

European Communities

EUROPEAN PARLIAMENT

Working Documents

1983 - 1984

20 February 1984

DOCUMENT 1-1387/83

REPORT

drawn up on behalf of the Legal Affairs Committee
on the right of members of the armed forces to
form associations

Rapporteur: Mr J.W. PETERS

At its sitting of 6 July 1981 the European Parliament referred the motion for a resolution, tabled by Mr Schall and others (Doc. 1-323/81) pursuant to Rule 47 of the Rules of Procedure, to the Legal Affairs Committee as the committee responsible.

At its meeting of 15 July 1981 the committee appointed Mr J.W. Peters rapporteur.

The draft report was considered at the meetings of 28/29 September 1983 and 25/26 January 1984.

At the last meeting the motion for a resolution was adopted unanimously with 2 abstentions.

The following took part in the vote : Mrs VEIL, chairman; Mr CHAMBEIRON, vice-chairman; Mr PETERS, rapporteur; Mr FISCHBACH, Mr GEURTSSEN, Mrs MACCIOCCHI, Mr PROUT, Mr SIEGLERSCHMIDT, Mr TYRRELL and Mr VIE.

The report was tabled on 6 February 1984.

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A

The Legal Affairs Committee hereby submits to the European Parliament the following motion for a resolution together with explanatory statement :

MOTION FOR A RESOLUTION

on the right of members of the armed forces to form associations

The European Parliament,

- having regard to the motion for a resolution tabled by Mr Schall, Mr Klepsch, Mr Vergeer, Mr Tindemans, Mr Habsburg, Mr Janssen van Raay, Mr Bocklet, Mr Konrad Schön, Mr Rinsche, Mr Notenboom, Mrs Walz, Mr Hahn, Mr van Hassel, Mr Penders, Mr Malangré, Mr Fuchs, Mr Brok, Mr Früh and Mr Mertens on the right of members of the armed forces to form associations (Doc. 1-323/81),
- having regard to the report of the Legal Affairs Committee (Doc. 1-1387/83),
- (a) having regard to the Universal Declaration of Human Rights (proclaimed at the United Nations General Assembly on 10 December 1948), and in particular Article 20 thereof (freedom of peaceful assembly and association), to the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and in particular Article 11 thereof (freedom of peaceful assembly and association), and to Article 3 of the European Social Charter,
- (b) having regard to the resolution adopted by the Parliamentary Assembly of the Council of Europe on 8 May 1979 which allows police officers, military police, armed forces personnel and militiamen performing the functions of police to establish, join and actively participate in professional organizations,
- (c) having regard to the Parliamentary Assembly's declaration that such professional organizations must have the right to take part in negotiations concerning the professional and social interests of their members,
- (d) whereas servicemen, whether conscripts or personnel serving for longer periods, must not become isolated from democratic society and must experience at first hand the democracy which they are protecting,

- (e) having regard to the principle that the serviceman is to be regarded as a citizen in uniform,
 - (f) whereas strikes cannot be considered a means of solving the social problems faced by servicemen,
1. Calls on all Member States of the European Community to grant their servicemen the right, in peace time, to establish, join and actively participate in professional associations in order to protect their social interests;
 2. Recommends that the legal provisions of individual States be approximated, taking into account the relevant articles of the United Nations Universal Declaration of Human Rights, the Council of Europe's Convention on the Protection of Human Rights and Fundamental Freedoms and the European Social Charter;
 3. Instructs its President to forward this resolution to the Council and the Ministers of the European Community meeting in political cooperation, calling on them to forward it to the appropriate ministries and to the parliaments of the Member States with a request for an opinion.

B
EXPLANATORY STATEMENT

The present motion for a resolution deals with the right of members of the armed forces to establish, join and actively participate in professional associations in order to protect their social interests (right of association). This is a specific extension of the universal fundamental right of freedom of association and must therefore be considered in the light firstly of the guarantees as regards universal fundamental rights and freedoms and secondly of the special legal status and duties of members of the armed forces.

