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## Kurzinformation

### Military Unions and Associations

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#### 1. The Rights of Professional Military Personnel to Form or to Join Unions or Professional Associations

The military personnel of the German Armed Forces (Bundeswehr) has not only the right to form and join military professional associations but it is also entitled to join trade unions.

The following laws and decrees regulate these rights:

##### 1.1. Article 9 “Freedom of Association” of the Basic Law <sup>1</sup>

**Article 9** of the **Basic Law** for the Federal Republic of Germany guarantees “**freedom of association**”. The first two sentences of paragraph 3 read as follows:

*“The right to form associations to safeguard and improve working and economic conditions shall be guaranteed to every individual and to every occupation or profession. Agreements that restrict or seek to impair this right shall be null and void; measures directed to this end shall be unlawful.”*

##### 1.2. Ministerial Decree about the Right of Soldiers to Practice Free Coalition

With regard to military personnel, the **unconditional right to join trade union organizations or, respectively, to join or to form military associations** was **partly confirmed by a ministerial decree** about the right of soldiers to practice free coalitions.<sup>2</sup> But this decree issued on **1 August 1966** by Dr. Kai Hassel, Federal Minister of Defence at that time, **didn't yet permit trade union activities within military facilities**.

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1 *Basic Law for the Federal Republic of Germany* (Grundgesetz – GG) in the revised version published in the Federal Law Gazette Part III, classification number 100-1, as last amended by Article 1 of the Act of 28 June 2022 (Federal Law Gazette I p. 968), available at: <https://www.btg-bestellservice.de/pdf/80201000.pdf>

2 Decree of the Federal Minister of Defence, VR IV 1, Az. 01-52-02 of 1 August 1966.

### 1.3. Ministerial Decree about Bundeswehr Cooperation with the German Armed Forces Association e.V. and the Public Services, Transport, and Traffic Trade Union

The right to trade union activities within military facilities wasn't confirmed until 24 November 1971, when then Minister of Defence, Helmut Schmidt, issued the decree<sup>3</sup> about **Bundeswehr Cooperation with the German Armed Forces Association e.V. (DBwV)**<sup>4</sup> and the **Public Services, Transport, and Traffic Trade Union (ÖTV)**<sup>5</sup>.

This decree guaranteed, for example,

- the **right of professional associations to participate in the preparation of laws or regulations concerning soldiers' rights** (no. 3),
- the **right to conduct trade union assemblies within military facilities** for discussing economic, social, or cultural questions as long as these assemblies do not collide with compelling official reasons and as long as they are conducted outside working hours (no. 5), and
- the soldiers' **right to participate in trade union activities outside military facilities during their leisure time** (no. 11).

### 1.4. Legal Status of Military Personnel Act (Article 20 "Sideline Jobs")

Article 20, section 6, paragraph 4 of the **Legal Status of Military Personnel Act**<sup>6</sup> stipulates that **soldiers' activities to protect professional interests in trade unions or professional associations do not require any authorization**. This implies the **soldiers' right for membership in unions and military professional associations**.

## 2. Inherent Rights

### 2.1. Collective Bargaining

**Neither the DBwV nor any other military professional association has the capacity to conclude collective agreements with legal effect**. For this purpose, DBwV may form a collective bargaining community with other organizations that are capable of concluding collective bargaining agreements.

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3 Decree of the Federal Minister of Defence, VR IV 1, Az. 01-52-02 of 24 November 1971, Gazette of the Federal Ministry of Defence 1971, no. 25, pp. 454 et seq.

4 *German Armed Forces Association e.V.*, in German language: Deutscher BundeswehrVerband e.V. (DBwV).

5 *Public Services, Transport, and Traffic Trade Union*, in German language: Gewerkschaft Öffentliche Dienste, Transport und Verkehr – ÖTV.

