

**GERMANY****Section I – Impact assessment**

*The content of CM/Rec(2010)4 was back in 2010 already comprehensively implemented in the Bundeswehr (German Armed Forces) through the concept of Innere Führung (leadership development and civic education), especially via the rights and obligations of soldiers in its existing form, and ample legislative disciplinary and complaints provisions that guarantee the soldiers' constitutional as well as their human rights. This system is complemented respectively with a close parliamentary control through the Defence Committee and the Parliamentary Commissioner for the Armed Forces of the German Bundestag (German Federal Parliament).*

*As a result, the above assessment of the effective implementation of the recommendation is positively reflected in the answers and examples provided for under Section III of this questionnaire.*

I.1 Has an authority been assigned as responsible for the implementation of the Recommendation? If so, which? Yes  No

The Federal Ministry of Justice and the Federal Ministry of Defence have, after analysing the Recommendation, come to the conclusion that no specific measures of implementation are called for.

I.2 How would you assess the impact of the recommendation on the human rights of members of the armed forces in your country? Please explain your reply.

Fully satisfactory  Adequate  Insufficient  Absent

As the measures recommended are already in place, it is not possible to assess the impact.

I.3 Have specific measures for the promotion and protection of the human rights of members of armed forces been adopted after and pursuant to the adoption of the Recommendation? If so, please provide examples. Yes  No  (see I.1)

I.4 Which obstacles, if any, have been encountered in the implementation of the Recommendation?

**Section II – Dissemination of the Recommendation**

See answer to Section I.

II.1 Has an authority been assigned as responsible for the dissemination of the Recommendation? If so, which? Yes  No  (see I.1)

II.2 Have specific events been organised to ensure the dissemination of the Recommendation? If so, please provide examples. Yes  No  (see I.1)

II.3 Which obstacles, if any, have been encountered in the dissemination of the Recommendation?

II.4 To which authorities has the Recommendation been distributed?

After having been received by the Federal Ministry of Justice, the Recommendation was distributed to the Federal Ministry of Defence, which is the highest military authority and oversees the organisation and administration of the Armed Forces.

II.5 Has the Recommendation been distributed to members of the armed forces? Yes  No  (see I.1)

II.6 Has the Recommendation been translated? Yes  No

II.7 If not, is this foreseen? Yes  No

II.8 How would you assess the visibility of the Recommendation?  
Fully satisfactory  Adequate  Insufficient  Absent

### Section III – Implementation of specific provisions

#### A - Right to life

A.1 Are there measures in place to ensure an independent and effective investigation into suspicious deaths or alleged violations of the right to life of a member of the armed forces? Yes  No

A.2 Are there measures in place to encourage reporting of acts inconsistent with the right to life and to protect those reporting such acts against retaliation? Yes  No

A.3 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is “NO”, please explain why such measures are not in place and whether any measure is in preparation.

The entire German criminal law and the law of criminal procedure apply to German military personnel. There are therefore no differences between them and other German citizens.

#### B – Torture and other forms of ill-treatment

B.1 Are there measures in place to protect members of the armed forces from torture or other inhuman or degrading treatment or punishment? Yes  No

B.2 Are there specific measures in place for more vulnerable categories, such as conscripts? Yes  No

B.3 Are there measures in place to ensure an independent and effective investigation into alleged acts of torture or other ill-treatment, or when the authorities have reasonable grounds to suspect that such acts have occurred? Yes  No

B.4 Are there measures in place to encourage reporting of acts of torture or other ill-treatment and to protect those reporting such acts? Yes  No

against retaliation?

B.5 Please provide information about the legal framework of such measures and examples of the measures in place. If the reply to one or more of the questions above is "NO", please explain why such measures are not in place and whether any measure is in preparation.