1. General principles

The motion for a resolution is in line with the European Communities' determination to respect and protect fundamental human rights as a cornerstone of the Community - a duty reflected in the Joint Declaration of 5 April 1977 by the European Parliament, the Council and the Commission on fundamental rights¹. The Community's obligation to protect fundamental rights also found expression in the fact that, in its resolution on the accession of the European Communities to the Convention for the protection of Human Rights and Fundamental Freedoms, the European Parliament reaffirmed its determination

'to strengthen and increase the protection of the rights of the individual in the formulation and development of Community law.'²

The wish to accede as a Community to the Convention on Human Rights must be seen in the light of the obligation expressed in this resolution to protect fundamental rights in the Community and, to press for their implementation inter alia in the field of national legislation.

Parliament has already acted on this in its resolutions :

- on the protection of the rights of the individual in the face of technical developments in data processing of 9 March 1982³,
- on the abolition of the death penalty in the European Community of 18 June 1981⁴ and
- on the report of the Commission of the European Communities on the protection of fundamental rights of 12 October 1976⁵.

¹ Doc. 427/77; OJ C 103 of 27.4.1977, p.1

² Resolution of 29.10.1982; Doc. 1-547/82; OJ C 304 of 22.11.1982, p.5

³ Doc. 548/81; OJ C 87 of 5.4.1982, p.39

⁴ Doc. 65/82; OJ C 172 of 13.7.1981, p.72

⁵ Doc. 321/76; OJ C 259 of 4.11.1976, p.17

In its rulings the Court of Justice of the European Communities has also stressed the Community's obligation to respect, protect and implement fundamental rights.

As demonstrated in the following judgments :

- Erich Stauder v. City of Ulm of 12.11.1969¹
- Internationale Handelsgesellschaft v. Einfuhr und Vorratsstelle für Getreide und Futtermittel of 17.12.1970², or
- Gabrielle Defrenne v. Société anonyme belge de navigation aérienne Sabena of 15.6.1978³,

the rulings of the Court of Justice have always been that :

'fundamental personal human rights form part of the general principles of Community law, the observance of which the Court has a duty to ensure.'

(Defrenne v. Sabena)

With regard to the armed forces, Parliament dealt thoroughly with the protection of fundamental rights in the Macciocchi report on conscientious objection⁴, in which it endorsed the principle that fundamental rights, including the right of conscientious objection, had to be guaranteed within the armed forces. The motion for a resolution states further that

'the performance of alternative service must be organized to respect the dignity of the person concerned and benefit the community.'

The same must apply equally to serving members of the armed forces.

In its resolution of 29 October 1982⁵ on human rights in the European Community, Parliament also called for consideration to be given to human rights in military and police colleges.

At present the right of members of the armed forces to join professional associations or trade unions differs considerably from one Member State to another. Annex II of this report deals with the trade union rights of members of the armed forces in the individual Member States. These rights range from extensive codetermination (Denmark) through compulsory consultation of professional representatives before the enactment of legal provisions which affect the legal status of military personnel (Belgium, Federal Republic of

¹ [1969] ECR 419 et seq.

² [1970] ECR 1125 et seq.

³ [1978] ECR 1365 et seq.

⁴ Doc. 1-546/82

⁵ Doc. 1-483/82/rev.; OJ C 304 of 22.11.1982, p.255 et seq.

Germany, the Netherlands) to legal sanctions to discourage servicemen who wish to be active in unions (France).

One of the Community's particular aims is the progressive improvement and harmonization of the living conditions and rights of all citizens of the Community. It would therefore seem appropriate to make some move towards an assessment of the national provisions relating to the right of members of the armed forces to form associations, bearing in mind that care must be taken to ensure that even soldiers enjoy a maximum of fundamental rights. The resolution eventually submitted must be formulated in such a way as to ensure that the rights already granted to members of the armed forces in individual Member States are in no way eroded.

