state or human rights and freedoms have been threatened.

Guaranteeing this right for the military also indicates the obligation on the part of immediate military superiors to facilitate the implementation of soldiers’ right to

⁷ ECHR, *Engel v. Netherlands*, Judgement of 8 June 1976, Series A No. 22, p. 23 at para. 54.

⁸ *Ibid.*, para. 57.

⁹ ECHR, *Hadjianastassiou v. Greece*, Judgement of 12 December 1992, Concurring Opinion of Judge De Meyer, para 2.

¹⁰ European Guidelines on Elections.

¹¹ Art. 10 of the European Convention of Human Rights.

information or to assembly as defined by law. In general, the freedom of expression of soldiers on duty during electoral campaigns is limited in the countries under review. For example, political, religious or philosophical expression is unrestricted in France, however, it cannot be exercised by soldiers while on duty. A soldier should obtain an authorisation of the Defence Minister for making a political statement.

b) Soldiers' Rights During the Election Campaign¹²

In most of the countries under study, there are several limitations regarding electoral campaigning and the pre-electoral political activities of soldiers. Soldiers may be involved in the electoral campaign. But the extent of their involvement varies significantly. Of crucial relevance is the right of soldiers to assembly and to demonstration as mentioned above. The aim of the legal regulations in this area is to prevent politicisation of the military.

While participating in political meetings, service duties should not be impeded and no action should be taken which would bring the service into disrepute (UK). In some countries under study, soldiers may participate in political gatherings and demonstrations where political convictions and demands are expressed. However, they are not entitled to reveal their military status nor wear their uniform while doing so (Denmark, Bulgaria, UK).¹³ The military should not take part in meetings directly supporting a political organisation (Lithuania, Bulgaria, UK, Slovenia). Military servicemen shall not be able to actively exercise propaganda and campaigning activity in favour of or against political parties and organisations. Soldiers may not make political statements, deliver articles or speeches where they publicly disagree with officially approved and implemented policy of democratically elected public authorities (the Parliament, President, Government). They may not submit political demands to national authorities.

Most of the limitations are imposed on soldiers' pre-electoral activities at the place of military deployment and defence establishments. They may not be allowed to be politically active at the places of their deployment – this is the general practice of the states discussed in this article. Moreover, it shall be forbidden to collect signatures of support for a constituency list within military units and other units subordinated to the Minister of National Defence.

The states under study have a less restrictive approach to soldiers' pre-electoral activities outside the military units. However, the political activities of soldiers outside the military units are also limited in most of the countries. While exercising their political freedoms outside the unit, soldiers should not wear military uniforms (Bulgaria), should not base their political views on their special status, and are prohibited from using their military status in the interests of a political party or independent candidate. This is needed in order to guarantee both soldiers' political neutrality and public confidence in the military.

¹² Soldiers are entitled to be involved in a wide range of the non-political activities. However, such activities of the military personnel should not interfere with military duties and undermine the principle of effectiveness of the armed forces. The non-political activities in which soldiers may participate are: the activities of public organisations, associations, clubs and any other non-political association, as well as in any other activity that develops moral, national, patriotic and civic democratic values (Lithuania). This kind of participation of soldiers in the social and public life of the country is indirectly linked with improving of the political knowledge and thinking of soldiers.

¹³ Jensen, *Military Law in Denmark*, in: Nolte (Ed.), *European Military Law Systems*, p. 250.

Furthermore, the military premises should not be used for political purposes. For example, it shall be forbidden to distribute leaflets, to affix election posters to the walls of military buildings or on military property (Canada).

There are different regulations regarding soldiers on duty, off duty and in their leisure time. In most cases, soldiers on duty are limited in exercising their political rights. Soldiers on duty, as a rule, are not allowed to be members of a political party or any other political organisation in the countries under review. These limitations are valid as long as soldiers are on duty.¹⁴ These provisions aim at keeping the active service soldiers out of the political debate. In addition, this restriction will have certain implications for soldiers' involvement in elections as the membership in a political party contributes to a final electoral success in some countries under study.

The off-duty soldiers enjoy more freedom in this respect. The off-duty soldiers are the military servicemen in reserve, retired or volunteer servicemen. Their participation in political activities is allowed in many countries. However, certain limitations may be imposed. The off-duty soldiers may not base their political activities on their military status, so they may not refer to their military status while participating in a political gathering. Moreover, the off-duty soldiers may not make references to their military rank, or wear their uniform while conducting political activities (Lithuania).