6 *Legal Status of Military Personnel Act* (Gesetz über die Rechtsstellung der Soldaten, in short: Soldatengesetz – SG) in the version published in the Federal Law Gazette I, p. 1482 on May 30, 2005, as last changed by article 5 of the law on August 20, 2021 (Federal Law Gazette I, p. 3932), available in German language at: <https://www.buzer.de/gesetz/2246/a31651.htm>

In 2000, **ÖTV**, together with other trade unions, merged to the **United Services Trade Union** (ver.di)<sup>7</sup>. Today, **ver.di** and the **German Civil Service Association** (DBB)<sup>8</sup> as the umbrella labor unions of the public service sector are the only collective bargaining parties on the public service sector's employees' side. However, when conducting collective bargaining with the Federal Ministry of the Interior (BMI) as the collective bargaining party on the employers' side, these unions take into account, in addition to the demands of other associations, the ones of the **DBwV**.

If the collective bargaining negotiations for the federal employees are successfully concluded, the collective bargaining result will generally be transferred to the federal civil servants, judges, soldiers and pension recipients by adjusting the **Federal Salaries Act**<sup>9</sup>.

## 2.2. Demonstration

In accordance with **Article 8 “Freedom of Assembly”** of the **Basic Law for the Federal Republic of Germany**<sup>10</sup>, *all Germans [...] have the right to assemble peacefully and unarmed without prior notification or permission*. This right to assemble peacefully and to express views through protest also applies to the military personnel.

But in accordance with article 15, section 3 of the **Legal Status of Military Personnel Act**<sup>11</sup>, soldiers are not allowed to wear uniforms when demonstrating.

## 2.3. Strike Action

According to the prevailing legal opinion in Germany, civil servants do not have the right to strike. The reason given for this is that civil servants have sovereign responsibility. **Since soldiers also have sovereign responsibility, the ban on strike action also applies to them.**

This **intervention into the “Freedom of Association”** (Article 9 (3) of the Basic Law) is justified according to the Federal Constitutional Court because **“the ban on strike action for civil servants is an independent and traditional principle of the career civil service system (in German language: *Berufsbeamtentum*) within the meaning of Art. 33(5) of the Basic Law. [...]**

*The legislature must have regard to the ban on strike action for civil servants as an independent and traditional principle of the career civil service system. It is closely linked to the civil service principle of alimentation, the duty of loyalty, the principle of lifetime employment and the*

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7 *United Services Trade Union*, in German language: Vereinte Dienstleistungsgewerkschaft – ver.di.

8 *German Civil Service Association*, in German language: Deutscher Beamtenbund – DBB.

9 *Federal Salaries Act* (Bundesbesoldungsgesetz – BBesG) in the version promulgated on 19 June 2009 (Federal Law Gazette I p. 1434), as last amended by Article 73 of the Act of 20 August 2021 (Federal Law Gazette I, p. 3932), available in German language at: <https://www.gesetze-im-internet.de/bbesg/BJNR011740975.html>

10 *Basic Law for the Federal Republic of Germany*, op. cit.

11 *Legal Status of Military Personnel Act*, op. cit.

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*principle that the legal relationship under civil service law, including remuneration, must be regulated by the legislature.”<sup>12</sup>*

### **3. Requirements for the Formation of Trade Unions or, respectively, of Military Professional Associations**

In Germany, there is **no legal regulation that directly defines the requirements for the formation of a trade union and determines when an employee coalition may call itself a union**. Freedom of association does not yet mean that any employee coalition may conclude collective bargaining agreements. In other words, all trade unions are employee coalitions, but not every employee coalition is also a trade union and thus has collective bargaining capacity.

The requirements that an employee association must fulfil in order **to be considered a trade union or, respectively, to have collective bargaining capacity** are based on case law of the **Federal Labour Court** (Bundesarbeitsgericht – BAG). According to this, an employee coalition must meet the following conditions in order to be considered a trade union:

- It must be freely formed, i.e., on a voluntary basis under private law.
- It must strive to conclude collective agreements, i.e., be “willing to conclude collective agreements”.
- It must be permanent, i.e., have a fixed structure.
- It must be independent of other associations and, above all, of the employers’ side.
- It must **recognize the right to collective bargaining** and be **organized according to democratic principles**.
- It must be “**socially powerful**”, i.e. “**assertive**”. This does not necessarily require a willingness to strike, but it does require the **ability to exert effective pressure on employers and to extract concessions from them under collective bargaining agreements**.

