

IV Unfit to Command?

Homosexual tendencies of this nature rule out a soldier's fitness to serve in a position of leadership.¹

Up until the year 2000, the severe stigma associated with homosexuality in the Bundeswehr persisted beneath the threshold of disciplinary action as well, regularly entailing serious consequences for military service. "Outing" oneself invariably meant the end of one's career. As jurists from the Bundeswehr's department of administrative and legal affairs wrote in 1970 – or one year after the reform of the criminal code – the legal system demanded "that a soldier with a homophobic disposition also observe his military service obligations and curb his inclinations."² Now, it stands as a matter of course that a soldier would have to fulfill his service obligations and "curb" whatever sexual inclinations might arise while on duty. This in turn coincided with the Bundeswehr's own express interest in "stifling homosexual dependencies, tensions, petty jealousies, cliques and nesting in the military," all well-trodden stereotypes about homosexuals continually being updated to fit the latest fashion.³ Yet the lawyers did not simply seem to have the line of duty in mind, but evidently meant the soldier's conduct overall, including in private. Conscripts' parents would "rightfully" expect the Bundeswehr to keep the official realm "free from homosexual relationships" and, as far as was possible, "the extra-official realm as well [!]."⁴ The jurists went on to note that "a soldier's homophobic tendencies are irrelevant to service law as long as he does not act in a like manner."⁵ When asked whether Bundeswehr members "whose homophobic disposition became known" would have to reckon with career roadblocks or even dismissal,⁶ the lawyers replied "no, so long as they do not pursue their tendency and do not engage in homosexual activity."⁷ Here too, there was not any limitation as to the line of duty.

By today's standards, recommending sexual abstinence in order to avoid repercussions may sound like satire. At the time, though, it was bitter reality. Up through

1 Federal Administrative Court, 1st Military Service Senate, ruling on 25 October 1979, Az.: BVerwG, 1 WB 113/78. Found on www.jurion.de.

2 BArch, BW 24/7180: BMVg, VR IV 1, 29 September 1970.

3 Ibid.

4 Ibid. Identical wording in BArch, BW 24/7180: BMVg, Füs I 1, 9 September 1970.

5 Ibid., emphasis in original.

6 BArch, BW 24/7180: Editors of *Das andere Magazin* to the BMVg, 17 August 1970.

7 Ibid., BMVg, VR IV 1, 29 September 1970.

the 1950s and 60s, abstinence served as a tried and tested way of working around one's homosexuality. Ultimately, it recalls the celibacy demanded by the Catholic Church of its priests, monks and bishops (which naturally applied, and does still for any form of sexuality.) In later decades the military no longer demanded private abstinence but "merely" silence when it came to homosexuality. This too resembles the practices of Christian churches; the Protestant Church previously, and today the Catholic Church.⁸ An army is not a church, however, the officer corps is not clergy and a lieutenant is not a priest voluntarily submitting himself to celibacy. In 1984, legal sociologist Rüdiger Lautmann was already criticizing the Bundeswehr alongside the school system and church ministry for continuing to threaten homosexuals with the "an employment ban and attempts at intimidation" and "controlling their appearance both on and off-duty."⁹

In 1972 a reservist officer took up the fight against the Bundeswehr's contempt for openly gay service members. Perhaps that was what it took – an engaged member in the reserve – to make the initial push just under three years after male homosexuality was decriminalized. Fixed-term and career soldiers ran a different sort of risk of jeopardizing their professional existence in taking such a step.

1. "Unresolvable by Us." A Reserve Lieutenant against the Ministry of Defense, 1972

The precipitating event for what would eventually turn into a years-long legal battle was a commonplace letter. In June 1972 Defense District Command 355 in Gelsenkirchen "invited" Mr. Rainer Plein, a lieutenant in the reserve, "to call in the coming days [...] with a view to the announcement of your promotion. Please bring your military pass with you."¹⁰ After a second request the recipient replied, writing that he was the "founder of the Homosexuality Activist Group (HSM Münster) and

⁸ For a comprehensive account of the Protestant Church's handling of homosexuality see Fitschen, *Liebe zwischen Männern?* On the controversy surrounding homosexuality among Catholic clergy, and especially within the Vatican see Martel, *Sodom*, as well as Drobinski, "Römisches Doppel-leben." Drobinski summarizes Martel's argument, writing "The more harshly one damns gays, the sooner he is one himself, the more rigidly he judges, the higher the likelihood that he is leading a double life." Many homosexuals in the clergy and especially the Vatican had "made themselves at home in the old system of keeping silent and [carrying on] a double life."

⁹ Lautmann, *Der Zwang zur Tugend*, 197–98.

¹⁰ Defense District Command 355, S1, 12 June 1972 (The author holds possession of a copy of the letter.)

was himself homosexual.” He would not accept his certificate of promotion as long as his “situation and position in the Bundeswehr [had not] been fully clarified.”¹¹

With that, Plein had thrown down the gauntlet. The personnel worker in Gelsenkirchen must have initially been taken aback, and forwarded the matter to the head office in Cologne. The head of Gelsenkirchen Defense district command added in writing “Baseline issue, unresolvable by us. S1: Prepare the file with attachments for forwarding to PersABw!”¹² Plein heard next from Section San I 3 that he had “raised an issue of principals,”¹³ meaning the Federal Ministry of Defense would have to be called in. In his letter to the BMVg, the head of the Bundeswehr personnel office stressed that “new regulations brought on by criminal law reform notwithstanding,” he considered it “indefensible that an officer in the reserve with this sort of tendency” and a mindset as made clear from his activities in the homosexual movement should serve “as a superior with young soldiers as his subordinates.”¹⁴ A letter from the head of the personnel office – pointing out that as a reservist, Plein was still subject to military surveillance regardless of declaring his homosexuality – prompted a lengthy response from Plein, where he first made his true, revolutionary sociopolitical concerns known.

I’m inclined to believe that if you make me first lieutenant – and the certificate of promotion has been ready for some time now, waiting only on my acceptance – that I have the right to pose critical questions. This promotion brings with it increased demands on me. It follows only too naturally from this that I have to ask in my situation as a homosexual what position the Bundeswehr takes regarding this fact about my personality [...] I see a contradiction when on the one hand homosexuals are disqualified during entrance examinations by being certified with an “inability to perform” and thus absolutely unfit to serve, yet another person receives further promotion, to the rank of officer no less [...] Once more – two months have gone by, after all – I request an unambiguous and clear statement regarding my question.¹⁵

The BMVg reacted, informing Plein that he “was not intended for the time being” to be called in for further military exercises, which meant there was “no space at

11 Reserve Lieutenant Rainer Plein, addressed with “To be forward to the responsible Bundeswehr office,” 13 August 1972. A copy is available in BArch, BW 24/7180.

12 Ibid., as well as Defense District Command 355 to Bundeswehr Central Personnel Office, 22 August 1972, BArch, BW 24/7180.

13 Bundeswehr Central Personnel Office, San I 3, 30 August 1972. The letter was signed by a chief of veterinarian staff, plainly angering Plein still further, who jotted down “responsible for pigs?”

14 BArch, BW 24/7180: Office head for Bundeswehr Central Personnel Office to the BMVg, P II 1, 4 September 1972.

15 Reserve Lieutenant Rainer Plein to the office head of the Bundeswehr Central Personnel Office, 9 October 1972. Emphasis in the original.

present” for his promotion to first lieutenant in the reserve.¹⁶ Plein appealed, the appeal was denied. A subsequent letter to the reserve lieutenant from the defense department’s lawyers offered a fundamental take on the situation.

Even without medical examination, it must be assumed that your case is one of consistent homosexuality, manifesting itself in same-sex activities. This likely makes you unfit for military service. Men who are consistent homosexuals are a disruptive factor in the military sphere [...] The military sphere is negatively impacted, as such a disposition is most often linked to other properties, and homosexual activity [is linked] to other forms of behavior inappropriate to the military, which jeopardize troop discipline and fighting power. This applies especially in cases where homosexuals are called to serve as superiors in the troops, and to set an example of model behavior for their subordinates (§10 (1) SG).¹⁷

This was the “unambiguous and clear statement” that Plein had sought. As could hardly be expected otherwise, the statement came out against him and others in a situation like his. Plein filed a complaint before Münster Administrative Court, demanding “to be promoted to first lieutenant, even as a homosexual. The reasons given for not promoting me do not stand up to rigorous scientific examination in any way, and are injurious and discriminatory against my person in the highest degree.”¹⁸ In a statement to the court, the lawyers in Bonn responded that there was no discrimination against the plaintiff taking place. Rather, it was in keeping “with experience that homosexual men put troop discipline and fighting power at risk within the military sphere.” It would bring “serious cause for concern if homosexuals had to serve as superiors in the troops, and at the same time set an example of model behavior to their subordinates.” Also, it had not been ruled out “in light of the plaintiff’s conspicuous tendency” that “same-sex activity was not occurring within the military sphere.”¹⁹ The lawyers also cited an increased risk of grooming by other intelligence services.

Münster Administrative Court rejected the plaintiff’s appeal, following the BMVg’s argumentation, if not in every point. “Increased risk of contact with other intelligence services and potential blackmailing [scenarios] could hardly be expected if the soldier openly admits to his homosexuality.” The judges also viewed the BMVg’s contention about “forms of behavior inappropriate to the military [that] endanger troop discipline and fighting power” as “wanting explanation and clarification,” only to waive it in the next sentence: “The court has nonetheless not

¹⁶ BMVg, P II 1, 23 November 1972 and BMVg, P II 3, 12 December 1972.