These restrictions imposed on soldiers' pre-electoral rights do not affect soldiers' right to free information. Access to relevant information on the election shall be provided to soldiers staying at their stations during elections. Moreover, in some cases, the military commanders are obliged to inform soldiers about elections taking place on the European, national or regional level. In the UK, service personnel should be informed of all forthcoming elections: European, general and by-elections. On receipt by the services of notification that a European, general or by-election is pending, a signal is despatched to all home commands giving the name of the constituency and address of the Electoral Registration Officer. Commanding Officers are required to ensure that the relevant notice of a pending European, general or by-election is posted on notice boards.

c) Responsibilities of Military Commanders

The strict political neutrality of military superiors must be observed – they should not be associated with certain political forces operating in the respective country and should not use his/her position for political purposes. In the countries under study the rights and responsibilities of a military commander are prescribed by the statutory law. The national legislation regulates both the positive and negative obligations of the military superiors regarding elections.

Soldiers' political views, which can be expressed during democratic elections, shall not be illegally restricted by actions of immediate military commanders. It is the duty of unit commanders to inform their soldiers of important elections, principles of elections, and the possibility of using a postal ballot.

¹⁴ The Law on the Organisation of the National Defence System and Military Service of Lithuania, adopted on May 5, 1998 No. VIII-723).

The commanding officers are responsible for ensuring the neutrality of soldiers on a defence establishment. They should not allow a political meeting to be held or a political speech to be delivered on a defence establishment, except in exceptional circumstances and where no practical alternative can be found; the commander should not allow political canvassing or the distribution of political advertising, other than by mail, anywhere on a defence establishment, except in single and married living quarters (Canada).

It is a legal obligation on the part of the service authorities that all qualified persons who desire to obtain and use a vote shall be given every assistance to enable them to do so (UK). Thus, there should be a positive obligation of military commanders to facilitate soldiers' participation in elections. For example, in Armenia the military commanders should facilitate the formation of polling stations and submit the number of voters registered in the military units to the head of respective community. The Central Electoral Commission of this country establishes a procedure according to which the polling stations are formed by the commanders of military units. Such activities of the military commander are also provided in the other countries under study. The Act of 12th April 2001 on Elections to the Sejm of the Republic of Poland and to the Senate of the Republic of Poland prescribes a positive obligation of the military commanders during elections – they have to ensure soldiers' opportunity to exercise their electoral rights.¹⁵

The Military's Participation in Elections

a) Active and Passive Voting Rights of Soldiers

There are two forms of soldier's participation in elections: an active participation by voting and passive participation by standing for the elected public posts. In the countries under review soldiers' right to vote is guaranteed by national legislation. There are two main groups of states: in some countries both active and passive electoral rights are ensured by law; others limit the passive electoral rights of soldiers.

The statutory law of the countries under study envisage different categories of soldiers and provide for the different regulations with respect to their participation in elections. For example, in the Slovak Republic the armed forces consist of professional soldiers, soldiers of preparatory service, soldiers of compulsory service, alternative service and reservists. The limits imposed on soldiers' electoral rights depend on the type of military service.

The democracies that take a more liberal approach towards the military's political activities in general grant more extensive electoral rights to soldiers than the countries where the army should be fully professional and excluded from the political activities. Moreover, they undertake certain positive obligations in order to facilitate the electoral activities of soldiers. The countries practising a highly restricted concept of soldiers' political neutrality impose certain, and sometimes quite far-reaching, limitations on soldiers' electoral rights.

¹⁵ Para. 3.

Turkey represents a far-reaching concept of the political neutrality of soldiers. According to article 67 of the Constitution and article 7 of the Law on Main Provisions on Elections and Electors' Lists, "privates and enlisted men as well as cadets cannot vote". Moreover, the ability of a person to occupy public offices depends on whether he has already performed compulsory military service. At the same time, "those who have not completed their military service and members of the Armed Forces who have not relinquished their duties, cannot be candidates and elected parliamentarians".¹⁶ They also cannot be elected as a mayor or as a member of the councils of provinces and municipalities.

Most of the countries included in this study follow a balanced concept of political neutrality of soldiers. In such cases, soldiers may vote but their right to stand for elections is restricted to a significant extent. In Luxembourg, the armed forces may vote in elections, but they may not stand for elections or hold public posts.¹⁷ According to the Administrative Code of Luxembourg (Article 54), the mandate of a Member of Parliament is not compatible with that of a serviceman on duty. This regulation is to prevent the merging of legislative and public power. The restriction is more far-reaching in Romania than in other democracies under review as it limits soldiers' ability to be elected even to posts in municipal institutions.