II. Legal bases

1. Members of the armed forces are particularly subject to state authority. Their terms of employment are governed by public law and based on orders and obedience, as a result of which the superior's right to command can even affect the subordinate's private life.

In countries where military service is compulsory, this extensive right of intervention starts with call-up.

The guarantee of civil liberties in the armed forces must be balanced against the need to safeguard the efficiency of the military organization. The justifiable concern for the rapid execution of orders may take precedence over the guarantee of fundamental rights. Military obligations such as obedience, discipline, comradeship, secrecy and restraint when appearing in public can also lead to a curtailment of personal rights.

However, the exercise of command is subject to the law and it is only in the light of this principle that a balance can be struck between the protection of fundamental rights and the curtailment of civil rights.

It is now generally recognized that human dignity must be inviolable even in the armed forces. The Member States consider that a soldier is a citizen in uniform. The granting of fundamental rights to servicemen must therefore be the norm and only in exceptional and well-founded cases should these rights be curtailed, because of the special nature of the duties of the armed forces.

2. The right to form associations is a fundamental right guaranteed by several international conventions and legal principles of international law.

The right to participate in the determination of social conditions is based on a number of individual fundamental rights, in particular respect for human dignity, and a series of principles and documents whose moral authority is generally recognized .

The most important documents are :

- the United Nations Universal Declaration of Human Rights of 10 December 1948,
- the European Human Rights Convention of 4.11.1950 and
- the European Social Charter of 18.10.1961 and
- the Joint Declaration by the European Parliament, the Council and the Commission of the European Communities of 5 April 1977 on fundamental rights.

3. In the Joint Declaration of 5 April 1977 the European Parliament together with the Council and the Commission endorsed and confirmed the prime importance attached to the respect of fundamental rights.

It undertook, in pursuance of the aims of the European Communities, to respect and to continue to respect these rights.

4. The United Nations Universal Declaration of Human Rights of 10 December 1948 states without reservation that the right of association is a human right. Article 23(4) states :

'Everyone has the right to form and to join trade unions for the protection of his interests.'

The right to social security (Article 22) and the right to freedom of peaceful assembly (Article 20,1) are prerequisites for the right to form associations.

Article 28 further states :

'Everyone is entitled to a social order in which the rights and freedoms set forth in this Declaration can be fully realized.'

5. Article 11(1) of the European Convention on Human Rights states:
'Everyone has the right to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.'
The European Court of Human Rights ruled on 8.6.1976 that the European Convention on Human Rights applied in principle also to members of the armed forces.

However, pursuant to article 11(2) of the European Human Rights Convention this right of association may be subject to national legal restrictions where the armed forces are concerned.

6. The right of employees to form associations to protect their economic and social interests is also referred to in Article 5 of the European Social Charter. Article 5(3), however, makes implementation of the principle and the scope of guarantees for the armed forces subject to the national legislative authorities.

7. An equivalent clause also makes the scope of the guarantees for the police force subject to national law (Article 5(2) of the Social Charter and Article 11(2)3 of the European Convention on Human Rights). However, Resolution No. 690(1979) of the Parliamentary Assembly of the Council of Europe specifies that :

'6. Police officers shall have the choice of whether to set up professional organizations, join them and play an active part therein. They may also play an active part in other organizations.

7. A police professional organization, provided it is representative shall have the right :

- to take part in negotiations concerning the professional status of police officers;
- to be consulted on the administration of police units;
- to initiate legal proceedings for the benefit of a group of police officers or on behalf of a particular police officer.'

8. The Court of Justice has already delivered opinions on several occasions on the notion that these international texts can be applied directly in the interpretation and formulation of Community law, in particular with reference to the fundamental rights of the individual. In its judgment in the *J. Nold v. Commission* case, 14 May 1974¹, it states :

'Similarly, international treaties for the protection of human rights, on which the Member States have collaborated or of which they are signatories, can supply guidelines which should be followed within the framework of Community law.'

The Court of Justice clearly confirmed this ruling in its judgment in the *National Panasonic v. Commission* case of 26 June 1980².