¹⁷ BMVg, VR I 1, 20 February 1973.

¹⁸ Rainer Plein to Münster Administrative Court, 23 March 1973.

¹⁹ BMVg, P II 7 to Münster Administrative Court, 16 July 1973.

considered a discussion that goes into individual details necessary,” because the BMVg’s considerations were “capable of supporting the contested decisions.” The key sentences in the ruling point beyond the troops and toward general attitudes within the broader population.

Notwithstanding the fact that criminal law has largely restricted the criminality of homosexual acts between men, one must count on a considerable measure of reserve toward homosexuals among the general population. In light of these circumstances, the assumption on the part of the defendant [the BMVg] that this same reserve could be counted on to a particular degree among soldiers and non-commissioned officers, making it seem unassured that the plaintiff would hold a sufficient degree of authority as a first lieutenant in the reserve, is not objectionable.²⁰

Still, casting its eye toward the future the Münster court spied a bright spot on the horizon, identifying a noticeable “trend toward tolerance” within public opinion and the population’s attitude toward homosexuals. Be that as it may, it “was not being decided here” whether or not the current ruling might continue to apply in the future “upon the trend’s continued existence.”²¹

North Rhine-Westphalia Superior Administrative Court also followed the BMVg in rejecting Plein’s appeal. The Bonn lawyers had sharpened their argument before the second appeals decision, writing that “the defendant’s promotion to first lieutenant would, in light of his homosexuality, not only have substantially diminished his authority but also the trust troops must place in superiors, as well as military order itself.”

The lawyers had even stronger words: “Superiors with the defendant’s disposition encounter flat-out rejection in the troops. Forms of insubordination not only cannot be ruled out, they must be expected with certainty. Within the ranks, homosexuality is considered unmanly at best, something that the legal reforms cannot do anything to alter – not at least for the time being.”²²

The judges at superior court likewise stressed the considerable reserve shown toward homosexuals among the population “and thus among soldiers as well.” The potential impairment of troop discipline and fighting power was a “cogent reason for differentiating, i.e. for not recognizing [the plaintiff’s] fitness to serve as a superior; and thus as an officer in the Bundeswehr.” The judges ruled further that “it does not matter whether [the plaintiff] has engaged in some form of homosexual activity previously while in the line of military duty and thus given cause

²⁰ Ruling at Münster Administrative Court, 10 June 1974, Az 4 K 338/73.

²¹ Ibid.

²² Ruling at North Rhine-Westphalia Superior Administrative Court on 4 September 1975.

for offense, because the defendant has rightly proceeded solely on the basis of his consistent homosexual tendencies.” General value standards, and specifically the principal of equal treatment would not be violated. “It is plain to see that different conditions apply for consistently homosexual men than for heterosexual soldiers in a community composed exclusively of men, as with certain sections of the Bundeswehr specified for defensive combat operations.” The Bundeswehr also could not wait to see whether a particular soldier did in fact endanger troops’ discipline and fighting power, “or in other words ‘let chance dictate.’”²³

The final act in Reservist Lieutenant Plein’s legal dispute with the Federal Republic was staged at the Federal Administrative Court, where his appeal against the superior administrative court’s previous decision was rejected.²⁴ The BMVg had prevailed in all instances; the officer had lost the battle and the war.

In evaluating the legal course of action, it should be kept in mind that the reservist officer played an early role in the emerging homosexual movement as a founder of the Münster activist group. He used the unexpected opportunity that presented itself in the original letter from defense district command to involve the Bundeswehr in a battle of principles against discrimination against gays and lesbians. Coming as a complete surprise to the armed forces, the otherwise routine procedure of promoting an officer in the reserve turned into a politically charged issue with potentially far-reaching effects. Plein could have accepted or rejected the promotion without further ado, but it was not about the promotion for him, it was about principal. Personnel management at defense district command understood this and referred the case to the defense ministry, which then took up the gauntlet before taking off the gloves, so to speak. By now it was much more than the promotion of a reserve that was at stake in the controversy. The administrative court rulings subsequently generated in the Plein trials established the principle that gays should not be seen as fit to serve as instructors or superiors in the military. For the first time, the BMVg was forced to take a legal position on homosexual soldiers’ fitness for service in leadership roles and defend it in court.

The judges’ ruling did not escape criticism from within their own ranks. Erhard Denninger, a law professor from Frankfurt am Main, objected that the military service senate had only noted the “abstract risk” that homosexual orientation might “carry into” the realm of service, but discounted the “risk” in the specific case of the plaintiff. This meant the assumed risk of “a possible impairment in troop discipline and fighting power” was sufficient to “deny the ability to serve as an officer generally.” Instead of creating an “individualized ruling to forecast suitability” the

²³ All quotes *ibid.*

²⁴ Ruling at BVerwG, 16 February 1976, Az VI B 83.75.

Bundeswehr had made a “general statement on unfitness,” thus violating the ban on discrimination under Article 3 of the Basic Law.²⁵

In November 1976 Rainer Plein died by his own hand. *Stern* magazine reported on the story in 1984, linking the suicide to the final court ruling.²⁶ A close associate of Plein’s rejected the suspicion voiced here and elsewhere that the suicide was closely tied to his losses in court.²⁷ The principles that were formulated during the proceedings against Plein endured for over twenty-five years.²⁸

Change must often be instigated outright; Rainer Plein provided an initial impetus. It was only after (many) courageous souls had stood up and demanded their rights that the pressure to change truly arose. The second impetus came from another lieutenant, this time from within the ranks themselves.

2. “Jeopardizing Discipline and Fighting Power.” The 1977 Case of a Lieutenant

Discovery of homosexual tendencies in a superior by subordinates, the Federal Administrative Court wrote in 1979, can bring disruption to service, weakening troops’ fighting power and ultimately impairing the Bundeswehr’s defense mandate, which took constitutional priority. The ruling came in response to a complaint filed by a lieutenant who had written to the BMVg about his homosexuality in April 1977.

I hereby inform you of my homosexuality. It is not possible for me to pretend any longer, nor do I see any reason why I ought to. Every acquaintance in my private life knows about it and accepts me. I’ve only ever had positive experiences with admitting my homosexuality up to now. I did not acknowledge it in some spectacular fashion but tried to present my tendency

25 Denninger, “Entscheidungen Öffentliches Recht,” 444–46.

26 “Following the final ruling at Federal Administrative Court, he took his own life in 1976.” Krause, “Da spiel’ ich denen eine Komödie vor.”

27 “Many posited a close link between the Bundeswehr’s crusade and the suicide; in my personal view (and source material only I have access to), the Bundeswehr was only a part of the picture.” Email from Sigmar Fischer to the author on 19 March 2018. On Rainer Plein’s life and the debate surrounding a street being named for him see Heß, “Der ungeliebte Aktivist”; Fischer, “Er organisierte Deutschlands erste Schwulendemo: Gedenken an Rainer Plein.” For a fuller account see Fischer, “Bewegung zwischen Richtungsstreit und Stagnation.” A draft resolution to name a street after Plein was initially rejected by majority vote of the district council for Münster city center in 2013, but then accepted in 2017. Since then, the city has had a street named Rainer-Plein-Weg.

28 This is Günther Gollner’s argument in “Disziplinarsanktionen gegenüber Homosexuellen im öffentlichen Dienst,” 116.

as something self-evident. Even in cases where I've shared it with one comrade or another, they've taken it in stride. My tendency has not had any negative impacts on my service up to now, nor can I picture any. My decision to report my homosexuality was influenced in part by the fact that I want to engage publicly to make equal rights for homosexuals a reality, so before you find out about my homosexuality through other sources, I'm telling you myself.²⁹

The lieutenant built on his first announcement with two more letters in May 1977 stressing "his goal to break down prejudices against homosexuality in the Bundeswehr."

To date he had not seen any of the dangers to service operations that allegedly came from homosexual officers, nor did other homosexual officers he knew have any negative impacts to report on their own activity in the service. The time had come to dismantle discrimination against homosexuality in the Bundeswehr, and accept it just as heterosexuality was.³⁰

In March 1978, the BMVg personnel department conducted the staff review requested by the lieutenant, informing him that his same-sex orientation precluded both fitness for and assignment to positions of leadership, as well as continued measures of support and promotion. He was advised further to apply for dismissal under §55 (3) SG. ("A fixed-term soldier is to be discharged at his request if remaining in the service would mean particular hardship for him due to personal, especially domestic, professional or economic reasons."³¹) The lieutenant declined, instead filing a complaint against the announced ban on his advancement and promotion in which he argued that his superiors were committing a breach of duty by denying his eligibility to serve as an officer based on his sexual orientation. He had been trained and qualified as an officer but was not being deployed as such, nor was he receiving support for further training. This was a contestable decision that could not be justified based on the alleged threat homosexuals in positions of leadership posed to young conscripts. No such threat existed in the present case. Assuming the existence of such a threat implicitly accused homosexual officers of undisciplined behavior without any justification, and could not be demonstrated empirically. His own situation was much closer in nature to that of women serving in the Bundeswehr medical corps. His transfer to a permanent student position on special assignment in the Army Office was not only unusual but unlawful. At the same time, the BMVg was failing to live up to its contractual obligation to continue the lieutenant's training at the Army's officer academy and his service branch

²⁹ Quoted in the ruling at the Federal Administrative Court, 1st Military Service Senate, 25 October 1979, Az.: BVerwG, 1 WB 113/78.