The most liberal approach to soldiers' participation in elections is practised in Denmark, Germany and Austria. In Denmark, as a general rule, military personnel can vote and stand for election. Certain limitations can be issued only in emergency situations by the Ministry of Defence.¹⁸ The military is not seen as a potential threat to the democratic order and can actively participate in political activities. The German approach to the participation of soldiers in the elections as voters and candidates is based on the concept of "citizens in uniform" which enables soldiers to be actively involved in the political life of the country. Such involvement of soldiers has been encouraged by the Constitution and statutory law of Germany where the right of soldiers to vote is not restricted in any respect.¹⁹ Moreover, soldiers may stand for elections and hold elective public posts on the federal state (regional), local and European level. Their service duties are suspended for the duration of soldiers' membership in the respective body.

The state should ensure that soldiers have enough time for election preparation. Regulars or temporary-career volunteers have to be granted unpaid leave as necessary, upon application, during the last two months prior to election day in order to prepare for the elections. This regulation implies that the candidates may campaign without any restrictions according to German legislation on elections. A reasonable time limit enables soldiers to engage in the election campaign.

The situation is similar in Austria where soldiers enjoy both active and passive electoral rights and may vote and stand for election. Military personnel have access to all public positions. Those soldiers who exercise a public mandate may be granted free leave or release from military duties. This solution makes it possible to separate military duties from the duties linked to the public mandate. In some East European countries, where

¹⁶ Art. 76 of the Turkish Constitution.

¹⁷ See : Dopagne, *Military Law in Luxembourg*, in: Nolte (ed.) *European Military Law Systems*, p. 529.

¹⁸ Jensen, *Military Law in Denmark*, in: Nolte (ed.), *European Military Law Systems*, p. 249.

¹⁹ Nolte/Krieger, *Military Law in Germany*, in: Nolte (ed.), *European Military Law Systems*, Berlin 2003, p. 371.

soldiers are seen as part of society, they may be engaged in political activities and enjoy passive electoral rights. The Parliament Election Law of Latvia provides for soldiers' right to stand for elections, however, in cases where individuals are confirmed as official candidates during elections, they must obtain leave from their post.

There exists a different state of affairs in France where the political participation of soldiers is subject to certain limitations.²⁰ Soldiers may stand for election and hold an elective public post on local, regional, national and European levels; but in this case, the active service of a soldier will be suspended for the duration of the electoral campaign. As a general rule, servicemen may not be members of a political party or organisation which reduces the probability of their election in the Parliament or another elective body to a minimum.²¹ If soldier has been elected and holds a public post, he will acquire a special status which allows him to be placed on the list of his unit and to retain certain rights. The military retains this status for five years.

Spain is also an example of the strict political neutrality of soldiers. The professional and reserve soldiers may not be involved in political activities. Their military status precludes them also from participation in elections.²² If they wish to participate in elections they must be transferred to the appropriate administrative status. Professional soldiers are assigned to one of the following administrative statuses: active service, special services, voluntary leave, suspended from employment, or suspended from duty reserve. The right to vote must be guaranteed by the commanders of the military units, and they must take appropriate measures to enable soldiers on duty to vote.

b) Public Posts Held by Soldiers

National regulations also differ regarding soldiers' holding of separate public offices. In general, soldiers may hold a wide range of public offices on different levels, if this is provided for by law. One of the pre-conditions in this respect is to observe the incompatibility rules laid down in the national statutory law.

c) Rules of Incompatibility

On the basis of the International Covenant on Civil and Political Rights (ICCPR): "If there are reasonable grounds for regarding certain elective offices as incompatible with tenure of specific positions (e.g. the judiciary, high-ranking military office, public service), measures to avoid any conflicts of interest should not unduly limit the rights protected by paragraph (b). The grounds for the removal of elected office holders should be established by laws based on objective and reasonable criteria and incorporating fair procedures".²³ Thus, soldiers' involvement in elected offices should be detailed by law and should not interfere with the defence duties of the military. Fair procedures should prevent the development of discriminatory practices.

²⁰ Gerkrath, *Military Law in France*, in: Nolte (Ed.), *European Military Law Systems*, p. 303.

²¹ Nolte (ed.), *European Military Law Systems*, p.

²² Cotonio Hueso, *Military Law in Spain*, in: Nolte (ed.) *European Military Law Systems*, p. 757.

²³ Para. 16 of the General Comment.