The entire German criminal law and the law of criminal procedure apply to German military personnel. There are therefore no differences between them and other German citizens. In addition, specific regulations regarding facts constituting an offence are in place to protect subordinates from harassment by superiors; physical and mental ill-treatment of a subordinate by a superior, for example, constitute abuse (Section 30) and degrading treatment (Section 31) under the Military Penal Code, to which the military personnel of the Bundeswehr are subject. The superior who encourages or, in violation of his/her duties, tolerates ill-treatment or degrading treatment of a subordinate will also be punished.

C – Forced or compulsory labour

C.1 Is military service compulsory? If so, please indicate whether it is possible to exact an alternative service instead of compulsory military service, and which are the differences in nature and duration of such service? Yes  No

Draft to compulsory military service is currently suspended.

D – Military Discipline

D.1 Is there a clear legal framework in place governing military discipline in accordance with paragraphs 19-21 of the Appendix to the Recommendation? If so, please indicate a reference to the relevant legal framework. If not, please explain why and whether any measure is in preparation. Yes  No

The punishment of culpable breaches of duty (disciplinary offences), committed by military personnel of the Bundeswehr, by disciplinary measures is regulated both in terms of proceedings and possible disciplinary measures by statutory provisions contained in the Military Disciplinary Code. This also contains "procedural safeguards" as set forth in paras. 19-21 of the Appendix on, among other things, processing disciplinary matters in a timely manner (Section 17, Military Disciplinary Code), on informing the accused soldier about the investigations as soon as possible, on informing him/her on the breaches of duty of which he/she is accused and on the fact that he/she is free to speak on the case (Simple Disciplinary Measures, Section 22, and Judicial Disciplinary Measures, Section 58).

E- Right to liberty and security

E.1 Is there a procedure prescribed by law dealing with the deprivation of liberty of members of the armed forces? Yes  No

E.2 Is it lawful to detain members of armed forces under the age of 18? Yes  No

E.2.1 If so, do detention conditions comply with the conditions set out in Paragraph 23 of the Appendix to the Recommendation? Yes  No

E.2.2 If the reply to question E.2.1 is "NO", please explain why and whether any measure is in preparation. Yes  No

E.3 Are there any limitations or exceptions to the guarantees set out in Paragraphs 24 to 27 of the Appendix to the Recommendation possible? If so, please specify.

F- Right to a fair trial

F.1 In matters that qualify as criminal under the European Convention on Human Rights, do members of the armed forces enjoy procedural rights and safeguards to the same extent as in criminal proceedings against civilians, in accordance with Paragraphs 28, 30 and 31 of the Appendix to the Recommendation? If not, please explain why and whether any measure is in preparation in this area.

Yes  No

F.2 Is there a clear legal framework setting out limitations or exclusions to the right to have access to a tribunal for the determination of members of the armed forces' civil rights and obligations? If any, please provide examples of such limitations or exclusions.

Yes  No

F.3 Does your country have military courts? Yes  No

F.3.1 If so, are they separate from the chain of command? Yes  No

F.3.2 If the reply to question F.3 is "yes", are there differences in the organisation and operation of military courts, in comparison with civil courts, in particular as regards the procedural safeguards set out in Paragraphs 33 and 34 of the Appendix to the Recommendation? Yes  No

With regard to the existence of "military courts", a distinction must be made between punishment of criminal offences committed by military personnel and punishment of disciplinary offences.

The German military legal system does not have any military courts or military criminal courts. If military personnel – either on or off duty – commit criminal offences, civilian public prosecution offices institute proceedings on the basis of the civilian Code of Criminal Procedure and bring a charge before the responsible civilian criminal courts. The only exception to this is laid down in Article 96 paragraph (2) of the Basic Law which provides that military criminal courts may be established during a state of defence or for military personnel serving abroad or on board warships. So far, however, the Federal Republic of Germany has not made use of this authorisation.