³⁰ Ibid.

³¹ http://www.gesetze-im-internet.de/sg/_55.html (last accessed 31 March 2021).

school. By contrast he, the plaintiff, had not violated his own official duties to date, even by reporting his homosexuality. The BMVg asked the court to deny the petition. The 1st Military Service Senate in turn ruled that:

1. The motion is admissible [...]
2. The motion is however, unfounded [...] The reason for the BMVg's contested decision was the petitioner's report that he was homosexually inclined. Homosexual tendencies of this sort exclude a soldier from being fit to serve as a superior.³²

Be that as it may, determining whether a soldier was in breach of duty if he partook in homosexual activity outside the line of duty should be distinguished from the question of whether a homosexual soldier was qualified to serve as a superior and receive further professional support.

Independently of the concrete risk, which depends on the person of the soldier in question, the very circumstance of a superior's homosexual tendencies becoming known to his subordinates can bring lasting disturbances to service operations. Modes of conduct that would be viewed as normal or common in heterosexuals may, in the case of someone with a homosexual orientation, take on a significance in the eyes of subordinates that can lead to gossip, suspicion or rejection of the superior, and to difficulties in giving and receiving orders. The BMVg need not close its eyes to this possibility with respect to Article 3 GG.³³

This meant that the principle of equality embodied in Article 3 of the Basic Law did not apply in full for homosexuals in the armed forces. Nor was the Bundeswehr required to stand up to the prejudice that existed against homosexuals among the troops by "asserting homosexual soldiers' presumptive claim to equal treatment against general opinion." Doing so "would weaken troop fighting power due to the unavoidable official difficulties that would result, thus impairing the Bundeswehr' defense mandate, which in turn holds constitutional priority." Rather, "even after the criminality of 'simple' male homosexuality had been abolished," the BMVg could still "take into account that in such a tightly bound male community as the Bundeswehr, homosexuals were still largely not accepted as before."³⁴ The court did not accept the lieutenant's analogy of female medical officers, who "were not subject to a loss in authority due to their heterosexual orientation." The military

³² Federal Administrative Court, 1st Military Service Senate, ruling on 25 October 1979, Az.: BVerwG, 1 WB 113/78.

³³ Ibid., excerpts quoted in *Stern*, 19 January 1984 in Krause, "Da spiel' ich denen eine Komödie vor."

³⁴ Federal Administrative Court, 1st Military Service Senate, ruling on 25 October 1979, Az.: BVerwG, 1 WB 113/78; also quoted in *Stern* on 19 January 1984.

service senate ruling was reprinted and commented on in specialist journals, especially given the limited view it took of the principle of equality in Article 3 of the Basic Law.³⁵

Similar to the Münster reservist officer five years before him, the lieutenant now found himself drawn into a battle over legal principles on behalf of homosexual rights. He persisted in his case against the Bundeswehr purely by formal means, turning directly to the Ministry of Defense when personnel leadership ignored his letters at first. When the ministry did not respond to his grievances in time either, he followed up with further complaints. A full year passed before the BMVg acceded to the lieutenant's request for a staff review. There he was not surprised to learn of the Bundeswehr's position regarding homosexual soldiers in supervisory roles; herein lay the cause for the legal action he was pursuing in such a dogged and targeted fashion. It was no longer his continued assignment as lieutenant with a foreseeable end to his time in the service that was at stake.

One can at least attach a question mark as to where the lieutenant's motivation lay in exposing himself in such a way. It can be gleaned from the administrative court ruling that he still had the remainder of his time in the troops to serve out after being released from his course of studies in the Bundeswehr university system. If the lieutenant's only concern had been to continue with regular training and assignment, he could have done so without making his sexual orientation known. This allows speculation as to whether all the announcements, legal complaints and court action merely represented an attempt to improve the lot of open homosexuals in the Bundeswehr, or whether they also harbored the notion of early dismissal back into civilian life as a self-outed homosexual. Whatever the lieutenant's ultimate motives, the dispute ended in a landmark ruling, similarly to the 1976 proceedings. The lieutenant's openly stated intention of "engaging publicly to make equal rights for homosexuals a reality" made it all the easier for the BMVg and the court to reject his claim. In their ruling the administrative judges wrote that "such strident display of his own homosexuality would only multiply the likelihood and scope of difficulties within the line of duty."³⁶

The two rulings from the Federal Administrative Court provided a north star for all subsequent court decisions until 1999. They were regularly invoked up through 2000 by the BMVg as a way of justifying restrictive practices, as in its 1995 response to a young man's questions, submitted via the parliamentary commis-

³⁵ See for example *Neue Juristische Wochenschrift* 21 (1980): 1178.

³⁶ Federal Administrative Court, 1st Military Service Senate, ruling on 25 October 1979, Az.: BVerwG, 1 WB 113/78.

sioner for the armed forces. The legal department quoted the 1979 ruling verbatim, although without identifying it as such.

Independently of this concrete risk, which depends on the person of the soldier in question, the very circumstance of a superior's homosexual tendencies becoming known to his subordinates can bring lasting disturbances to service operations. Modes of conduct that would be viewed as normal or common in heterosexuals may, in the case of someone with a homosexual orientation, take on a significance in the eyes of subordinates that can lead to gossip, suspicion or rejection of the superior, and to difficulties in giving and receiving orders. The BMVg need not close its eyes to this possibility with respect to Article 3 GG.³⁷

The Bundeswehr took care to ensure that troops were also made aware of the 1979 ruling. To that end an early, longer article appeared in 1981 in the magazine *Truppenpraxis*, bearing the conspicuous title “Current Legal Cases: Homosexual Tendencies within a Military Superior.” The article concluded that

Homosexual tendencies within a military superior – specifically an officer – preclude his suitability for promotion because those tendencies are liable to encumber the exact sort of close-knit official and person-to-person points of contact that are necessary in the military. Nothing else applies concerning an officer's fitness for assignment as a superior or further promotion.³⁸

Civilian publications were clearer still in their translation of the verdict and its implications: “Homosexual tendencies rule out a soldier's fitness for assignment as a superior.”³⁹ With the *Truppenpraxis* article, homosexual soldiers now had it in writing that their only chance in the Bundeswehr was to continue concealing their orientation and private lives. One of them was Captain Michael Lindner, company commander in ABC Defense Battalion 610.

37 BAArch, BW 1/531593: BMVg, VR II 7, to Mr. T., Bremen, 13 January 1995.

38 Weidinger, “Homosexuelle Neigungen eines militärischen Vorgesetzten.”

39 *Neue Juristische Wochenschrift* 21 (1980): 1178. The name of Michael Kühnen should also be remembered here, a lieutenant who studied at the Bundeswehr University Hamburg and was dismissed as a fixed-term soldier in 1977 not for his homosexual orientation, but due to right-wing extremist political activity. Later, he achieved dubious fame as “Germany's most prominent right extremist,” as the *taz* put it in 1991. Wolfgang Gast, “Neonazi Michael Kühnen gestorben,” *taz*, 26 April 1991.

3. A Subject for Debate in Parliament: The Case of Captain Lindner, 1981

The ruling came as a “shock” for Captain Lindner, rattling his already fragile sense of self-confidence as a homosexual officer and overall confidence in the service, and ultimately leading to psychological problems, increasingly strident declarations and dismissal for reasons of health.⁴⁰ Declared medically unfit for service since 1980, the captain was retired due to illness on 30 September 1982 under §44 (3) and (4) SG.⁴¹ Lindner’s struggle for gay rights in the military, both in general and on his own behalf, encompassed innumerable petitions and complaints filed against his superiors and the BMVg, written publications, and open lectures.⁴² In doing so the captain could not hope for any support from the German Armed Forces Association (Deutscher Bundeswehrverband); a 1982 attempt to win the association chairmen over for the cause of homosexual soldiers, let alone interest them, had failed. The subject had never come up before at either district or general meetings – the “overwhelming majority of soldiers” was “not attached [to the topic] in the way you might have expected.” It “was not a subject for the Bundeswehr” if one wanted to “avoid arguments,” association chairman Colonel Volland informed Lindner; it was “rather a negative stance that was adopted” in this case. It was the same old story: “Integrating homosexual soldiers would necessarily lead to unrest within the ranks.”⁴³ The office of the parliamentary commissioner for the armed forces had already replied to a previous petition from Lindner in 1980 by rehashing the ministry argument about “endangering discipline and fighting power.”⁴⁴

Lindner did not lose heart, laboring to make sure that homosexuality ultimately remained a topic on the desks, and thus in the minds of officers, government officials and lawyers alike. His letters, proposals and informational pieces, as well as his legal complaints and action, take up any number of thick folders in multiple BMVg offices.⁴⁵ In July 1981, already declared medically unfit but still in

⁴⁰ For a full account see chapter 2.

⁴¹ BArch, BW 1/503302: BMVg, PSZ III 6, 29 June 2001; *ibid.*, BMVg, PSZ I 8, 20 June 2002. Also mentioned in “Soldaten als potentielle Sexualpartner,” 22.