The civilian missions of soldiers cannot be carried out while retaining a military position. This is a general principle in the countries included in this study. The countries provide different regulations on how to observe the rules of incompatibility in practice. As a rule, the service duties of professional soldiers will be suspended for the duration of their respective public office. The service status of soldiers will be restored after the termination of public duties. The countries set out the different conditions for soldiers' transfer to another service status that should guarantee the separation of powers between the civilian and military sector of the state and between the executive and legislative branch of government. In most cases, soldiers, if elected, will be transferred to inactive service.

The military status of soldier will be suspended by registration in the electoral commission of the country (Germany). After the completion of the mandate of an elected state body or in the case where soldier has not been elected to the respective body, or has withdrawn his candidature, he may continue to exercise the service duties at his original service post. The countries under study retain the possibility of soldiers' returning to military service at a later date (Polish Constitution Article 26 (2)).²⁴ There is a different regulation in Turkey: Officers and non-commissioned officers who are not elected cannot return to the armed forces.

Political Independence of Soldiers

According to general practice, professional military personnel may not act in the name of a political party, although they may stand for election as independent candidates.²⁵ Contracted soldiers shall suspend their membership in political parties during the period of service. Through these restrictions the impartiality and politically-neutral character of the army should be guaranteed. These rules indicate that soldiers, if they are elected to the Parliament or to a municipal organ, should represent not the particular interests of a political party, nor the institutional interests of the military, but their own political ideas and views. For example, in the UK, serving personnel who are permitted by the Ministry of Defence to be nominated for election to any local authority may only stand as independent candidates; they are not to stand as candidates for any political organisation, party or movement and, if elected, are not to involve themselves in any way in the affairs of any such organisations.

State Authorities' Responsibility for Soldier's Participation in Elections

The neutrality of the army should be respected by the military command, the government and the political parties. It is not only the Ministry of Defence that is involved in the matter, but also the General Staff, Central Election Commissions, and Parliament. Additionally, various executive agencies may engage in election preparation. The role of the Ministry of Defence is a special one in so far as it is the main coordinating body regarding the military's involvement in elections. In this area, the Defence Ministries co-operate with various state agencies. For example, the Minister of National Defence and

²⁴ Kowalski, *Military Law in the Republic of Poland*, in: Nolte (ed.) *European Military Law Systems*, p. 652.

²⁵ Act XCV of 2001 laying down the rules applying to the legal status of professional and contracted soldiers in the Hungarian Army, art. 21 (1).

the Minister responsible for internal affairs shall, in agreement with the National Electoral Commission, determine the procedure for performance of the duties of commanders.

The Ministry of Defence may grant certain permissions. For example, in France, soldiers should obtain a prior authorisation from the Defence Ministry in order to participate in political activities.²⁶ In the UK, the serving personnel may not accept membership of any local authority, or allow themselves to be nominated for election to any such body, without the permission from the Ministry of Defence.

Regulations on Election Day

There are no particular provisions foreseen for the military on election day. However, there are positive and negative obligations of military which should be observed on election day. The elections must be free from the military's influence and pressure - persons bearing arms shall be forbidden entry to the polling station. For example, according to the Administrative Legislation of Luxembourg, the armed forces shall not be allowed to be placed neither in the session room nor in the surroundings of the place where the election is to take place.²⁷ Only the President can make an exemption from this general rule.

On the other hand, the countries under consideration retain another option – the military can intervene if an emergency situation in the country requires this. This can be inferred from the general obligation of the military to protect democracy and the constitutional order in the country.

Sanctions System

The country's legislation must guarantee effective legal remedies which can be applied in case of coercion and pressure in the military units. Disciplinary powers of military superiors which are necessary in order to implement various electoral restrictions imposed on soldiers should be balanced by establishing the responsibility of the immediate superiors and military commanders for the violation of soldiers' electoral rights. This is a special topic which is relevant with respect to the effective implementation of the national legislation on soldiers' participation in elections.

Involvement of the Military in the Technical Electoral Process

The management of elections is the ultimate responsibility of the civilian authorities in democratic countries. However, military personnel may also be allowed to participate in the work of the electoral commissions. The states' legislation usually provides for limitations with respect to soldiers' involvement in the technical electoral processes. There is no uniform state practice as to what extent the military's involvement can be

²⁶ Peter Rowe, *Military Law in the United Kingdom*, in: Nolte (ed.) *European Military Law Systems*, p. 833.

²⁷ Administrative Code, Article 83, Chapter VI.

limited. It depends on the position of soldiers in the respective state as a politically neutral or politically active individual. As a rule, the military can engage in counting and the determination of results only as ordinary administrative officers of the electoral commissions.