9. The right to freedom of association is also recognized as a fundamental right in all the legal systems of the Community's Member States. In some cases, as for example in the Basic Law of the Federal Republic of Germany (Article 9(3)), it is also referred to specifically as the right to form trade unions and professional organizations.

¹ [1974] ECR 491 et seq.

² [1980] ECR 2033 et seq.

III. Comments on the proposed resolution

1. The basic goal must be to ensure that members of the armed forces enjoy fundamental rights including the right to form associations both in theory and in practice.

The Member States of the European Communities consider that the soldier, as a citizen in uniform, is an integrated member of society. In principle, therefore, the members of the armed forces are also entitled to enjoy all fundamental rights. The soldier's task is to protect civil rights and liberties from external threats. Servicemen bear the responsibility for the defence of fundamental rights against external threats in the same way as members of the police force are called upon to protect these rights and liberties against internal threats.

It seems inconsistent that those who are responsible for protecting the community and its liberties should have some of these very liberties withheld from them.

The serviceman will have greater motivation to defend the rights and liberties of democratic society if he himself possesses these rights, can exercise them and thus appreciate their substance and value at first hand.

2. Among the fundamental rights which must be granted to members of the armed forces are the right to form associations and the right to participate in the determination of social conditions.

3. With a view to a closer union between the peoples of the Community, efforts must be made to harmonize the legal positions in the Member States which, at the moment, differ widely. The goal must be the creation of equal living conditions and rights for all citizens in the Community. This applies in particular to fundamental rights and thus also to granting freedom of association to members of the armed forces.

4. An awareness that restrictions may be necessary does not invalidate the principle that fundamental rights should be granted to the armed forces, although it follows that, because of the special nature of military duties, it could well become necessary to make the right to freedom of association subject to the limitations which this implies.

Just as Article 15 of the European Convention on Human Rights provides for restrictions on the fundamental rights of all citizens in time of war or other public emergency the proposed resolution is also based on the premise that the granting of the right of association to the armed forces only applies in peacetime.

Some thought must also be given to the compatibility of the right to be active in trade unions with the needs of the military structure. Hence it cannot be assumed that a right to strike for members of the armed forces can be reconciled with the need for defence readiness in the army.

However, military functions and structures must be examined very carefully and traditional structures of command and obedience dating from an authoritarian past must be reconsidered so that, if necessary, they can be altered to achieve more democracy.

5. Well founded reasons must always be given for the denial or curtailment of fundamental rights.

There are no such reasons militating against the establishment of professional associations representing the social interest of members of the armed forces, as provided for in the resolution. The examples of the armed forces of Belgium, Denmark, the Federal Republic of Germany, Luxembourg and the Netherlands demonstrate that the operational readiness of the armed forces is not impaired by the existence of effective professional associations representing servicemen. On the contrary, the granting of as many civil liberties as possible may well lead to stronger positive motivation on the part of soldiers, greater personal commitment to military service and hence, in the last analysis, improved operational readiness of the armed forces.

Subject to the above reservations, members of the armed forces must therefore be granted the right to form associations to defend their social interests. A free democratic and socially oriented state system calls for a free, democratic and socially oriented military structure.



EUROPEAN PARLIAMENT

Working Documents

1981 - 1982

26 June 1981

DOCUMENT 1-323/81

MOTION FOR A RESOLUTION

tabled by Mr SCHALL, Mr KLEPSCH, Mr VERGEER,
Mr TINDEMANS, Mr HABSBERG, Mr Janssen van RAAY,
Mr BOCKLET, Mr Konrad SCHÖN, Mr RINSCHÉ,
Mr NOTENBOOM, Mrs WALZ, Mr HAHN,
Mr von HASSEL, Mr PENDERS, Mr MALANGRÉ,
Mr FUCHS, Mr BROK, Mr FRÜH and Mr MERTENS

on behalf of the Group of the European People's
Party (Christian-Democratic Group)