A distinction must be made between military disciplinary law, to which all military personnel of the Bundeswehr are subject, and civilian criminal law. For disciplinary offences, which involve breaches of the military duties specified in the Legal Status of Military Personnel Act, the military personnel in question may receive either simple or judicial disciplinary punishment, depending on the severity of the disciplinary offence. The relevant disciplinary procedures and measures are laid down in the Military Disciplinary Code.

Responsibility for the imposition of simple disciplinary punishment lies with the corresponding military personnel's disciplinary superior; which, as a rule, is the company commander.

Simple disciplinary measures include:

- reprimand,
- severe reprimand,
- disciplinary fine (to a maximum amount of one month's pay),
- confinement to quarters (with a maximum duration of three weeks),
- disciplinary arrest (with a maximum duration of three weeks and requiring prior judicial order).

Judicial disciplinary measures against military personnel who have breached their official duties in a particularly severe manner are imposed by judgment of the Bundeswehr Disciplinary and Complaints Courts in the area of responsibility of the Federal Ministry of Defence (FMoD):

Judicial disciplinary measures include:

- reduction of emoluments,
- debarment from promotion,
- reduction in pay grade,
- demotion,
- disciplinary discharge.

Again, Bundeswehr Disciplinary and Complaints Courts are not "purely military courts", but are composed of a civilian judge and two military personnel serving as honorary judges. Appeal against the judgments of the Bundeswehr Disciplinary and Complaints Courts is admissible. Decisions are made on these by the Military Affairs Divisions of the Federal Administrative Court, with a bench of three civilian judges and two military personnel serving as honorary judges.

Instituting authorities are responsible for the institution of judicial disciplinary proceedings. These are commanders at division level and above. In order to conduct these proceedings, they draw on the support of the Disciplinary Attorneys for the Armed Forces that are assigned to them.

These attorneys are civilian lawyers qualified to hold judicial office and serving as legal advisers to commanders in their primary function.

In performing their tasks, the Disciplinary Attorneys for the Armed Forces are not subject to the administrative and functional supervision of the military instituting authorities, but to that of the Disciplinary Judge Advocate General for the Bundeswehr at the Federal Administrative Court. The Disciplinary Judge Advocate General and his full-time staff are also civilian lawyers qualified to hold judicial office.

The "procedural safeguards" of paras. 33 and 34 of the Appendix are guaranteed.

G – Right to respect for private and family life, home and correspondence

- |     |  |                   |                             |
|-----|--|-------------------|-----------------------------|
| G.1 | Are there measures in place to ensure that conscripts are posted near their family and home, and that posting of professional members far from their family and home is not used as a disciplinary punishment? | Yes X,<br>see C.1 | No <input type="checkbox"/> |
| G.2 | Are there measures in place to ensure that members of the armed forces posted abroad are able to maintain private contacts?  | Yes X             | No <input type="checkbox"/> |
| G.3 | Are there assistance programmes in place for those accompanying the members of the armed forces posted abroad?   | Yes X             | No <input type="checkbox"/> |
| G.4 | Can members of the armed forces enjoy parental leave, childcare  | Yes X             | No <input type="checkbox"/> |

benefits, access to nursery schools and adequate children's health and educational systems? If not, please explain why and whether any measure is in preparation.

G.5 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to respect for their private and family life, home and correspondence, in accordance with section "G" of the Appendix to the Recommendation.

General Handout 1/500 "manual on the compatibility of family life and military service", telecommuting, work at home, part-time employment, parent-child office, company kindergarten (military hospitals and universities of the German Federal Armed Forces).

*H – Freedom of thought, conscience and religion*

H.1 Are there measures in place to allow all members of armed forces to comply, as much as possible, with their religious obligations? If so, please provide examples. If not, please explain why and whether any measure is in preparation.

Yes  No

In the Bundeswehr, freedom of faith, conscience and creed is ensured for all religious groups and belief communities. All military personnel have a statutory right to pastoral care and the undisturbed practice of religion.