Underlying these prerequisites is the **goal of protecting collective bargaining autonomy** as a regulatory mechanism and thus employee interests.

An employee coalition is “socially powerful” if it is taken seriously by the employer side

- due to the **number of its members**, and
- its **organizational strength**.

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12 Judgment of the Federal Constitutional Court of 12 June 2018 - 2 BvR 1738/12, available at: [https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2018/06/rs20180612\\_2bvr173812en.html](https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2018/06/rs20180612_2bvr173812en.html)

Although **DBwV** exercises the powers of a trade union on behalf of its more than 205.000 members in accordance with the **Federal Personnel Representation Act**<sup>13</sup>, the **Soldiers' Participation Act**<sup>14</sup>, and corresponding laws, neither this leading-edge military professional association nor any other one has the capacity to conclude collective agreements.<sup>15</sup> Thus, DBwV is not a union in the true sense of the word but a professional association. As such, it is open for active and retired soldiers of all ranks, reservists, civil servants and employees of the Bundeswehr. However, there are other smaller military professional associations in Germany that are only open for a certain group of ranks.

In accordance with Article 56 of Germany's **Civil Code** (Bürgerliches Gesetzbuch – BGB)<sup>16</sup>, at least seven persons are required to found an association. One of these seven persons must be the chairperson (Article 26 BGB) who represents the association in and out of court; they have the status of a legal representative. A further requirement for founding an association is the establishment of statutes (Article 25 BGB).

#### 4. The Rights and the Status of Trade Unions' and Military Professional Associations' Leaders

The **status** of the leader of a union or a military professional association **depends to a large extent on the statutes of the union or the professional association in question**. During their term of office, for example, the elected **federal chairpersons of the DBwV are on leave of absence, without cash or non-cash benefits**. Their salary is paid by the association and independent of rank.

The leave of absence allows them to not only devote themselves one hundred percent to the association's work but gives them **extraordinary freedom in exercising their political mandate**. When exercising this mandate, they **may not suffer any disadvantages** from their activity (as such) because that would be a restriction of “freedom of association” through the back door (quasi by “deterrence”).

The federal chairperson of the DBwV **remains in his/her employment relationship and retains his/her rank** (even with the opportunity to be promoted during his/her tenure). Although chairpersons continue to be members of the armed forces with the right to wear uniform in the performance of their duties **they have, compared to “normal soldiers”, a somewhat greater freedom** to the extent that **statements** made in the course of their mandate, and especially criticism, **may not be sanctioned**.

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13 *Federal Personnel Representation Act*, in German language: Bundespersonalvertretungsgesetz – BPersVG), available in German language at: [http://www.gesetze-im-internet.de/bpersvg\\_2021/](http://www.gesetze-im-internet.de/bpersvg_2021/)

14 *Soldiers' Participation Act*, in German language: Soldatinnen- und Soldatenbeteiligungsgesetz – SBG, available in German language at: [https://www.gesetze-im-internet.de/sbg\\_2016/BJNR206510016.html](https://www.gesetze-im-internet.de/sbg_2016/BJNR206510016.html)

15 see Article 2, paragraph 4 of the *Statutes of the German Armed Forces Association e.V.* as amended by the resolutions of the 21st Annual General Meeting, available in German language at: [https://www.dbwv.de/fileadmin/user\\_upload/Downloads/Der\\_Verband/Struktur\\_und\\_Organisation/Satzung/Satzung\\_HV2021.pdf](https://www.dbwv.de/fileadmin/user_upload/Downloads/Der_Verband/Struktur_und_Organisation/Satzung/Satzung_HV2021.pdf)

16 *Civil Code*, in German language: Bürgerliches Gesetzbuch – BGB, available in German language at: <https://www.gesetze-im-internet.de/bgb/>