⁴² On 17 June 1982, for example, Lindner addressed “The fate of homosexuals in the Bundeswehr” at the Martin Luther King House in Hamburg – and then again on 9 February 1984 at Hamburg’s Magnus Hirschfeld Center, an initiative he cofounded – regarding the current scandal surrounding General Kießling.

⁴³ Federal Chairman of the German Bundeswehr Association to Captain Lindner, 21 July 1982.

⁴⁴ Office of the Parliamentary Commissioner for the Armed Forces to Captain Lindner, 9 September 1980.

⁴⁵ To cite just a few examples, on 22 September 1981 Lindner wrote to BMVg, Org. 1; that same day

active service, Lindner informed the BMVg that he was planning an international press conference in Bonn for that October. The topic would be “Human rights and dignity in the Federal Republic of Germany – On the example of homosexuals in the German armed forces.”⁴⁶

The captain’s case also engrossed the German Bundestag in 1981 after Lindner won Hamburg deputy Helga Schuchardt (FDP) over to his cause. In an inquiry to the defense ministry, Schuchardt asked “how the federal government accounts for the contradiction that homosexual men are fundamentally fit for military service and longer periods of voluntary service, yet denies their suitability for leadership positions despite scientific consensus that homosexuality is not an illness but merely one variety of sexual behavior?”⁴⁷

As was customary for this sort of question-and-answer period, a prewritten answer was read aloud to the plenary session word for word before debate about the inquiry and its response began (a format that has come in for frequent criticism).⁴⁸ Parliamentary State Secretary Wilfried Penner of the SPD answered for the BMVg in 1981, contending that the government did not see any contradiction in the juxtaposition; the two sets of facts were not comparable. When it came to military eligibility, it was the person’s ability to integrate that was of defining importance. Being suitable for leadership roles, on the other hand, depended on whether a “person is capable of exercising the corresponding degree of authority in that role.”⁴⁹ This latter question had been answered in the negative, in accordance with court rulings at the highest instance. Schuchardt responded with a “practical question”: If homosexuals were not able to take on leadership roles, how likely did the state secretary consider it that those soldiers would be susceptible to blackmail, “precisely because they had denied their homosexuality?”⁵⁰ The state secretary

about another matter to BMVg, P II 1; on 30 September 1982 to the editorial board at the magazine *Truppenpraxis*, and again to FÜS at the BMVg on 20 January 1983 under the letterhead “Independent Homosexual Alternatives, Public Affairs,” from Hamburg. All archived in BArch, BW 2/31224.

46 BArch, BW 2/31224, letter from Captain Michael Lindner to the Federal Ministry of Defense on 29 July 1981.

47 German Bundestag, 9th legislative period, 45th Session, 24 June 1981, typed transcript, 2541.

48 In an interview with Roger Willemsen for *Die Zeit* (Die Zeit 17, 16 April 2014), former Bundestag President Norbert Lammert criticized the period as “the weakest part of the German parliamentary system,” “unpresentable” and “politically meaningless in its current format”. Willemsen is the author of a satirical book about the course of daily debate in the Bundestag entitled *Das hohe Haus* (The high house). “There were no ministers on the government bench, only the state secretary [...] the opposition had already handed its written questions in. And then the state secretary read a prewritten answer out loud.” Quoted in Graw, “Echter Schlagabtausch oder höfisches Ritual?”

49 German Bundestag, 9th legislative period, 45th Session, 24 June 1981, typed transcript, 2541.

50 Ibid.

countered that he had limited himself to the issue of authority in his answer. When Schuchardt then asked what the basis was for the supposition that homosexual soldiers or superiors had no authority, Penner tersely responded, “certain life experience.”

Deputy Ralph Herberholz (SPD) continued the line of questioning, asking whether “the ability to display authority depends on an individual’s sexual behavior?” Penner replied that he “did not mean to be understood in that way.” What mattered, he continued, was whether certain sexual behavior became known about, eliciting then party colleague Karl-Heinz Hansen to interject “Aha, so it’s nineteenth-century hypocrisy then!”⁵¹ A question from Deputy Schuchardt followed as to whether the government shared the opinion that its treatment of homosexual soldiers was not reconcilable with the legal reforms of §175 StGB from 1969 and 1973. Penner replied that “the reforms concerning §175 StGB hold no direct bearing on whether or not homosexual soldiers are fit for positions of authority. Fitness can also be denied in cases where neither a criminal act nor disciplinary misconduct is present.”

The FDP deputy was not done yet, and returned to the question of authority. “Do not the risks of being discovered tempt those affected to hypocrisy? Do not you believe that people who are prone to hypocrisy can no longer be the first to hold authority?” (*Der Spiegel* picked up Schuchardt’s veiled accusation in an article that year, writing that the FDP deputy had charged the defense ministry with “practically inciting homosexual soldiers to hypocrisy.”⁵²) Dr. Penner responded that “the difficulties in which the group of people under discussion find themselves are sufficiently known about.” It had not been possible up until now to look beyond the security precautions he had described, although it was possible that society would continue to evolve. When Schuchardt asked hopefully whether she might draw from this a certain chance to expedite the defense ministry’s process of forming an opinion on the matter, the state secretary sidestepped the issue. He did not believe that it was a matter of the BMVg forming an opinion, “at any rate I would not want to restrict the developments to this establishment alone. I believe it’s a matter of society as a whole forming an opinion.”⁵³ At this point, Deputy Herberholz asked

51 Here and in what follows, *ibid.*, 2542. At the time proceedings were underway to expel Karl-Heinz Hansen from the SPD due to his harsh critique of counter-armament, specifically for claiming that Chancellor Schmidt’s defense policies were “a sort of secret diplomacy against his own people.”

52 “Berufliches”: Michael Lindner,” 176.

53 German Bundestag, 9th legislative period, 45th Session, 24 June 1981, typed transcript, 2542.

the parliamentary state secretary and fellow party member a question that immediately showed the visible discrepancies in the BMVg's position.

State Secretary sir, you have just said that only when a certain form of sexual behavior becomes known about does one lose the ability to exercise authority. Am I to assume then that sexual behavior unknown to the BMVg basically guarantees the ability to exercise authority where this matter is concerned? If you affirm this, then how is it that the BMVg actually determines sexual behavior if people do not exactly go around shouting it from the rooftops?⁵⁴

In this instance, all Secretary Penner could do was assure the representatives in parliament that the BMVg did not make inquiries about sexual tendencies. Conservative SPD member Lothar Löffler sprang to the secretary's defense, using a follow-up question to articulate the position that sexual behavior was not something that could be fixed by defense ministry decree but a broader social issue. Penner concurred readily, replying that that matched his view. Claus Jäger of the CDU then provided the finale to the debate, tiresomely dressing up in the form of a question his own announcement that "in securing suitable growth in leadership, [the Bundeswehr] has quite a different set of concerns weighing at present than the impact of the reform of §175 on soldiers' ability to lead." Penner did not pick up the ball from the opposition, responding that "Unlike you, I'm of the opinion that from time to time, when appropriate, it is perfectly becoming for parliament to make visible discrimination against different groups of people." The transcript records applause from the SPD and FDP and interjections from the CDU/CSU that "that was not at all what he asked!"⁵⁵

Nineteen years later in 2000, *Der Spiegel* asked Wilfried Penner, now parliamentary commissioner for the armed forces, about his previous position on homosexual soldiers in positions of authority. He replied that "even at the time he had not felt right" about his statements before the Bundestag. He had changed his opinion in the meantime, and "the younger generation views it much more casually anyway."⁵⁶

In 1979 at the request of Bundestag representative Hertha Däubler-Gmelin, the BMVg's legal department filed a summary of the regulations concerning the "assignment and career advancement of homosexual soldiers." Signed by Parliamentary State Secretary Andreas von Bülow, the document began by stressing that a homosexual soldier was "as a matter of principle not treated any differently than

⁵⁴ Ibid., 2543.

⁵⁵ All quotes *ibid.*

⁵⁶ "Im Kosovo noch lange benötigt."

heterosexual soldiers,” and that it would only be different “if the soldier’s homosexual activity impacts the official line of duty.”⁵⁷ At any rate, “whether the soldier can continue to advance, remain in his official post or should receive a different assignment [...] or whether there is a possibility of dismissal” would be decided based on individual circumstances. A soldier’s homosexuality being known about within the service meant it was no longer a private matter but had now made its way into the official realm. It meant that the soldier was unfit for a higher assignment and the greater supervisory powers it would entail. As a rule, the soldier’s advancement was no longer possible.

A closer look at the phrasing reveals differences to corresponding statements from the 1980s and 1990s. Unlike later communications, there was no mention of homosexual soldiers’ general ineligibility to serve as superiors or military instructors in 1979. Nor, in contrast to subsequent regulations, was there any reference to mandatory dismissal from positions of authority, as with the case of Lieutenant Winfried Stecher in 1998.⁵⁸ In the 1979 paper, transfer, and thus removal from one’s official post was required only in the event that the “respectability and trustworthiness” of the soldier in question had been diminished. This formulation would certainly have allowed platoon leaders like Lieutenant Stecher and others whose homosexual orientation had no impact on their official duties to remain in their posts. This in turn intimates what other source comparisons reveal: Throughout the 1980s and 1990s the Ministry of Defense took a decidedly harsher stance against homosexual superiors, maintaining this strict line undeterred up to the new millennium. Two ministry papers from the early 1980s proved decisive markers along the way.