The countries under review regulate soldiers' involvement in the management of elections differently by prescribing clear prohibitions or allowing some involvement in the technical process of elections. For example, in Estonia the military may not be involved in the work of the central or the other electoral commissions at all. In contrast to this, a professional soldier of the Slovak Republic may be involved in the process of election preparation.²⁸ Certain states, including Latvia, allow soldiers' participation not only in the organisational and technical but also in the security preparation of elections.

States differentiate between the scope of soldiers' involvement in the electoral commissions at the regional and central (federal) level. For example, the electoral legislation of Bulgaria prohibits the appointment of military personnel to the Central Election Commission, however, there is no legal obstacle to a soldier being involved in the technical election process as a member of regional or district electoral commissions which are set up in every constituency or electoral district respectively.

In some countries there are general regulations which can also be applied to the military (Germany, Austria, Denmark). The military personnel in Austria enjoy unrestricted access to public positions, consequently, they may engage in the respective electoral administration. However, they may participate in the technical organisation of elections not in the capacity of the military's representative, but as a member of the respective political party or official of an electoral organisation. There is a similar regulation in France, which allows soldiers to be involved in the technical election process, however, they may not mention their special status if a political question arises during the electoral process. Basically, military personnel can be involved in the election proper on the same terms as any other citizen in Denmark (as a returning officer or as a polling official). Soldiers may participate in the technical electoral regulation voluntarily. If such involvement is allowed by law, the state should facilitate soldiers' participation in the work of the electoral commissions. As a rule, the professional soldier is given a short leave if he cannot conduct professional service due to the public functions or civilian duties fulfilment. In contrast to these examples, the military cannot be involved in the technical election process in the UK.

Soldiers' involvement in the technical election process is most crucial with regard to the military units deployed abroad. For example, a number of military personnel of Denmark serving abroad are appointed permanent recipients of postal votes appointed through the Ministry of the Interior and Health. They hold polls for Danish military personnel and other Danes sent out by a Danish public authority or a Danish relief organisation serving abroad (casting by postal vote).

²⁸ Para. 128 Section 2 of the Act on Military Service.

Military's Role around the Ballot

In most democratic countries there is no role for the military foreseen around the ballot. Even the protection of polling stations is not the task of the armed forces, but rather is assigned to the police. Soldiers may play a subsidiary role if the need arises. However, in case of emergency, the military can engage in the protection of the democratic institutions and the constitutional order. This can be derived from the constitutional provisions on emergency situations and the missions of the military as defined in the Constitutions and statutory law of the countries under review. Otherwise, the military as such are not entitled to deal with elections. They may not support the civilian authorities in conducting the elections or exercise election observation. Likewise, the military is not involved in the turnout, publication or transmission of election results.

Voting Procedures

a) General Framework

There is a general obligation on the part of states to facilitate the democratic election process by creating fair procedures for voting. According to the Comments to Article 25 of the International Covenant on Civil and Political Rights: "States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed. If residence requirements apply to registration, they must be reasonable, and should not be imposed in such a way as to exclude the homeless from the right to vote. Any abusive interference with registration or voting as well as intimidation or coercion of voters should be prohibited by penal laws and those laws should be strictly enforced. Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community".²⁹

b) Place of Voting

There are various voting options for the military to vote in the countries under review. Soldiers may vote in the polling stations of the locality in which they are serving; i.e., in the respective electoral constituencies; they may also vote in accordance with their civil registration: as an accepted practice, at their place of residence (Hungary, Poland, France, Lithuania, France, Germany, UK). However, soldiers may vote also in their military units. In this case they use the special voting facilities created at the military base. This, however, is not a general practice. As a rule, members of the military vote at civil voting facilities.

Questions related to the voting procedures are regulated by General Election provisions. Soldiers should act according to this. Therefore, they often cannot choose where to vote. However, some countries uphold the principle of free choice, where soldiers may choose the place of voting. In this case, soldier may choose any voting precinct throughout the territory of the respective country (Latvia).

²⁹ Para. 11 of the General Comment.