pursuant to Rule 47 of the Rules of Procedure

on the right of members of the armed forces
to form associations

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tabled by Mr SCHALL, Mr KLEPSCH, Mr VERGEER, Mr TINDEMANS, Mr HABSBURG, Mr Janssen van RAAY, Mr BOCKLET, Mr Konrad SCHÖN, Mr RINSCHÉ, Mr NOTENBOOM, Mrs WALTZ, Mr HÄHN, Mr von HASSEL, Mr PENDERS, Mr MALANGRE, Mr FUCHS, Mr BROK, Mr FRUH and Mr MERTENS

on behalf of the Group of the European People's Party (Christian-Democratic Group)
pursuant to Rule 47 of the Rules of Procedure

on the right of members of the armed forces to form associations

The European Parliament,

- having regard to Articles 20, 22, 28, 29 and 30 of the United Nations Universal Declaration of Human Rights,
- whereas servicemen, whether conscripts or personnel serving for longer periods, must not become isolated from democratic society and must experience at first hand the democracy which they are protecting,
- having regard to the principle that the serviceman is to be regarded as a citizen in uniform,
- whereas strikes cannot be considered a means of solving the social problems faced by servicemen,
- having regard to the positive experience gained from the associations formed to protect the social interests of active servicemen in a number of Member States,
- whereas neither the efficiency nor the readiness for action of the armed forces of those countries has been impaired by these associations,
- having regard to the resolution adopted by the Parliamentary Assembly of the Council of Europe on 8 May 1979, which provides for police officers, military police, armed forces personnel and militiamen performing the functions of police to be allowed to establish, join and actively participate in professional organizations,
- having regard to the Parliamentary Assembly's declaration that such associations must have the right to take part in negotiations to determine their professional status,

1. Calls on all the Member States of the European Community to grant their servicemen the right, in times of peace, to establish, join and actively participate in professional associations in order to protect their social interests;
2. Recommends that the laws of the Member States can be harmonized, taking account of the United States Universal Declaration of Human Rights;
3. Instructs its President to forward this resolution to the Council and to the Foreign Ministers of the ten Member States of the European Community meeting in political cooperation.

DIRECTORATE-GENERAL FOR RESEARCH
AND DOCUMENTATION

- Legal Service -

The right of members
of the armed forces to form associations

18.4.1983

K.OFF/jm

The right of members of the armed forces to form associations

The rights of soldiers, national servicemen and other employees of the armed forces to form associations and to set up representative and professional organizations vary considerably from one country to another. In some cases such activities have a long tradition going back to before the first World War whilst in others they are prohibited. This document reviews the position of soldiers in the individual Member States of the Community, which can be broken down as follows:

(a) Member States in which the right to form associations

- is not granted:

Greece, France, Italy

- is not exercised:

Ireland

- is granted but without the right to be consulted:

United Kingdom;

(b) Member States in which the professional organizations have a right to be consulted but no negotiating rights:

Belgium, Germany, the Netherlands, Luxembourg;

(c) Member States in which the professional organizations have negotiating rights:

Denmark.

I.1 Member States in which the right to form associations is not granted

GREECE

1. Article 12 of the Greek Constitution guarantees the right to establish associations and non-economic organizations. Article 23(1) of the Greek Constitution states that the State shall take the necessary steps to protect the freedom of association.

Article 12(4) permits restriction of the freedom of association for officials and public employees. Article 23(2)2 prohibits strikes by, inter alia, the security forces.

2. Members of the armed forces are prohibited from joining associations or setting up professional organizations (Article 5(2) of Law 643/1977).

FRANCE

1. Civil and human rights are not listed in the French Constitution. However, the Preamble to the 1958 Constitution refers to the Declaration of the Rights of Man of 1789 and to the Preamble to the 1946 Constitution. The Preamble to the 1946 Constitution lays down the right to organize in trade unions as a social principle as well as the participation of employee's representatives in determining working conditions.
2. Pursuant to Article 10 of Law No. 72-662 of 13 July 1972 members of the armed forces in France are prohibited from joining associations or setting up professional organizations.

