

NETHERLANDS**Section I – Impact assessment**

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

Assigning a particular authority responsible for the implementation of the Recommendation was not necessary, because the items addressed by the Recommendation were already part of the legal position of the members of the armed forces of the Netherlands, see question I.2.

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

The Netherlands had already put in place a national system ensuring human rights of members of the armed forces, before the adoption of the Recommendation. In the Netherlands, human rights of both citizens and members of the armed forces are protected under the Dutch constitution and international human rights treaties to which the Netherlands is a party (In the Dutch legal order treaty provisions which may be binding on all persons by virtue of their contents, become binding after they have been published and may thus be directly applied in Dutch courts (art. 93, Dutch Constitution).

Limitations to human rights, laid down in either the Dutch constitution or in international human rights treaties, will need to fully meet the requirements of the Dutch constitution and/or the relevant international human rights treaties (such as the requirement that limitations should be provided by law). Thus, prior to the adoption of the Recommendation, human rights of members of the armed forces were already ensured by the Dutch constitution and by international human rights treaties to which the Netherlands is a party, allowing for limitations to these rights only under strict conditions.

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

Since a system ensuring human rights of members of the armed forces was already in force before the adoption of the current recommendation (see question I.2), no specific measures were required after and pursuant to the adoption of the Recommendation.

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

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Section II – Dissemination of the Recommendation

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

See Section I.

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

See Section I.

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

See Section I.

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

The Directorate of legal affairs of the Ministry of Foreign Affairs and the Directorate of legal affairs and the Directorate of personnel policy of the Ministry of Defence.

II.5 Has the Recommendation been distributed to members of the armed forces?

Yes No

The items addressed by the Recommendation were already part of the legal position of the members of the armed forces of the Netherlands. See Section I.

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

➔ See Question I.2.

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.

Under the authority of the (civil) Public Prosecution Service, the Royal Military Constabulary is responsible for investigating criminal offences within the armed forces (art. 14, Dutch Code of Criminal Procedure (Wetboek van Strafvordering)). In the Netherlands, the procedural safeguards for criminal investigations concerning civilians are applicable to investigations concerning the armed forces (Dutch Criminal Code (Wetboek van Strafrecht) and the Code of Criminal Procedure. These safeguards are complemented by procedural safeguards aimed specifically at criminal offences within the armed forces, such as the Dutch Military Criminal Code (Wetboek van Militair Strafrecht) and the Military Criminal Justice Act (Wet militaire strafrechtspraak).

Persons reporting acts mentioned under A.2 are specifically protected under the rules on integrity for members of the armed forces (article 12 quater, Military Personnel Act 1931 (Militaire ambtenarenwet 1931), further specified in Chapter 11a of the General military personnel regulation (Algemeen militair ambtenarenreglement).

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

➔ *Since 1997 conscription in the Netherlands has been suspended.*

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 against retaliation? Yes No

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.

*B.1 See answer to Section I, question I.2.
B.2 Since 1997 conscription in the Netherlands has been suspended.
B.3 See answer to question A.3
B.4 See answer to question A.3*

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

Since 1997 conscription in the Netherlands has been 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 relevant legal framework consists of the Military disciplinary code (Wet militair tuchtrecht), Dutch military criminal code (Wetboek van Militair Strafrecht)- and the Military Criminal Justice Act (Wet militaire strafrechtspraak).

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.

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. Yes No

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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

In the Netherlands, the procedural safeguards for criminal proceedings concerning civilians are applicable to proceedings concerning the armed forces (Dutch Criminal Code (Wetboek van Strafrecht) and the Dutch Code of Criminal Procedure (Wetboek van Strafvordering)). These safeguards are complemented by procedural safeguards aimed specifically at criminal proceedings concerning members of the armed forces (Military Criminal Code (Wetboek van Militair Strafrecht) and the Military Criminal Justice Act (Wet militaire strafrechtspraak)).

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

In the Netherlands, the legal framework on the right to have access to a tribunal for the determination of civil rights and obligations operates equally for both civilians and members of the armed forces.

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

In the Netherlands the military judicial organisation operates within a hybrid system. Certain civilian courts operate with a military criminal chamber. In principle the procedures and safeguards of these chambers are the same as of the civil courts. The main differences concern the defence of the defendant (the possibility of bringing a military defence counsel (officier raadsman) and the composition of the military chamber (consisting of two civilian judges and one military member; Military Criminal Justice Act (Wet militaire strafrechtspraak) and the Judiciary (Organisation) Act (Wet op de Rechterlijke Organisatie)).

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?

→ *The differences in the organisation and operation of military courts comply with Paragraphs 33 and 34 of the Appendix . See answer to question F.3.* Yes No

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 No

→ *Since 1997 conscription in the Netherlands has been suspended.*

G.2 Are there measures in place to ensure that members of the armed forces posted abroad are able to maintain private contacts? Yes No

G.3 Are there assistance programmes in place for those accompanying the members of the armed forces posted abroad? Yes No

G.4 Can members of the armed forces enjoy parental leave, childcare 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. Yes No

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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.

Members of the armed forces of the Netherlands enjoy the same respect for their private and family life, home and correspondence as other citizens of the Netherlands. See question I.2.

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

The Netherlands armed forces have chaplains of Roman Catholic, Protestant, Jewish, Hindu, Moslem and Humanist denomination serving with the armed forces to provide religious support. In addition, at all military bases there are facilities for private prayers and religious services, which may be used for all religious denominations. Moreover, the armed forces provide, as much as possible, food consistent with the various religious obligations of members of the armed forces (kosher, halal, vegetarian).