If the interests of the Service prevent soldiers leaving the barracks for the period of elections, they must be informed in reasonable time prior to the elections and provided with the opportunity to vote at their place of service. In some countries under consideration, soldiers, at their request, will be added to the roll of voters created for the locality in which they are serving (Poland, Armenia, Bulgaria). In Armenia, soldiers who have the right to vote - and who reside in the area where the military unit is located (at least 50 km far from the nearest populated area) - are included in the electoral roll of the relevant polling station in accordance with the data provided by the commander of the unit. Servicemen residing outside the area of the military unit are included in the electoral roll on a universal basis. A similar practice has been adopted in Bulgaria. Conscripts shall be entered in the electoral lists of the election districts closest to the military unit. The list of the conscripts shall be made and signed by the commander of the unit and not later than 45 days before the election day and shall be sent to the mayor of the municipality or region or the mayoralty for entry in the electoral lists. The municipal administration for soldier's permanent address shall be informed about the entry in order to delete them from the respective electoral lists. The military commanders are obliged to facilitate the electoral procedure.

c) Means of Voting

The legislation of some countries presented in this article provides for voting by mail.³⁰ This is especially the case where the respective military unit is deployed abroad or on an international mission. The Army shall ensure that its members who are on a mission abroad can vote by correspondence during the election days (Luxembourg). Postal ballot is also practised within the national borders (Germany, Slovak Republic). If soldiers cannot vote at their place of residence, voting by post should be an alternative (Lithuania). The military commanders should be responsible for the implementation of an effective voting procedure within the military unit.

During the 2003 referendum in Romania which aimed at reviewing the country's constitution, an Emergency Order was issued allowing voting on-line. Because of this, the Romanian military personnel abroad were able to exercise their right to vote. Though this way of voting seems to be practical, it must be ensured that the voting remains confidential.

If the military is on a mission, it can vote not only by mail but also by procurement (France). In the United Kingdom, military personnel have a wide range of electoral registration options. Military personnel may either register to vote at their private or other qualifying address, Service Families Accommodation or Single Living Accommodation, or register to vote by means of Service declaration. If the option of registering to vote by means of a Service declaration is preferred, a new Service declaration is required every twelve months. Those resident in the United Kingdom who are unable to vote in person may vote by either post or proxy. Those individuals who choose to register on a local electoral register (and who are not registered as Service voters through a Service declaration) will be able to vote either by post or proxy if they

³⁰ Rules to Regulate Electoral Proceedings, Voting by Mail, ROYAL DECREE 421/1991 of 5th April; Voting by post by staff of the Armed Forces on ships or in exceptional situations related to national defence, Regulations, ORDER 116/1999 of 30th April.

are overseas or away from home during an election. Personnel who are posted overseas and are registered as Service voters may vote only by proxy. The Ministry of Defence issues an annual Defence Council Instruction explaining voting arrangements in detail. All ships, units and stations are to give personnel and their dependants (especially when overseas) every reasonable assistance to register as voters. However, the Ministry of Defence does not have any involvement in the logistics of the registration or voting process.

e) Special voting facilities

As the place of deployment may differ from the place of soldiers' permanent residence, it appears appropriate to consider the creation of the special polling stations for the military in the military units or at the respective deployment places. According to a general practice in the majority of the countries under review, the military does not have its own voting facilities. Special voting facilities for the military can be established if the armed forces are deployed abroad or on an international mission. If the place of deployment of armed forces is far from the next civilian polling station or the respective diplomatic mission is not accessible, the countries may also consider the creation of special voting facilities for the military.

There are some other special cases: in Romania, military units having at least 50 electors, can form separate voting sections for the military. The Ministry of National Defence and the Ministry of Administration and Internal Affairs, supported by local public administration form such voting sections and equip them. According to the Romanian legislation, the polling stations can also be established within the military units for military students or cadets as well as for conscripts on duty on election day. There are service advance polls in Canada where soldiers may vote during election. They may, however, vote at a regular civilian polling station. As a general rule, the same standards shall be applied within the places of deployment of the military personnel as in the case of civilian's voting.

Ensuring Free and Fair Elections for Military

There is a general obligation on the part of the state to facilitate democratic elections. For example, Canada's Election Act establishes the general responsibility of the state to facilitate soldiers' participation in elections. Part 11 of the Law provides every member of the Canadian Forces with the opportunity to vote wherever he or she is serving in the world. Other countries under review ensure free and fair elections for military personnel, providing equal opportunities for soldiers who may vote as every citizen in a democratic society (Denmark, Germany).

The legislation of the respective country is to envisage the norms and procedures with respect to the participation of the military in elections. The constitutional provisions which establish the general legal framework for conducting free and fair elections should be concretised and implemented by statutory law, which, in turn, should prescribe the responsibility of the military leadership for establishing fair electoral procedures in the army.

Absence of Statistics and Factual Information on Soldiers' Participation in Elections

For the majority of countries included in this study, there are no statistics on soldiers' participation in elections. Therefore, the effectiveness of the norms can hardly be judged. Only the Romanian Defence Ministry answered positively on the respective question. The Ministry of National Defence keeps a record of the conscripts and military students who can exercise their voting rights in the polling stations formed within the military unit.