The provisions of Article 4 of the Basic Law ("the freedom of faith, conscience and creed") are thus also implemented in Section 36 of the Legal Status of Military Personnel Act.

The undisturbed practice of religion is guaranteed accordingly, as far as this is possible. Furthermore, military superiors are requested to be open-minded about the religious needs of military personnel and to carefully see to it that, within the framework of duty and free time, the soldiers are given adequate opportunity to practise their religion undisturbed. The subject area of "observing religious rules" is a part of "intercultural competence" for which there is special training.

H.2 Do conscripts have the rights to be granted conscientious objector status?

Yes  No   
see C.1.

H.2.1 If so, is an alternative service of a civilian nature available?

Yes  No   
see C.1.

H.2.2 If not, please explain why and whether any measure is in preparation.

H.3 Are conscientious objectors exposed to sanctions, disciplinary measures or judicial prosecutions?

Yes  No

H.4 Can professional members of the armed forces leave the armed forces for reasons of conscience? If so, please explain the conditions and the procedure, and in particular whether the requests can be reviewed by an independent and impartial authority. If not, please explain why and whether any measure is in preparation.

Yes  No

Each soldier can request to be accepted as a conscientious objector. He has to present the request, the arguments, a curriculum vitae and a police certificate. The decision lies with the Federal Office of Family Affairs and Civil Society Functions, which is under the responsibility of the Federal Ministry

for Family Affairs, Senior Citizens, Women and Youth.

H.5 Are there measures in place to ensure that conscripts and members of the armed forces are informed, respectively, of the right to be granted conscientious objector status and to leave the armed forces for reasons of conscience and of the procedures available to exercise these rights? Yes  No

H.6 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to freedom of thought, conscience and religion, in accordance with section "H" of the Appendix to the Recommendation.

Leadership in the Bundeswehr is based on the system of values set forth in the Basic Law. The Basic Law demands unrestricted regard for human dignity, human rights, the principles of equality, justice, responsibility and tolerance.

Article 4 of the Basic Law ("freedom of faith, conscience and creed") states that: (1) Freedom of faith and of conscience, and freedom to profess a religious or philosophical creed, shall be inviolable. (2) The undisturbed practice of religion shall be guaranteed. (3) No person shall be compelled against his conscience to render military service involving the use of arms.

Article 4 is implemented in the Legal Status of Military Personnel Act by Section 6 ("Civic Rights of the Soldier"), Section 12 ("Comradeship"), Section 15 ("Political Activities") and Section 36 ("Religious Support").

I – Freedom of expression

I.1 Is there a clear legal framework setting out formalities, conditions and restrictions to the right to freedom of expression for the members of armed forces? Yes  No

I.2 If so, please briefly present it, by providing in particular examples of restrictions to the right to freedom of expression.

The legal status of military personnel in the Federal Republic of Germany has its roots in the basic constitutional decision according to which such personnel are to constitute "citizens in uniform" who in principle retain all basic rights in full just like each and every German citizen and whose rights may be restricted only within the framework prescribed by the constitution.

The legal status of military personnel is also the subject of Section 6 of the Legal Status of Military Personnel Act (Civic Rights of Members of the Armed Forces) according to which "a member of the armed forces enjoys the same civic rights as any other citizen. Where the requirements of military service so dictate, his rights are restricted by his statutory duties."

In addition, Sections 8, 10 subsection 6, Section 15 subsections 1 and 2 as well as Section 17 subsection 2 of the Legal Status of Military Personnel Act provide a differentiated framework which describes restrictions on freedom of expression rooted in the soldiers' obligations as a serviceman.

J – Right to access to relevant information

J.1 Are there measures in place to ensure that full and detailed information about recruitment in the armed forces and commitments resulting therefrom are provided to potential recruits? Yes  No

J.2 Can former and current members of armed forces have access to their own personal data, including medical records and information? Yes  No

regarding exposure to situations potentially hazardous to their health?