A member of the armed forces who plays an active part in a trade union contravenes the Code de justice militaire and thereby renders himself liable to prosecution (Article 421 of the Code de justice militaire).

However, a Comité d'information de droit du soldat (IDS) has been set up and is pressing for a change in the law.

ITALY

1. Article 39(1) of the Italian Constitution guarantees the right to set up trade unions. However, under Article 98(3) it is possible to bar certain groups of citizens by law from joining political parties. The Council of State (Consiglio di Stato) considers that it is impossible to separate political and trade union activities.
2. Article 46(1) of the military disciplinary regulations (Presidential decree of 31 October 1964) states that members of the armed forces may not belong to any organization which is incompatible with obligations under the military oath or with strict observance of discipline. Article 2 of Law No. 382 of 1978 laying down service regulations for the armed forces prohibits soldiers from founding professional trade union organizations and from joining other trade unions. In addition, the creation of servicemen's associations is subject to the approval of the Ministry of Defence.

In the meantime a system of staff representation for members of the armed forces has been introduced for matters relating to pay, status in legal disputes and welfare.

The plenary session of the Council of State took the view, in Article 1 of its decision of 4 February 1966, that, given the constitutional position, it was not necessary to withhold from ~~members~~ of the armed forces all rights in respect of trade unions.

I.2 Member States in which the right to form associations is not exercised

IRELAND

1. Article 40, Section 6, Subsection 1(iii) of the Constitution of the Irish Republic guarantees freedom of association. However, this right is subject to a legal proviso in section 2 of the same subsection.
2. Members of the armed forces have not formed trade unions or professional associations. However, this is apparently based not on a legal prohibition but on traditional discipline. The military oath precludes membership of political organizations and secret societies.

I.3 Member States in which professional organizations have no right to be consulted

UNITED KINGDOM

1. The United Kingdom does not have a constitution in the traditional sense.
2. The Trade Unions and Labour Relations Act of 1974 does not apply to soldiers (section 3, paragraph 1 of this law). Soldiers are specifically excluded from the definition of a 'worker'.

However, there are no provisions preventing an officer or soldier from joining a civilian trade union or association appropriate to his particular trade or specialization. However, such membership may not bring the soldier into conflict with the requirements of the service or discipline as defined in Queen's Regulations (Army Act of 1955, Section 30).

In addition, Queen's Regulations state that any soldier may submit proposals relating to welfare or the service.

3. Trade unions are not allowed to represent their members in disciplinary matters.

II. Member States in which the professional organizations have a right to be consulted but no negotiating rights

BELGIUM

1. In Belgium Article 20 of the Constitution guarantees freedom of association.
2. Article 16(1) of the Law of 14 January 1975 - Loi portant la règlement de discipline des forces armées - grants servicemen the right to join recognized associations for military personnel or public service unions. Pursuant to Article 1(1), the law applies both to national servicemen (No. 1) and regular soldiers (No. 2).
3. The rights of the trade unions are set out in the Law of 11 July 1978 - Loi organisant les relations entre les autorités publiques et les syndicats du personnel militaire des forces terrestres, aériennes et navales et du service médical. However, except for Article 1 this law has not yet entered into force.

Article 1, which has entered into force, pursuant to the Royal Decree of 5 January 1983 - Arrêté royal relatif à l'agrément des organisations syndicales du personnel militaire des forces terrestres, aériennes et navales et du service médical - governs the recognition of trade unions.

The law provides for the following rights of codetermination:

- (a) The trade unions must be brought into negotiations under a special procedure prior to the tabling of bills and the introduction of basic provisions with regard to the social status or rights of soldiers (Article 2(1) of the law. The procedure is concluded when it is established either that the proposal concerned is unanimously accepted or that the representatives of the government and unions cannot reach agreement.
- (b) The unions must also be consulted on the introduction of provisions relating to social affairs, security, improvement of working conditions and questions on housing for soldiers (Article 7 of the law). This process takes place in the consultative committee (Comité de concertation).