One of the reasons for which the countries do not have a special database on soldiers' participation in elections is the existence of general electoral provisions in these countries, according to which there should be free and secret voting during elections – not only for civilians, but also for the military. Therefore, it is not possible to collect the concrete material on the involvement of soldiers in elections..

The countries included in this study did not refer to the difficulties with respect to soldiers' participation in elections. The only problem in this respect has been mentioned by the Latvian Defence Ministry. Soldiers, deployed in remote areas abroad where there are no Latvian consular facilities and where the regular air service and other contacts are not available, cannot effectively engage in the electoral process.

Concluding Remarks

There is no uniform state practice with regard to soldiers' participation in elections. The states have a wide margin of appreciation to limit soldiers' right to stand for elections. However, the means employed in this respect should be defined by law and should not be disproportionate. This means they should be acceptable in a democratic society.

As a rule, the military can vote in the countries under review. However, its entitlement to hold public posts can be restricted by country's legislation. In some countries under review the military is not allowed to occupy public offices; however, there is a group of states where the military may be elected to public positions. In the majority of the countries discussed in this article soldiers may engage in the public service on the municipal level without restrictions.

The arguments for and against the military's involvement in public service vary. Those countries which follow a strict professional concept and exclusive political neutrality of soldiers argue that a clear dividing line between the military and civil affairs can better guarantee the effectiveness of the armed forces. Another group of countries bears on the principle of democratic control over the armed forces. It is held that the military's involvement in the public service denies it neutrality. In some European countries, the armed forces are seen as a democratic institution that contributes to the political life of the respective country and actively participates in elections. In this case the military has a right to co-determination. The concept of the "citizen in uniform", as practised in Germany and Denmark, implies that the military does not pose any danger to the society and should be granted the same rights and obligations as ordinary citizens.

In this respect, there are different regulations depending on whether soldier applies for a public post on duty, off duty or in his leisure time. As a rule, soldiers have to take leave

in order to exercise other public functions. Strict limitations have been imposed on the political activities of soldiers' on duty. There is a general restriction with regard to electoral campaigning in the barracks. The holding of political activities at places of military deployment is generally limited. Soldiers cannot organise demonstrations or publicly support a political party or candidate. They may participate in political gatherings outside the military unit, but may not make public their military status.

The state bears the responsibility of ensuring the effective participation of soldiers in elections. The national legislation should concretise the international guidelines in this respect. Primarily, the defence officials of the respective states should be responsible for the organisation of voting and the election itself. They have to take positive measures in order to achieve this. The burden of work should be shared by the various state institutions. Above all, the Defence Ministry should facilitate the effective electoral engagement of soldiers. National legislation should determine the responsibilities of the defence officials with regard to soldiers' involvement in elections. Soldiers who have been unlawfully excluded from election should have effective legal remedy. To create such remedies through legislative actions is a task of parliament.

This study showed that there are some common features in the national legislation of the countries reviewed in this article with regard to the military's participation and role in elections. The general democratic principles of elections can be applied to soldiers' involvement in the electoral processes to a significant extent. Their application should prevent a politicised involvement of the military forces in the democratic electoral processes and lead to a balanced participation of the military in elections admissible in a democratic society.

Table 1 - Military's Participation in Elections

	Right to vote?	Right to be elected?	The military in public offices?
Armenia	Yes	No	None
Austria	Yes	Yes	Elected public offices on all levels
Bulgaria	Yes	Yes	President and vice-president, Members of Parliament, municipal and regional councillors and mayors
Canada	Yes	Only on the municipal level	Membership in the local government body
Denmark	Yes	Yes	All elected public offices / Member of Parliament and other public institutions
Estonia	Yes	No	None
France	Yes	Yes	All elected public offices on the European, state, regional and local level
Germany	Yes	Yes	All elected public offices on the European, state, regional and local level
Hungary	Yes	Yes	Members of Parliament; the Lord Mayor, mayors, members of local governments or minority self-governments
Latvia	Yes	Yes	All elected public offices
Lithuania	Yes	No	None
Luxembourg	Yes	No	None
Poland	Yes	Yes	Members of Parliament
Romania	Yes	No	None
Slovak Rep.	Yes	Yes	Various elective public posts
Slovenia	Yes	Yes	All elected public posts
Spain	Yes	Restricted	Councillor, regional deputy
Turkey	Privates and enlisted men as well as cadets cannot vote	Officers and non-commissioned officers	Member of Parliament
UK	Yes	Only on the local level	Membership in a local authority