J.3 If so, are there restrictions to this right of access? Please provide examples, if any. Yes  No

K – Freedom of peaceful assembly and association

K.1 Can members of the armed forces join lawfully established military associations or trade unions? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation. Yes  No

Article 9, para. 1 of the Basic Law guarantees military personnel the freedom to establish, join or actively participate in private-law associations. Above and beyond the restrictions imposed on participation in associations as defined in article 9, para. 2 of the Basic Law, military personnel must comply with their service duties.

The right guaranteed in article 9, para. 3 of the Basic Law to form, join or actively participate in trade unions or professional associations for the purpose of safeguarding and promoting the economic, social and cultural interests of any profession, as well as to not join or to leave such an organisation, is a right to which military personnel are also entitled. This applies equally to the right to association with a view to pursuing the purposes defined in article 9, para. 3 of the Basic Law by way of specifically active participation in an association, a right which in its essence is also protected by article 9, para. 3 of the Basic Law.

The constitutionally guaranteed essence of the right to association has its restrictions in the "functional capability of the Bundeswehr" which is similarly protected by the constitution and which, as the outcome of careful consideration of the constitutional issues at stake, has a restrictive effect on the basic right insofar as the right of military personnel to strike is excluded by the constitution. Accordingly, strikes, similar industrial action and their preparation are prohibited for military personnel. Participation in or support of such measures constitutes for members of the armed forces a violation of Section 7 of the Legal Status of Military Personnel Act, namely the fundamental duty of servicemembers to serve their country faithfully.

It is only in respect of this particular restriction of the right to association that military personnel are subject to a restriction of the basic right to freedom of association above and beyond that which applies to all other citizens.

K.2 Can members of the armed forces join political parties? If so, please indicate the conditions and eventual restrictions to this right. If not, please explain why and whether any measure to review or lift the existing restrictions or prohibitions is in preparation. Yes  No

According to Section 8 of the Legal Status of Military Personnel Act, the members of armed forces must acknowledge the free democratic basic order of the Federal Republic of Germany. According to Section 15 of the Legal Status of Military Personnel Act, the members of armed forces must exercise political restraint while on duty. The right to free expression in conversation with fellow soldiers remains unaffected.

L – Right to vote and to stand for election



L.1 Are there any restrictions on the electoral rights of members of the armed forces and on membership in the armed forces during a member's candidacy or term of office? If so, please provide examples. Yes  No

M- Right to marry

M.1 Do members of the armed forces enjoy the right to marry and to form civil partnership in the same terms as civilians? If not, please explain why and whether any measure is in preparation. Yes  No

N – Right to protection of property

N.1 Are there measures in place to ensure that the property of members of armed forces, including conscripts, if retained upon joining the armed forces, is returned at the end of military service? Yes  No

No property is retained.

O – Accommodation

O.1 Are there measures in place to ensure adequate accommodation for members of armed forces and their families, both on the national territory and abroad? Yes  No

Apart from those soldiers that are committed to live in barracks, there is no specific program with respect to the accommodation of servicemembers and their families in official accommodations of the Bundeswehr. However, there are financial and other supporting measures in place in order to help members of the Bundeswehr and their families to find adequate accommodations on the market. Furthermore, there is an initiative to accommodate commuters in buildings that will become vacant due to the realignment of the Bundeswehr. In missions abroad, accommodation for all servicemembers is ensured in field camps.