By royal decree rights, which are the responsibility of the Comité de sécurité d'hygiène et d'embellissement du lieu de travail, may be transferred to the comités de concertation which are organized on a basis of parity (Article 7(2) of the law).

The Comité de concertation gives a reasoned opinion on the matters referred to it (Article 9).

(c) The trade unions are also entitled:

- to submit proposals for decisions to the authorities (Article 13(1)),
- to place posters in offices (Article 13(2)),
- to collect union dues in offices during working hours (Article 14(2)),
- to be involved in entry tests (Article 14(3)),
- to hold meetings in offices (Article 14(4)).

The legislative process for the implementing decrees has not yet been completed.

FEDERAL REPUBLIC OF GERMANY

1. The right to form associations to safeguard and improve working and economic conditions is guaranteed to everyone and to all trades, occupations and professions (Article 9(3) Basic Law). The right to form associations is therefore a fundamental right under the constitution. This right may not be restricted for soldiers by laws concerning military service (Article 17(1) Basic Law).
2. When the Bundeswehr was set up the German legislative authorities opted for a democratic military organization. In practice this means that military service is organized in such a way that the legal position of servicemen is as similar as possible to that of other citizens, with the restrictions which arise from the special requirements of military duties. Paragraph 6 of the Soldatengesetz thus states that a serviceman has the same political rights as any other citizen and that these rights may only be curtailed by the obligations, laid down by law, as part of the requirements of military service.

3. The involvement of the relevant trade union executive committees in the preparation of general provisions for servicemen is required by law (Soldatengesetz, paragraph 35 (c), Bundesbeamtengesetz, paragraph 94).

The following restrictions apply: ban on strikes, ban on demonstrations in barracks and ban on disruption of the armed forces' administrative procedures. In anticipation of the above-mentioned legislation what was known as the 'cooperation decree' (Zusammenarbeitserlass) applied from 1971 onwards between the Federal Minister of Defence and the servicemen's professional organizations, the Deutsche Bundeswehr-Verband (280,000 members) and the servicemen's branch of the Gewerkschaft Öffentliche Dienste, Transport und Verkehr (approximately 2,000 members). Under that procedure the professional organizations had to be included in the preparation of laws and regulations; there was a requirement to do so as a general rule in the case of decrees. Under the Cooperation decree heads of units, commanding officers and heads of department were, in addition, and this still applies today, instructed to encourage close cooperation with both professional organizations. They must, upon request, give the representatives of those organizations an opportunity to state their wishes. Under that order, meetings of those organizations may be held out of working hours. Professional organizations may affix their information to the notice-board in the barracks or distribute it amongst their fellows by other means. Voting conditions and the rights and responsibilities of spokesmen for officers, NCOs and other ranks are governed by law (Soldatengesetz, paragraph 35).

In certain areas of the Bundeswehr, in particular at higher levels, staff representatives are elected as in other public service sectors. This also applies to soldiers serving outside actual Bundeswehr sectors (Soldatengesetz, paragraph 35(a)(a)).

Paragraph 2(1) of the Bundespersonalvertretungsgesetz provides for cooperation with the trade unions as part of staff representation. At local level committees are established to deal with housing, canteens, menus etc.

At national level the constitution (Article 45(b) Basic Law) provides for an ombudsman (parliamentary commissioner for the armed forces) responsible for military questions in the Bundestag. All members of the armed forces may have direct access to him. There is no restriction on the right of petition (Article 17 Basic Law).

THE NETHERLANDS

1. Freedom of association in the Netherlands is guaranteed in Article 8 of the Constitution.

2. Soldiers in the Netherlands may form professional organizations to safeguard their economic, social and cultural interests. They may join these associations and play an active role in them. There are professional organizations for officers, NCOs, professional soldiers and national servicemen, some of which have existed since 1890.
3. The rights and privileges of professional organizations are laid down in the Militaire Ambtenaren Wet of 1931, the Besluit Georganiseerd Overleg Militairen of 31.12.74 and the Interimregeling Faciliteiten Belangenverenigingen van Militairen of 22.12.1976.