Table 2 - Pre-electoral Activities of Soldiers

	Membership in a political party	Electoral activities while on duty
Armenia	No	No
Austria	No	No
Bulgaria	No	No
Canada	No	No/allowed only in the exceptional circumstances
Denmark	No	No
Estonia	No	No
France	No	No
Germany	No	No
Hungary	No	No
Latvia	No	No
Lithuania	No	No
Luxembourg	<i>no information available</i>	<i>no information available</i>
Poland	No	No
Romania	No	No
Slovak Rep.	No	No
Slovenia	No	No
Spain	No	No
Turkey	No	No
UK	No	No

Table 3 - Military's Involvement in the Technical Election Process

	Military's participation in the electoral commissions	Role of the military around the ballot ³¹	Election day
Armenia	Yes / in certain cases the polling stations are formed by the commanders of military units	No	No
Austria	Yes	No	No
Bulgaria	On the regional and local level	No	No
Canada	No/there are some exceptions	No	No
Denmark	Yes	Yes / returning official, polling officer, permanent recipient of postal votes abroad	No
Estonia	No	No	No
France	Yes	Yes / technical functions / counting the votes	No
Germany	Yes	No	No
Hungary	<i>no information available</i>	<i>no information available</i>	<i>no information available</i>
Latvia	Yes	Yes / organisational, technical and security functions of the elections	No
Lithuania	No	No	No
Luxembourg	No	No / only by the decision of the President	No
Poland	No	No	No
Romania	No	No	No
Slovak Rep.	Yes	No	No / keeping the public order and state security if necessary
Slovenia	No	No	No
Spain	No	No	No
Turkey	No	No	No
UK	No	No	No

³¹ The military retains its emergency powers.

Table 4 - Voting Procedures

	Place of voting / Polling place	Means of voting	Special voting facilities
Armenia	Civilian polling stations / military units	Ballot / Electoral roll of military units	Yes
Austria	Civilian polling stations	Ballot / by mail	No
Bulgaria	Permanent residence	Ballot / the electoral lists of the election districts closest to the military unit	No
Canada	Home ridings	Ballot	Yes / service advance polls
Denmark	Civilian polling stations at the permanent address / Danish representations abroad	Ballot / by mail	No
Estonia	Civilian polling stations / voting at representations of Estonia	Ballot / electronic voting / voting by post	No
France	Civilian polling stations	Ballot / by mail and proxy	No
Germany	Civilian polling stations	Ballot / postal ballot	No
Hungary	Place of residence / place of service	Ballot	No
Latvia	Free choice / in Consulates	Ballot / by mail abroad	No
Lithuania	Permanent residence / military units	Ballot / by mail	Yes / in the military units
Luxembourg	Place of residence	Ballot / by mail (abroad)	No
Poland	Permanent address / roll of voters created for the locality in which soldiers are serving/consulate	Ballot	No
Romania	Civilian polling stations/military units	Ballot / on-line	Yes / polling stations in the military units
Slovak Rep.	Permanent residence / municipality where the military unit is located	Ballot	No
Slovenia	Civilian polling stations	Ballot	No
Spain	Permanent address / voting abroad	Ballot / by mail / by electronic mail	No
Turkey	Civilian polling stations	Ballot	No
UK	Permanent address	Voting by means of service declaration / voting by post or proxy	No

Table 5

Arguments for military in public offices	The armed forces pose no threat to democracy; soldiers are ordinary individuals - "citizens in uniform"; the applicability of the human rights standards to soldiers
Arguments against military in public offices	Effectiveness of armed forces; the principle of the democratic control of armed forces; separation of powers; conflict of interests.



Geneva Centre for the Democratic Control of Armed Forces (DCAF)

Established in October 2000 on the initiative of the Swiss government, the Geneva Centre for the Democratic Control of Armed Forces (DCAF) encourages and supports States and non-State governed institutions in their efforts to strengthen democratic and civilian control of armed and security forces, and promotes security sector reform conforming to democratic standards.

The Centre collects information and undertakes research in order to identify problems, to gather experience from lessons learned, and to propose best practices in the field of democratic governance of the security sector. The Centre provides its expertise and support, through practical work programmes on the ground, to all interested parties, in particular governments, parliaments, military authorities, international organisations, non-governmental organisations, and academic circles.

Detailed information on DCAF can be found at www.dcaf.ch

Geneva Centre for the Democratic Control of Armed Forces (DCAF):
rue de Chantepoulet 11, PO Box 1360, CH-1211 Geneva 1, Switzerland
Tel: ++41 22 741 77 00; fax: ++41 22 741 77 05; e-mail: info@dcaf.ch;
website: www.dcaf.ch