O.2 Where accommodation is provided in barracks, are there separate dormitories for women and men? Yes  No

P – Remuneration and pension

P.1 Do professional members of the armed forces receive remuneration giving them a decent standard of living and an adequate retirement pension? Yes  No

P.2 Are there measures in place to ensure that men and women in the armed forces are entitled to equal pay for equal work or work of equal value? If not, please explain why and whether any measure is in preparation. Yes  No

Q – Right to dignity, health protection and security at work

Q.1 Are there specific measures in place to protect the dignity at work of members of armed forces, in particular as regards the prevention of sexual harassment? If so, please indicate the relevant legal framework and provide examples. If not, please explain why and whether any measure is in preparation. Yes  No

The legal framework is provided by the Basic Law, the Legal Status of Military Personnel Act, the

Military Penal Code, the Act on Equal Opportunities for Female and Male Military Personnel of the Bundeswehr, the Act on the Equal Treatment of Female and Male Military Personnel as well as by the concept of Innere Führung (leadership development and civic education). There are, for example, "Guidelines for Superiors – Dealing with Sexuality".

Q.2 Is medical care provided during and as a result of military operations free of charge for the servicepersons? Yes  No

Q.3 Are there allowances or compensation schemes available for members of the armed forces obliged to leave the armed forces because of an injury resulting from the exercise of military duties, or in case of death in service? Yes  No

Q.4 Where appropriate, please provide examples of good practices regarding the right of members of armed forces to dignity, health protection and security at work, in accordance with section "Q" of the Appendix to the Recommendation.

Article 1 of the Basic Law stipulates that it is the duty of all state authority to respect and protect human dignity. This protection objective applies to all status groups (military personnel, civil servants and employees) of the Bundeswehr.

The Basic Law, the Occupational Safety and Health Act, the Legal Status of Military Personnel Act, the Military Pensions Act, the Act on the Continued Employment of Personnel Injured on Operations, the Military Penal Code, the Act on Equal Opportunities for Female and Male Military Personnel of the Bundeswehr, the Act on the Equal Treatment of Female and Male Military Personnel as well as the concept of Innere Führung (leadership development and civic education) provide a sufficient framework for guaranteeing and protecting the individual rights (e.g. the inviolability of human dignity, protection of health) of personnel.

The employer's duties under labour protection law and the duties and rights of personnel are regulated in principle in the Occupational Safety and Health Act, and also for civil servants in the Civil Service Benefits Act and for civilian personnel in the Seventh Book of the Code of Social Law. Accordingly, the employer is obliged to take the necessary measures of occupational safety and health, taking into consideration circumstances which affect the safety and health of all members of the Bundeswehr at work.

During their term of service, military personnel of the Bundeswehr are entitled to free medical care. This includes all measures necessary for protecting, maintaining, promoting and restoring physical and mental health as well as social well-being and operational readiness in accordance with current scientific and technological standards.

The guiding principle for the quality of medical care during deployments abroad is to guarantee a treatment outcome that, in terms of quality, corresponds to medical standards in Germany.

This can be illustrated using benefits and pensions as an example.

In the case of a reduction of 25 percent or more in earning capacity, military personnel with a service-related disability receive a monthly tax-free basic pension. The level of this pension is based on earning capacity and is graded, from EUR 127 a month for a 25-percent capacity reduction up to EUR 666 a month for a 100-percent reduction.

If, as the result of particularly dangerous duty, on operations involving particular threats to life or as part of a deployment-related accident on special operations abroad, a member of the Bundeswehr sustains an injury that permanently reduces his or her earning capacity by at least 50 percent, he or she will receive a tax-free lump-sum compensation of EUR 150,000.

If the health impairment resulting from the service-related disability is so severe that performance of military service is no longer possible, the disabled military personnel will additionally receive an increased pension and also, if requested from the civilian regional pensions offices, disablement benefits under the applicable provisions of the Federal War Victims Pensions Act.

For widows, widowers and orphans of deceased military personnel, the Military Pensions Act contains regulations for the surviving dependants' pension.

But in many cases, personnel injured on operations do not want to retire completely or receive a pension for the rest of their lives. This was taken into account by the Act on the Continued Employment of Personnel Injured on Operations, which entered into force on 18 December 2007. The outstanding aspect of this Act is the legal entitlement to retention for persons whose earning capacity has been reduced by at least 30 percent as a result of a deployment-related accident. Being protected by an entitlement to retention and thus being offered a career perspective has, in addition to the financial coverage, a significant psychological effect on the injured persons and on their dependants.