4. Policy Papers, from 1982 and 1984

An officer or non-commissioned officer who states his homosexual tendencies must reckon with no longer being promoted or entrusted with higher-order tasks. Furthermore, he can no longer remain in the troops in the service post of direct superior (e.g. as a group leader, a platoon leader, company head or commander). He will receive an assignment in which he is no longer the direct superior of predominately younger soldiers.⁵⁹

⁵⁷ BArch, BW 1/304284: BMVg, VR I 1, 15 February 1979. See also BMVg, parliamentary state secretary to Representative Herta Däubler-Gmelin (SPD), 23 February 1979, as in what follows.

⁵⁸ See below in section 9 e of this chapter for a more detailed account.

⁵⁹ BArch, BW 2/31224: BMVg, P II 1, Az 16-02-05/2 (C) R 4/84, 13 March 1984. A copy is also available in BArch, BW 2/38355, and verbatim in a BMVg previous response to a letter from a petty officer 2nd class in early February 1984, i.e. at the height of the Kießling affair. BArch, BW 1/378197: BMVg, P II 1 to Petty Officer, 2nd Class G., 8 March 1984.

Issued by Section II 1 of the BMVg personnel department on 13 March 1984, the quoted regulations came in a circular letter intended and subsequently used as guidelines for department employees. Though the date suggests otherwise, the policy paper was not created in the wake of the Wörner–Kießling affair. The exact same wording can be found in another paper from the same section two years before in August 1982, which among other things discusses gay officers' "reduced ability to assert themselves" and the need to "protect military subordinates against ranking homosexual officers."⁶⁰ In the view of the personnel unit, it was not merely conscripts and their parents but "broad segments of the population" that "would show no understanding for soldiers being exposed to the influence of superiors with deviant behavior." For young prospective officers who were gay, their unsuitability for positions of authority meant the end of their careers before they had begun. A young cadet admitting his homosexuality would lead to dismissal in a simplified procedure as "unfit to serve as officer," with §55 (4) SG providing the legal basis in this case.⁶¹ (A staff officer today recalls one incident from his officer training in 1995, when his then partner had planned a weekend visit to the school in which he was enrolled. Following protocol as he did, the private (and officer candidate) requested permission for the overnight stay from his superior. The course leader asked him what his relationship to the man was. All of a sudden, the entire future career of the prospective officer hung in the balance. Without knowing the personnel guidelines himself, the officer cadet instinctively sensed the danger that lay in an honest answer and opted for an untruth, replying that the visitor was an old friend from school. The course leader was satisfied, and the cadet's partner came to visit that weekend. Officer training continued, the eyewitness became an officer and today is a lieutenant colonel.)

Even if, as in this case, an officer candidate behaved "inconspicuously" and succeeded in making the rank of lieutenant, he was still liable to be shown the door – both lieutenants and younger lieutenant colonels could be dismissed up to

⁶⁰ BArch, BW 1/304286: BMVg, P II 1, 12 August 1982.

⁶¹ Ibid. "A fixed-term soldier may be dismissed during the first four years of his service if he no longer meets the demands his career track will make of him. An officer cadet who is unqualified to be an officer, a medical officer cadet unqualified to be a medical officer, a military music officer cadet unqualified to be a military music officer, a sergeant cadet unqualified to be a sergeant and a non-commissioned officer cadet unqualified to be a non-commissioned officer shall be discharged without prejudice to the first sentence of this paragraph." If the party concerned has previously been a fixed-term non-commissioned officer or enlisted soldier prior to his admission to the career of officer or sergeant, he shall not be discharged but "restored [to his former status], provided he still has a service rank that corresponds to that career track." See http://www.gesetze-im-internet.de/sgl_55.html (last accessed 31 March 2021).

the end of their third year under §46 (4) SG for “lacking qualification as a career soldier.”⁶²

A closer inspection of the sources leaves it unclear as to whether this regulation affected all officers or only career soldiers. The personnel division took the latter view in 1990, writing that the differences in regulation between fixed-term and career soldiers were “hardly satisfying.”⁶³ A previous paper by the legal department from 1979, on the other hand, had explicitly limited the measure to lieutenants in career service.⁶⁴ However, the policy of dismissing homosexual officer candidates as unsuitable applied indisputably for all prospective officers.⁶⁵

The BMVg's excommunication policies did not only affect gay officers and officer candidates, but reached conscripts hoping to continue voluntary service in the rank-and-file as well. The justification cited in the latter case was that “NCOs are largely recruited for the Bundeswehr from this career group,” and homosexuals were not qualified to serve as NCOs.⁶⁶ Privates or privates first class also did not stand any chance of remaining in the Bundeswehr even without the intention to apply for NCO, as “longer-serving rank-and-file soldiers still obtain a position of trust in their units or formations even without admission to the career group of NCO.”⁶⁷

Even a soldier with a sterling assessment record stood zero chance of lengthening his contract or being appointed to career service if his homosexuality became known, justified in terms of the restricted number of assignments available to him.⁶⁸ Since the Plein proceedings in 1972, Bundeswehr leadership had settled on the following point: Homosexual superiors lacked the requisite trust of the soldiers under their command.

Underlying the view of the BMVg is the experience that due to the broad rejection of homosexual forms of behavior within the ranks, superiors with homosexual tendencies are unable

⁶² BArch, BW 2/31224: BMVg, P II 1, Az 16-02-05/2 (C) R 4/84, 13 March 1984. A copy is also available in BArch, BW 2/38355. See also BArch, BW 2/32553: BMVg, Füs I 4, 3 February 1993.

⁶³ BArch, BW 2/31224: BMVg, P II 1, 2 March 1990.

⁶⁴ BArch, BW 1/304284: BMVg, VR I 1, 15 February 1979, as well as BMVg parliamentary state secretary to MdB Herta Däubler-Gmelin (SPD), 23 February 1979.

⁶⁵ Ibid.

⁶⁶ BArch, BW 2/31224: BMVg, P II 1, Az 16-02-05/2 (C) R 4/84, 13 March 1984, verbatim previously in BArch, BW 1/304286: BMVg, P II 1, 12 August 1982 and in the BMVg response to a letter from a petty officer 2nd class in early February 1984, i.e. at the height at the of the Kießling affair. BArch, BW 1/378197: BMVg, P II 1 to Petty Officer, 2nd Class G., 8 March 1984.

⁶⁷ Ibid.

⁶⁸ These are the retrospective findings on §37 SG, which governed appointments of career or fixed-term soldiers, in Walz, Eichen and Sohm, *Kommentar zum Soldatengesetz*, 647–48.

to hold their ground without suffering a severe loss in their official authority. As the career groups of NCOs and officers consist of a series of assignments that are predominately carried out within the ranks, superiors with a same-sex orientation cannot be entitled to expect treatment equal to soldiers with normal sexual tendencies – especially when it comes to official promotion.⁶⁹

The same argumentation was now extended even to longer-serving privates first class and lance corporals. Homosexual soldiers' alleged unfitness to serve as superiors thus also justified their exclusion from lower career groups down to the rank-and-file, a line of reasoning that was unconvincing even at the time but provided effective cover for itself. It made no difference that by far not every nonrated soldier wanted to become an NCO, and not every NCO or officer wanted to enter career service. In the end, the disadvantages mutually sustained each other from different vantage points and the circle closed in on itself, leaving soldiers who identified outwardly as homosexual without any career prospects in the Bundeswehr.

A BMVg spokesperson made no secret of this policy speaking to *Der Spiegel* in 1993. Anyone who announced his homosexuality when applying to be an officer cadet would be turned away “as fundamentally unfit for the officer and NCO career groups.” Bundeswehr leadership viewed “soldiers with deviant sexual behavior as a ‘potential target for foreign services’,” the article continued, going on to cite the well-known case of the Austrian colonel Alfred Redl. The BMVg spokesperson pointed to the “the topic’s polarization in broader social discourse” as a further reason for restrictions.⁷⁰

Günther Gollner had already warned the Bundeswehr against its reliance on disciplinary measures in 1977, in one of the first academic publications on discrimination against homosexuals in professional life. It would be better instead “if they settled issues related to homosexuality at the level of personnel leadership. Matters that no longer lead to removal from service but a transfer at most will soon no longer create a stir; and what does not create a stir is hardly capable of diminishing someone’s reputation.”⁷¹

This was exactly how the BMVg and the Bundeswehr were already proceeding. Yet Gollner turned out to be mistaken in his assumption that personnel measures like transfers would not create a stir.

Where exactly do you draw this inhuman attitude from, of regarding every homosexual officer or NCO as unfit a priori for leadership responsibilities? [...] From Alexander the Great and Gaius Julius Caesar on down to Prussia’s Frederick the Great, their homosexual tenden-

⁶⁹ BArch, BW 2/31224: BMVg, P II 1, Az 16-02-05/2 (C) R 4/84, 13 March 1984.

⁷⁰ “Versiegelte Briefe,” 51.