As in the Federal republic of Germany, officials and servicemen are not entitled to take part in negotiations. However the associations must be consulted when the legal status of servicemen is affected by ministerial rulings etc. A central consultative committee has been set up for this purpose with the Secretary of State as the chairman. It meets twice a month and discusses all legal conditions and provisions which affect servicemen and the policies, guidelines and general principles of the personnel programme. There are subcommittees dealing with matters relating to the army, navy and air force which meet once a month.

At a lower level there are consultative committees in each navy unit, at company, battalion and barrack level for the army, and for each air force base or unit. These consider individual cases or questions relating to working conditions. The representatives are elected by the appropriate groups and do not have to be members of a servicemen's association. Fundamental questions on legal status may only be discussed at the highest level of consultative committee. Civilians employed in the armed forces are represented by public service associations which are consulted in a similar manner. Associations may hold meetings in barracks with the commander's permission. There is freedom of the press including the right to distribute broadsheets. There is no right to strike, but soldiers in uniform may stage demonstrations when they are not on duty.

The possibilities open to the professional organizations of the Dutch armed forces are comparable with those in Germany. In both countries the position of servicemen is similar to that of civil servants. These provisions can be suspended in time of war and do not in fact apply to Dutch soldiers serving in the Lebanon under the auspices of the UNIFIL.

LUXEMBOURG

1. Article 11(5) of the Constitution of the Grand Duchy of Luxembourg guarantees the freedom to form trade unions by law.
2. Servicemen are allowed to organize or join non-political unions. The majority are members of the Syndicat professionnel de la force publique which is part of the Confédération générale de la fonction publique.

III. Member States in which professional organizations have negotiating rights.

DENMARK

1. Article 78(1) of the Danish Constitution gives the right to freedom of association. Pursuant to Article 85, this right may be curtailed for servicemen.
2. The actual representation of military personnel is based on the following principles:
 1. the general provisions laid down for civil servants with regard to negotiating rights which establish the administrative details for negotiations and the exchange of information between management and staff;
 2. a law of 1969 containing provisions on cooperation within the armed forces, the main provisions being that commanders at every level are responsible for establishing a suitable system of cooperation within their sphere of responsibility;
 3. a circular, (1972) on cooperation committees in state companies and institutions, which also applies to the armed forces.
3. Servicemen therefore have the same negotiating rights and the same right to conclude agreements as all other government employees. There are various groups of professional organizations for serving officers, reserve officers and serving soldiers. These associations negotiate on general pay and working conditions with the Minister of Defence. They voluntarily renounce the right to strike.

National servicemen have not yet stated that they wish to set up a professional association. They have spokesmen (shop stewards) with a seat on the spokesmen's committees. Decisions on working and employment conditions are taken by the headquarters cooperation committee. Similar committees at service and local level (regiment, naval base, air force base) are responsible for their particular sectors. They comprise an equal number of representatives for the 'employers' (ministry) and 'employees' (servicemen and civilian staff). These committees share the decision-making in a wide range of areas, for example, daily working hours, welfare measures, safety of staff, planning and working methods, appointments, dismissals, promotion, staff training etc.

In the contact committees at regimental level (naval base, air base) matters are considered which relate to the ordinary serviceman in his unit and decisions are taken by superiors. Spokesmen's committees exist for the small units (company, ship, squadron) and are formed from the appropriate officers and servicemen's representatives who are democratically elected. The committees may discuss all matters except for very personal matters and those excluded on grounds of security. At national level regional spokesmen's conferences are held three times a year where an executive committee is elected. Members of this executive committee are released from normal duties. The executive committee can discuss the conditions of the national servicemen on a regular basis with the Minister of Defence and with the military authorities.

All associations are neutral in party-political terms and financially independent. They renounce the right to strike.