The Act on the Continued Employment of Personnel Injured on Operations essentially provides the following: Following a deployment-related accident, a protection period shall be allowed for the necessary restoration of health and any necessary vocational qualification in order to ensure later permanent vocational activity. For the purpose of obtaining vocational qualifications, those persons affected shall, if required, be granted benefits in the form of vocational training programmes or follow-on training. What must be taken into account when selecting specific programmes are aspects such as the interests, aptitude and proficiency of the person concerned, but also the conditions prevailing in the labour market.

During this protection period, persons injured on operations must not be retired or dismissed on grounds of unfitness for service without their consent (general dismissal ban). If, as a result of health impairment due to a deployment-related accident, benefits also become necessary for a vocational qualification in order to carry out previous professional duty, to be retained in accordance with the Act on the Continued Employment of Personnel Injured on Operations, or to be otherwise integrated into working life, the protection period is limited to five years. With regard to age, the protection period is valid until the end of the 65<sup>th</sup> year.

Military personnel, whose service status would terminate during the protection period due to expiry of the term of service, transfer to special service status by law unless they object in writing. Under this status, they are legally treated as temporary-career volunteers, especially with regard to pay.

In order to ensure that the protection period does not adversely affect the military careers of injured military personnel, the Act provides that they be taken into consideration for personnel selection decisions. Consequently, they are, for example, also eligible for promotion during this period.

From balancing the principle of achievement concerning eligibility for public office that is enshrined in the constitution of the Federal Republic of Germany, on the one hand, against the welfare state principle of social justice and the "willingness to sacrifice" oneself for the general good, on the other hand, derives the military personnel's legal entitlement to retention if they have suffered an accident while deployed in

a non-permanent service status and their earning capacity as a result of this accident is reduced by at least 30 percent at the end of the protection period. This means that with reduced demands on fitness for duty and subject to the necessary qualification for a certain career, these military personnel injured on operations – after successfully completing a preceding six-month probationary period – are legally entitled to be employed, irrespective of personnel requirements,

- as regulars,
- as permanent civil servants or
- as employees on a permanent contract

in the area of responsibility of the Federal Ministry of Defence.

Military personnel who suffered an accident while deployed in a non-permanent service status and whose health impairment caused by this accident was not identified until after expiry of this status are, under certain conditions, entitled to re-employment in a special service status after completion of the regular term of service.

Such re-employment in a special service status aims at the restoration of health and any necessary vocational qualification in accordance with the Act on the Continued Employment of Personnel Injured on Operations or any other integration into working life.

#### R – Nutrition

R.1 Are there measures in place to ensure that members of the armed forces enjoy the right to decent and sufficient nutrition in accordance with section “R” of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices.

Yes  No

#### S – Non-discrimination

S.1 Are there measures in place to ensure that members of armed forces enjoy their rights and freedoms without any discrimination, in accordance with section “S” of the Appendix to the Recommendation? Where appropriate, please provide examples of good practices.

Yes  No

Article 1 of the Basic Law stipulates that it is the duty of all state authority to respect and protect human dignity.

The Basic Law, the Legal Status of Military Personnel Act, the Military Penal Code, the Act on the Equal Treatment of Female and Male Military Personnel, the Act on Equal Opportunities for Female and Male Military Personnel of the Bundeswehr as well as the concept of Innere Führung (leadership development and civic education) provide a sufficient framework for guaranteeing and protecting the individual rights of personnel.

S.2 Are there any limitations to the access of women to the armed forces, or to particular types of occupational activities within the armed forces? If so, please provide examples.

Yes  No

S.3 Can sexual orientation constitute a ground to prevent access to the armed forces, or for discharge?