H.2 Do conscripts have the rights to be granted conscientious objector Yes No

status?

➔ *Since 1997 conscription in the Netherlands has been suspended.*

H.2.1 If so, is an alternative service of a civilian nature available? Yes No

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

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H.3 Are conscientious objectors exposed to sanctions, disciplinary measures or judicial prosecutions? Yes No

➔ *Since 1997 conscription in the Netherlands has been suspended.*

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

The Act on conscientious objection to military service (Wet gewetensbezwaren militaire dienst) provides the legal framework for members of the armed forces leaving the armed forces for reasons of conscience. The Minister of Defence may approve a request for acknowledgement of serious conscientious objections of a member of the armed forces (art. 3, Act on conscientious objection to military service). The acknowledgement of serious conscientious objections results in full exemption from military service and dismissal from the armed forces (art. 9, Act on conscientious objection to military service). The request can be reviewed by the Administrative Jurisdiction Division of the Dutch Council of State (Afdeling Bestuursrechtspraak van de Raad van State; art. 7b, Act on conscientious objection to military service).

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.

Members of the armed forces enjoy the same freedom of thought, conscience and religion as other citizens of the Netherlands. See question I.2.

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.

See Section I, Question I.2.

In addition, article 12a of the Military Personnel Act 1931 (Militaire ambtenarenwet 1931) states that members of the armed forces should refrain from using their right to express thoughts, opinions or feelings, if those thoughts, opinions or feelings are connected to the fulfillment of their function and if by

expressing them the proper fulfillment of their function or the functioning of the public service could no longer be reasonably guaranteed. This is a norm addressed to the individual who makes his own considerations; only, should he regress he can be called to task afterwards. The right to freedom of expression is limited by the pledge of secrecy in regard of classified information (Dutch Criminal Code (Wetboek van Strafrecht) and the Military Personnel Act 1931). This limitation is covered by the requirements for limitations of human rights – see Section I, question I.2.

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 regarding exposure to situations potentially hazardous to their health? Yes No

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

The access to personnel files of members of the armed forces is regulated by the legal framework on data protection, complemented by specific rules on data protection in the armed forces (Dutch Personal Data Protection Act (Wet bescherming persoonsgegevens); Regulation on Dutch personal data protection act ministry of Defence (Regeling Wet bescherming persoonsgegevens ministerie van Defensie)). In principle the right of access is unrestricted, with only very limited exceptions to this right, such as restriction for reasons of national safety or for the protection of the person concerned (art. 43, Dutch Personal Data Protection Act).

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

Members of the armed forces are compelled to report any (future) additional functions, which could affect the interest of the military service, as far as this is connected to the fulfillment of their function (art. 126b, General military personnel regulation (Algemeen militair ambtenarenreglement); Regulation on additional functions Defence (Regeling nevenwerkzaamheden Defensie)). Members of the armed forces are entitled to freedom of assembly and association, unless the proper fulfillment of their function or the functioning of the public service (as far as this is connected to the fulfillment of their function) would thereby no longer be reasonably guaranteed. This requirement does not apply to membership of political parties and trade unions (art. 12a, Military Personnel Act 1931 (Militaire ambtenarenwet 1931); art. 126b, General military personnel regulation (Algemeen militair ambtenarenreglement)).

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

See Question K.1.

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

See Question K.1.

In addition, members of the armed forces who are appointed or elected as member of a public body can be temporarily exempted from military service, based on the extent of their activities as member of a public body, unless this would be against the interests of the military service (art. 12c, Military Personnel Act 1931 (Militaire ambtenarenwet 1931)).

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 of members of the armed forces is retained upon joining the armed forces.*

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

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

➔ *Note: there are no dormitories. Except for initial training, accommodation consists of individual rooms for 1, 2 or 4 persons.*

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

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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 Yes No

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.

Dignity at work of members of the armed forces, in particularly as regards the prevention of sexual harassment, is ensured by the legal framework on integrity for members of the armed forces (Chapter 11a of the Dutch military personnel regulation (Algemeen militair ambtenarenreglement)). Those reporting wrongs regarding dignity at work are for example protected under these rules on integrity.

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.

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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

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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

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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

Women cannot serve in the Royal Marines, the Army special forces (Korps Commandotroepen) or in the submarine service. This is because it is not possible to guarantee a minimum amount of privacy in these particular divisions of the armed forces.

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

Knowledge of human rights is part of the curriculum of the initial training for all parts of the armed forces.

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

First of all, human rights violations of members of the armed forces fall within the ambit of the national protection system of the Dutch constitution and international human rights treaties to which the Netherlands is a party, see Section I, Question I.2.

In addition, members of the armed forces may file a complaint with their superior, a specifically appointed confidant or the ‘Commissie integriteit overheid’ (a commission responsible for issues of integrity within government; art. 126j, Dutch Military Personnel Regulation (Algemeen militair

ambtenarenreglement)). *The legal framework on integrity for members of the armed forces applies (chapter 11a Military Personnel Regulation).*

Section IV - Follow-up

General remark: many Member States, including the Netherlands, had already put in place national systems ensuring human rights of members of the armed forces, before the adoption of the Recommendation. Future questionnaires should take this into account.

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?

See the general remark above under 'Section IV'.

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?

See the general remark under 'Section IV'.

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

See the general remark under 'Section IV'.