⁷¹ Gollner, “Disziplinarsanktionen gegenüber Homosexuellen im öffentlichen Dienst,” 116.

cies are common knowledge. You would hardly want to insinuate that these men had difficulties in giving orders and receiving compliance. Your automatism in immediately viewing gay superiors as unfit to serve can only be based on your prejudices and/or your homophobia [...] As a homosexual soldier and officer, I find your statements discriminating in the highest degree, because they are stigmatizing. Up until now I had believed that the defense ministry had woken up, at least by the end of the Kießling affair, and finally set aside past relics of vilifying homosexuals from the era of the Nazi dictatorship. It pains me greatly to have learned the opposite from you.⁷²

This was a captain's 1985 rejoinder after the BMVg responded to his question about the treatment of homosexual superiors. The BMVg's letter had "sent a 'cold shiver' down the spine, to say the least."⁷³ The captain issued a clear challenge two weeks after receiving the reply, personally forwarding news of his own homosexuality along with a request for a career prognosis through his superiors to the BMVg personnel department.⁷⁴ The department responded within days, listing the entire menu of restrictions. Going by the current personnel guidelines, the only "career prognosis" was its end, or in the words of the personnel officers and lawyers, "no leadership assignments, no further advancement or promotion." Four days after the captain's direct superior received the letter, the captain was removed from his post as the area leader of a telecommunications sector.

The press also took up the case, with *taz* publishing an article in August 1986 that bore the headline "Unacceptable in male society."⁷⁵ "Hostility toward homosexuals" lived on in the military even after the Wörner–Kießling affair, with "gays [...] forced into mendacious and secretive behavior by every means." The captain's status as a career soldier was changed to that of a fixed-term soldier with a term of twelve years; he would leave the Bundeswehr "in just under a year," in summer 1987.⁷⁶ Yet the change in status could only occur with the captain's consent, as soldiers of any rank identified as homosexual generally had not been subject to immediate dismissal since the 1970s (as long as they had not implicated themselves in

72 Letter from Captain P. to the BMVg head of information security from 8 October 1985. (The author has a copy of this and the following letter from 21 October 1985 in his possession. Thanks to Michael Lindner of Hamburg for supplying them.)

73 Ibid.

74 Letter from Captain P. to the BMVg, P IV 5 from 21 October 1985, with copies sent to the legal advisor of the chief of defense, the parliamentary commissioner for the armed forces, the board chairman at the German Bundeswehr Association, the Bundestag Defense Committee and the defense policy working groups at the CDU/CSU, SPD and FDP, among others. Excerpts also quoted in BArch, BW 2/31224: Military Service Court North, 12th Division, ruling, Az N 12 BL a 3/86 on 16 December 1986.

75 Wickel, "In einer Männergesellschaft nicht hinnehmbar."

76 Ibid.

any other sort of official misconduct). The same went for career soldiers who had completed their third year of service as it did for fixed-term officers, NCOs and non-rated soldiers who had completed their fourth year of service. The BMVg had again ruled out premature retirement for the “person concerned” in its decree from March 1984, at least so long as no evidence of inability to serve was present, “something toward which homosexual orientation [did] not count.”⁷⁷ The year before, in 1983, the personnel department had ascertained that “early retirement that did not rest on inability to serve or a court ruling” was not possible in the case of an officer “at present.”⁷⁸ Ten years later a BMVg division again found that homosexuality was “not grounds for dismissal for reasons of health [sic].”⁷⁹ The Bundeswehr was far more progressive on this point in the late 1970s than other NATO forces, many of which continued to dismiss homosexuals without exception into the 1990s, even up through 2000.⁸⁰

The BMVg made no attempt to hide the matter from the media, for better or worse. In 1993 *Der Spiegel* quoted a ministry spokesperson as saying that “homosexual soldiers who were already officers or NCOs will remain in the Bundeswehr if no extraordinary circumstances arose. They will, however, only be assigned to posts that hold no leadership responsibility.”⁸¹

The August 1982 paper did not simply look to justify the current restrictions against homosexual superiors, officers and officer cadets. The author, a member of the personnel department, also cast an eye toward future developments for which the Bundeswehr had to be prepared, in his view. The document’s candid and undogmatic reflections are surprising in how closely they anticipate the changes that would come about in 2000, and deserve to be acknowledged and recounted here.

Society’s increasingly liberal views on homosexual behavior, the author wrote, may bring changes in jurisprudence “if it is not possible to set forth compelling reasons to rule out introducing this liberalization to the armed forces.”⁸² This made it “necessary to develop ideas amenable to the armed forces in a timely fashion that will also allow superiors with a same-sex orientation to continue to advance officially through access to higher-rated service positions.” The paper was also ahead of its time in reckoning that the armed forces would open further to women. In that case, it was an open question whether case law would still accept the argument

77 BArch, BW 2/31224: BMVg, P II 1, Az 16-02-05/2 (C) R 4/84, 13 March 1984. A copy is also available in BArch, BW 2/38355.

78 BArch, BW 1/304286: BMVg, P II 1, 12 August 1982.

79 BArch, BW 2/32553: BMVg, Füs I 4, 3 February 1993, also in BW 24/14249.

80 See chapter 7 for a full account.

81 “Versiegelte Briefe,” 49.

82 BArch, BW 1/304286: BMVg, P II 1, 12 August 1982. Also in what follows.

that “a homosexually inclined superior is constantly exposed to the risk of seeing potential sexual partners in his subordinates, and being influenced by sexual motivations in his behavior toward subordinates.” Logically, it followed that the same “would also have to apply for heterosexually inclined male or female superiors toward subordinates of the respective opposite sex.”⁸³

Every subsequent official position and reply from the BMVg on the subject of homosexuality repeated the 1984 orders verbatim. BMVg department InSan I 1 did however build on the guiding principle in 1990 by noting that if someone applied for career or fixed-term service without disclosing his (homo)sexual orientation, he would be accepted based on qualification and need.⁸⁴ (“Qualification and need” were and remain a standard formula in the Bundeswehr for any statement dealing with hiring or subsequent personnel decisions.) Fixed-term soldiers were acceptable as career soldiers. In short, “as with heterosexual soldiers, an entirely normal military career stood open to this group” one sentence began – before going on to qualify – “insofar as their sexual orientation does not in some way become known to the service.” The phrase “in some way” deserves attention here, as it specifically implied revelations that were not only offered freely by soldiers themselves but chance discoveries, as in the course of MAD reviews or by targeted denunciation. This relativized the promise of an “entirely normal military career.” Yet in practice, nothing changed. As ever, the sword of Damocles continued to swing above the heads of gay officers and NCOs, capable of coming down on them at any time, without any say or possibility of redress. Nearly all the eyewitnesses interviewed by the author gave impactful accounts of how aware they were of the constant risk, the tremendous psychological burden and the limitations it imposed, including on their private lives.

Looking back, the BMVg emphasized in 2016 that “No ministerial orders were issued to all personnel posts in the Bundeswehr.”⁸⁵ Was this a defensive, even a false statement to downplay earlier papers that were unflattering from the present perspective? It was not. The BMVg personnel department had explicitly emphasized previously in January 2000 that no “ministerial orders for personnel oversight over homosexual soldiers” had been sent out to all personnel posts. Rather, the 1984 letter from division P II 1, internally dubbed the “Westhoff paper” after its author, had only been circulated to the personnel offices at the joint staff of the armed forces and central personnel posts. These formalities notwithstanding, the

⁸³ Ibid.

⁸⁴ Here and in what follows, BArch, BW 1/546375: BMVg, InSan I 1 to the British defense attaché in Bonn, 21 August 1990.

⁸⁵ BMVg, P II 1, Az 16-02-5/2 from 22 August 2016.

paper reflected the “principles that apply to date [January 2000].” Ministry-wide orders had consciously been avoided in 1984, with the view being that “the presumably smaller percentage of homosexual soldiers compared to the overall population does not justify it.” The number of legal remedies (read complaints and inditements) to which the ministry had to attend was minor, “if labor intensive.”⁸⁶

The personnel department did draft a centralized decree in advance of the 1998 Bundestag elections that explicitly contained “no trends toward softening” but instead couched current practices in clean-cut legal formulations, i.e. which would have locked the restrictions in place. The armed forces suggested instead letting the orders quietly vanish into the drawer “for reasons of expediency.” (Soldiers like to speak in this context about “Filing Unit P,” – “P” for paper basket.) The reason for their concern was another “media field-day.”⁸⁷ What was more, at the time the chairman of the German Bundeswehr Association had promised to cover the legal costs “up to the final instance” of an air force lieutenant then protesting his transfer based on his homosexuality.⁸⁸ This led the ministry to assume that the association’s representatives in the joint spokesperson committee, the principal body representing soldiers’ interests at the BMVg, would object to new, restrictive orders.⁸⁹ The old policies thus remained in place without being put to writ or confirmation coming through the established channels.

In March of 1984 the BMVg went public with the regulations even before they were circulated among the personnel department. And it did so not just anywhere but on the most important stage in German politics, during a plenary session of the Bundestag. In mid-January 1984, as the Wörner–Kießling affair reached fever pitch, parliament took up the topic of the Bundeswehr’s treatment of homosexual soldiers in Bonn. Deputy for the Greens Wolfgang Ehmke inquired among other things about the legal basis for dismissing homosexual soldiers and superiors. BMVg Parliamentary State Secretary Würzbach responded by quoting from the personnel guidelines, which were distributed shortly thereafter. Under §55 (5) SG, a fixed-term soldier could be dismissed from the Bundeswehr during his first four years of service “if remaining in his post would seriously endanger military order or the reputation of the Bundeswehr.” That included cases in which fixed-term soldiers came under disciplinary action or were criminally convicted for homosexual activity. §55 (4) SG stipulated that an officer candidate unfit to become an officer should be dismissed. “Here too, homosexual activity could be grounds for such mea-

⁸⁶ BAArch, BW 1/502107: BMVg, PSZ III 1, 5 January 2000.