Yes  No

#### T – Persons under the age of 18 enlisted in the armed forces

T.1 Does your legislation allow the voluntary recruitment into the

Yes  No

armed forces of persons under the age of 18?

T.2 If so, are there measures in place to ensure the full information about the duties involved and the informed consent of these persons and of their parents or legal guardians? Yes  No

T.3 Are there special measures in place to protect the physical and psychological welfare of these persons? Yes  No

T.4 Can these persons take an active part in the hostilities? Yes  No

#### U – Training

U.1 Are training activities aimed at increasing the knowledge of human rights by members of armed forces in place? If so, please indicate by whom are such training activities carried out. Yes  No

All Military Personnel of all ranks receive comprehensive training related the knowledge of human rights. The training is usually being conducted by military leaders or by legal advisors.

U.1.1. If the reply to question U.1 is “YES”:

U.1.1.1 Is international human rights law part of the training programme? Yes  No

U.1.1.2 Are the human rights of the members of armed forces themselves part of the training programme? Yes  No

U.1.1.3 Are prevention of ill-treatment and discrimination part of the training programme? Yes  No

U.1.1.4 Is international humanitarian law, including the duties mentioned in paragraph 84 of the Appendix to the Recommendation, part of the training programme? Yes  No

U.1.2 If the reply to question U.1 is “NO”, please explain why and whether any measure is in preparation.

#### V – Allegations of human rights violations

V.1 Are there measures in place to ensure that members of the armed forces have the right to bring allegations of human rights violations, in particular of discrimination, harassment and bullying, before an independent body? If so, please indicate to which authorities can such allegations be brought and which is the procedure. If not, please explain why and whether any measure is in preparation. Yes  No

Various options have been established for members of the Bundeswehr to report irregularities: Direct (virtually informal) petitions submitted to the Parliamentary Commissioner for the Armed Forces or to the Petitions Committee of the German Bundestag, formal complaints (in accordance with the Military Complaints Regulations) and official reports (in accordance with the Legal Status of Military Personnel Act) submitted to superiors as well as reports to police (the right of everyone outside the Bundeswehr).

In particular, the role of the Parliamentary Commissioner for the Armed Forces of the German Bundestag should be emphasised here:

The Parliamentary Commissioner for the Armed Forces is elected by the Members of the Bundestag in a secret ballot for a five-year term of office. The Commissioner is neither a Member of the Bundestag nor a civil servant – he occupies a special position. The Commissioner works “to safeguard basic rights and to assist the Bundestag in exercising parliamentary oversight” over the armed forces, a task enshrined in the Basic Law (the German constitution). He or she investigates incidents within the Bundeswehr which give rise to the suspicion that, for example, human dignity, freedom of opinion or the legal protection of military personnel have been unlawfully restricted. The Commissioner’s attention can be drawn to special incidents which lead to investigations during visits to military units and through press reports, information from Members of the Bundestag or petitions from military personnel.

In addition to this, the Federal Anti-Discrimination Agency (FADA) was set up in 2006 when the General Equal Treatment Act entered into force. The FADA provides information about claims and possibilities of taking legal action, provides referrals to counselling by other agencies and, in cases where Commissioners of the Federal Government or of the German Bundestag are responsible, passes on requests from petitioners, after having obtained their consent, to those Commissioners.

## **Section IV - Follow-up**

IV.1 Which measures would you recommend to ensure that the principles set out in the Recommendation and in its Appendix are complied with in national legislation and practice?

With respect to the Bundeswehr, the principles set out in this recommendation and in its appendix are already amply complied with in national legislation and practice.

IV.2 Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

In line with Germany’s over all support for the adherence to human rights, the continued periodical examining of the recommendation’s implementation is welcomed. It is suggested to keep the current format for this process.

IV.3 Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

In regard to the Bundeswehr, the recommendation and its appendix cover the necessary conditions in order to guarantee a comprehensive protection of the soldiers’ constitutional and human rights.