⁸⁷ Ibid.

⁸⁸ See chapter 4, section 9.e, and chapter 6, section 2.

⁸⁹ BAArch, BW 1/502107: BMVg, PSZ III 1, 5 January 2000.

sures in specific cases. The same applied for lieutenants up until the end of their third year as officers under §46 (4) SG.”⁹⁰ Moreover, a military service court could order both fixed-term and career soldier to be removed from service under §63 of the Military Disciplinary Code in the event of serious disciplinary misconduct, “e.g. same-sex relations with a subordinate.” Würzbach’s remarks reflected the legal situation with great precision, meaning that parliamentarians and the press – and with them the public – knew about the BMVg’s guiding practices by January 1984 at the latest. SPD deputy Dietrich Sperling’s followed up by asking whether that meant “a soldier who openly confesses his homosexuality and wishes to become an officer has an incomparably more difficult time getting promoted and becoming a superior than someone who openly discusses his heroics with women, and must endure much more invasive investigation of his fitness to serve than the other who openly and permissively lives out his virility as a heterosexual.” “Colleague, sir, I can confirm this,” came the state secretary’s reply.⁹¹

The state secretary stressed the fact that “no initiatives had been developed at the Bundeswehr to learn about soldiers’ homosexual tendencies,” in line with the “respect the service held for the soldier’s entitlement to the protection of his private sphere.” For these reasons there had been “no systematic registration of cases in which same-sex behavior by soldiers had led to dismissal or removal from service by court order.”⁹²

In the course of the lengthy debate, which even today is worth reading, State Secretary Würzbach laid out a further aspect that seemed important to him: A duty of care existed toward homosexual soldiers, especially “if they showed extreme tendencies,” since it had come to pass “that other soldiers would make fun of them, yank their chain, encourage or force them to behave in certain ways [...] press-gang or blackmail them.” This explained why “certain measures within an organization such as the armed forces are [were] required.”⁹³

Norbert Gansel of the SPD later asked whether he could summarize the state secretary’s position as being that “in the Bundeswehr, a soldier who is homosexual but has neither incriminated himself under general criminal law nor abused his official position and otherwise lives among ordered relations is not discriminated against in any way.” “Yes,” Würzbach replied “as I relate that to the service and superiors.” Würzbach then added that “in human practice” discrimination by

⁹⁰ German Bundestag, 10th legislative period, 47th Session, 19 Jan 1984, typed transcript, 3377.

⁹¹ *Ibid.*, 3379.

⁹² *Ibid.*, 3377.

⁹³ *Ibid.*, 3378.

fellow soldiers “could not be ruled out and, as experience teaches us, tends to set in.”⁹⁴

One idea advanced in the personnel office’s paper came in for special criticism from the armed forces: Creating service posts specifically for homosexually oriented soldiers. “Establishing and demarcating service posts for this group would as a matter of course lead to heterosexual soldiers also being assigned to those posts, who could potentially find this unacceptable.”⁹⁵ There was no need for action in general; the rulings at the Supreme Administrative Court were sufficient. In 1987 Füs I 4, the personnel section responsible for leadership development and civic education, cited another reason to stay as far away from the topic as possible: “Homosexuals are among the high-risk groups when it comes to the immunodeficiency disease AIDS, bringing a new dimension to the issue that in light of the political disputes requires proceeding with the utmost caution.”⁹⁶

Given the circumstances, and since no new findings were expected, Füs I 4 saw no need for a meeting. Section P II 1 could “not provide endorsement” and insisted on one.

I admittedly share your view that the subject requires the utmost caution, and likewise your concerns about establishing dedicated positions, or even the potential consequences of holding a position dedicated especially to the group of people in question. I’m not able to share your view that the supreme court rulings are enough to enable providers to decide appropriately in individual cases.⁹⁷

What was more, homosexuals, including soldiers, would open up “more and more frequently about their tendencies.” Interested parties would increasingly make it an obligation to protect minorities. In saying so, the personnel office was not interested in revising its position so much as fortifying it yet again for the foreseeable judicial and political disputes.

In my opinion, the current line should be maintained. In all likelihood, this will result in increased complaints and court proceedings as well as activity within parliamentary politics and on the behalf of the interested parties. I thus see coordinating between users and providers as indispensable.⁹⁸

⁹⁴ Ibid., 3379.

⁹⁵ BArch, BW 2/31224: BMVg, Füs I 4 to P II 1, 2 September 1987.

⁹⁶ Ibid.

⁹⁷ BArch, BW 2/31224: BMVg, P II 1 to Füs I 4, 7 October 1987.

⁹⁸ Ibid.

(In the world of the Bundeswehr, *Bedarfsträger* or “users” meant the armed forces, while *Bedarfsdecker* or “providers” meant personnel leadership.) The meeting resulted in the following arrangement:

1. Advancement (training for advantageous assignments, transfer to similar service posts and subsequent promotions) is generally ruled out. Cases that arise will be considered on this basis. Exceptions are possible only within narrowly defined bounds.
2. There will be no tagging of service posts for which homosexually oriented soldiers would come under consideration.
3. A regulation (ministry decree, G1 Note) will not be issued.⁹⁹

Decisions dating back thirty or forty years neither can nor should be measured (exclusively) against today’s standards. The armed forces’ line of reasoning at the time was entirely plausible from their point of view: The prejudices that existed among the broader population toward homosexual men would find reflection in the minds of its soldiers. In doing so, BMVg lawyers generally had their eyes trained on conscripts and younger fixed-term soldiers who would carry societal reservations with them into the Bundeswehr, although those same reservations certainly existed among all ages and ranks in the armed forces. In the estimation of the Bundeswehr, reservations like these could trigger a loss in authority in superiors who were known to be homosexual. The following line of argumentation has been described repeatedly; the BMVg lawyers derived it from the constitution, elaborating a highly abstract but legally effective justification for the restrictions. With the arguments they believed themselves forearmed for the possible and increasingly likely scenario of a complaint before the Federal Constitutional Court (Bundesverfassungsgericht, BVerfG). By the ministry’s logic, the judges at the Karlsruhe court would then have to weigh and decide between the constitutional mandate to defend the country and the foreseeable argument of the constitutional ban on discrimination. The Bundeswehr’s legal staff spied a favorable hand for itself in that case. Yet their arguments had a weak spot: The evidence for, let alone the plausibility of their causal chain was lacking. Did homosexual superiors jeopardize the combat readiness of the armed forces in actual fact? Ultimately, the reservations about homosexuals playing out in the minds of the lawyers and employees of the BMVg reflected the norms and values of society at large.

This sort of assessment may still have been current in the 1960s, the 1970s and the early 1980s. Yet with each new decade, gay (and lesbian) life paths met with increasing tolerance and acceptance. This was the very trend, already visible on the

⁹⁹ BArch, BW 2/31224: BMVg, P II 1, note from the meeting on 22 October 1987. A copy is available in BArch, BW 2/31225.

horizon in 1973, that the Münster administrative judges had anticipated with their ruling as a window onto the future.

The BMVg was already pointing out the connection between developments in the Bundeswehr and in society by 1993; speaking to *Der Spiegel* with a view toward further “shifts in society’s moral conception,” the ministry spokesperson would not rule out the possibility “of homosexuality someday no longer being a problematic topic in officers’ circles.”¹⁰⁰

5. Excursus: “Teachers’ Fear of Outing Themselves.”

It was not just soldiers whose careers threatened to come to an end if their homosexuality came out, but nearly anyone in public service. “Even if you don’t violate any existing laws as a homosexual in the public service, you still hold no guarantee of being left in peace, not by a long shot,” one writer lamented in 1981. “Professional bans on homosexuals are seldom acknowledged in public, because most of those affected keep silent as to the actual reasons for not being hired or their dismissal out of fear of their surroundings and justified concern for their further career path.”¹⁰¹

One case from 1974 did draw notice, involving a lawyer working in the cultural ministry for Saarland’s state government, whose “homosexual relationships” had exposed him to “potential public or secret extortion.” Demoralized, the government councilor had quit the service, as *Der Spiegel* reported.¹⁰² The list of teachers dismissed for their sexual orientation is also long.¹⁰³ Much longer would be the never-compiled list all the men who were rejected for the civil service and/or government posts from the outset due to their sexual orientation. “If you won’t go so far as to openly justify it based on the homosexuality of the person, there are usually other ways and means to be free of the candidate.”¹⁰⁴

As with criminal law, civil service law in the Federal Republic followed the well-trod paths of previous decades, following the principle in effect since the turn of the twentieth century that “no homosexual can remain in service, much less enter it”.¹⁰⁵

100 “Versiegelte Briefe,” 54.

101 Stümke and Finkler, *Rosa Winkel, Rosa Listen*, 375

102 *Rosa Winkel, Rosa Listen*, 376–77.

103 For more see Gollner, “Disziplinarsanktionen gegenüber Homosexuellen im öffentlichen Dienst,” 117–124.

104 Stümke and Finkler, *Rosa Winkel, Rosa Listen*, 377.

105 Gollner, “Disziplinarsanktionen gegenüber Homosexuellen im öffentlichen Dienst,” 106

Special standards applied (and still do) to teachers who had either received tenure or held permanent salaried positions. In 1979, the disciplinary tribunal at Düsseldorf Administrative Court ordered a teacher from North Rhine-Westphalia to be removed from his post in the civil service. A regional court had previously sentenced the teacher to pay a fine for crimes against §175 StGB (the newer version) after the judges became convinced he had repeatedly engaged in consensual homosexual activity with a fifteen- and sixteen-year-old. The disciplinary judges for the state of North Rhine-Westphalia certified that the accused had “failed in the core area of his duties as a teacher,” and as such was no longer tenable.¹⁰⁶ The teacher, who had been provisionally removed from service in the meantime, filed an appeal against the ruling that was subsequently denied by the disciplinary senate at North Rhine-Westphalia Superior Administrative Court.¹⁰⁷

In 2019, a former teacher from Berlin looked back on the difficult situation gay teachers still faced in the 1970s in an article for *Der Tagesspiegel* entitled “Teachers’ fear of outing themselves.” “Before, homosexuality in schools was absolutely taboo, you didn’t talk about it. When we became active and visible with the gay movement in the early Seventies, there were professional bans and discrimination at the work place.”¹⁰⁸

6. “I’ll Just Say I’m Gay Then.” Attempts to Shorten the Length of Service

The number of qualified or outstanding officers and NCOs who declined to apply for fixed-term or career service due to restrictions against homosexuals cannot be reckoned. The Bundeswehr rejected them, their potential went unrealized. The author himself can recall many such instances of longer-serving comrades, highly rated officers among them, from his own officer training starting in 1995, and after 1997 as a student at the Bundeswehr University in Hamburg. The armed forces lost highly qualified leaders forever as a result of its policies.

Quite a few officers and NCOs used the fact that the service uniformly denied identified or self-ascribed homosexuals’ ability to serve in positions of leadership to their own particular advantage. From the very beginnings of the Bundeswehr there have been soldiers who sought to exit the military for the free economy as quickly

¹⁰⁶ Disciplinary division at Düsseldorf Administrative Court, Az 15-0-12/79, ruling on 28 June 1979.

¹⁰⁷ Disciplinary Senate at North Rhine-Westphalia Superior Administrative Court, Az V-11/79, ruling on 7 October 1980.

¹⁰⁸ »Die Angst der Lehrer, sich zu outen«.

as possible after completing a degree at one of the Bundeswehr universities. For top graduates from technical or economics courses, offers of well-paid jobs at private companies beckoned in place of the sometimes harsh realities of military life. The issue was that the Bundeswehr did not make it all that easy for officers to leave once they had successfully completed their degree, insisting that they now fulfill the agreed upon period of service. Some tried to get around it by filing as war resisters, although the approval procedure generally showed limited prospects for success. To others it seemed more promising to identify themselves as homosexuals, and thus set the mechanism of automatic dismissal into motion. “I’ll just say that I’m gay then” was one option. Former officers recall that any number of officers dismissed from the armed forces in this way had not actually been homosexual. A person’s sexual tendencies obviously could (and can) not be “verified,” at least not without violating the basic standards of human dignity. In the final instance, the regulations were clear: more or less credible report of a same-sex orientation was enough. The officers turned the Bundeswehr’s own weapons against it.

One officer in this category had studied mechanical engineering at the Air Force Technical Academy. In 1972, now a captain and career soldier in his final year at a civilian technical college paid for by the service, he filed a petition for release due to inability to serve under §44 (3) SG on account of his homosexuality. The personnel department at the BMVg denied the motion.¹⁰⁹ The officer’s appeal to the BMVg was similarly denied on the grounds that while homosexuality could constitute unfitness to serve under §44 (3) SG in principle, not “every homosexual tendency sufficed, but only one heightened to a sexual perversion.” That was not the case with the petitioner, who up to that point in his service had understood how to “curb his tendencies to the extent that they did not cross the threshold of military service or criminal law.”¹¹⁰ The captain made a renewed effort, this time under §46 (3) SG due to special hardship. The Bundeswehr granted this request, but demanded the captain repay all his training expenses to the tune of around 38,000 DM. The former officer filed suit. Bremen Administrative Court accepted the lawsuit and ruled the payment request, which in the meantime had been lowered to around 13,000 DM, unlawful. In their rationale, the Bremen judges took the BMVg’s going line of argumentation as to why gay men were unfit for leadership positions and turned it against the armed forces (and thus the taxpayer) to impose a burden, in this case financial:

¹⁰⁹ BArch, BW 24/7180: BMVg, P IV 4, 23 May 1972.

¹¹⁰ BArch, BW 24/7180: BMVg, VR I 1, 4 July 1972.

Were the plaintiff to remain in service, it would have meant a disproportionately heavy burden for him. Despite the liberalizations that have taken effect in the meantime – and leaving open for now whether it is justifiable or not – homosexuals still come across as out of place in the Bundeswehr's male society. This makes it plain to see that the plaintiff would have had to count on his homosexual tendency posing all kinds of difficulties if it came out in the Bundeswehr. His career path as an officer too would also have been [...] diminished, as same-sex tendencies preclude [...] a soldier's suitability positions of authority [...] It would have been unreasonable therefore for the plaintiff to remain in career service.¹¹¹

The BMVg's demand to pay back educational expenses would similarly represent a special hardship for the plaintiff.¹¹² The lawyers for the BMVg decided against appeal and embraced, or perhaps put up with, the judgement. Four expert reports confirmed the former officers' homosexuality as "heightened to a sexual perversion," the court's ruling on special hardship was "unshakeable."¹¹³

Still, the service did not make departure all that easy. The sources preserve one case from 1988 involving a lieutenant. The officer, who had signed on for a period of six years in the service, was removed from his course of study at Bundeswehr university after failing his preliminary diploma examination and transferred to serve out the remainder of his time in the troops. The lieutenant sought to avoid what clearly seemed to him unfavorable career prospects by filing for release due to inability to serve under §55 (2) SG, on grounds of homosexuality. The personnel division at the BMVg turned down the lieutenant's first application; a Bundeswehr hospital had found him fully eligible for military service, and under the guidelines of ZDv 14/5 no illness or inability to serve that would justify dismissal under §55 (2) SG was in evidence.¹¹⁴ The officer's attorney filed an appeal. His client was homosexual, something he had felt more and more strongly over the past years and to which he now openly confessed. Independently of whether or not homosexuality should be viewed as a disease in the strict medical sense, it presented an obstacle to his client in fulfilling his service duties. In this case the lawyer flipped the familiar restrictions against homosexual superiors around to use them as ammunition against the BMVg on behalf of his client.

My client's tendency brings him into continual conflict when performing his service within the ranks. On the one hand he knows that officers and nonrated troops learning of his tendency could lead to difficulties. In view of the vast discrepancies in society's attitudes toward homosexuality, it could only be feared that a number of officers would lose their trust in my client, while a number of NCOs and enlisted men would lose respect. For this reason, up to

¹¹¹ BArch, BW 1/304284, ruling at Bremen Administrative Court, Az 3 A 342/79 from 24 July 1980.

¹¹² Ibid.

¹¹³ BArch, BW 1/304284: BMVg P II 8, 2 December 1980.

¹¹⁴ BArch, BW 2/31224: BMVg, P III 5, Notice of appeal, addressee and date redacted.

now my client has endeavored to prevent his tendency from becoming known about within his unit [...] At the same time, serving in the Bundeswehr rests on a sense of camaraderie and life together in extremely tight quarters. It is nearly unbearable for my client to constantly have to keep up pretenses under these circumstances. Homosexuality is an obstacle to my client in fulfilling his role as an officer, and ultimately may diminish troop fighting power. My client has already been forced to give up all leadership responsibilities.¹¹⁵

In concluding, the lawyer asked whether it was true that homosexuality was cause for dismissal under §55 (2) SG for career soldiers, but not for fixed-term soldiers, which would constitute an utterly incomprehensible instance of unequal treatment if so.¹¹⁶ Ultimately, the lawyer had merely written down the ministry's well-known arguments and returned to sender. The BMVg's lawyer remained unconvinced.

The fact that you can no longer be employed in the essential functions commonly associated with an officer in the rank of lieutenant owes exclusively to the homosexual tendency you have disclosed. Yet according to medical report results [the tendency] holds no value as an illness, and thus cannot be understood as a "physical affliction" in the sense of §55 (2) SG. Nor does the tendency satisfy the element of a "weakness in physical or mental forces" in the legal sense. Your disclosed homosexual tendency thus establishes a lack of suitability of a different kind than the one that could lead to dismissal for inability to serve. Lawmakers have refrained – not least in the interests of protecting soldiers – from granting the service the possibility of dismissal *ex officio* in the event of any kind of unsuitability.¹¹⁷

The jurists in Bonn did, however, hint at another way out of the Bundeswehr for the lieutenant. Upon request, "cases involving a homosexual tendency" frequently met the conditions for dismissal due to special hardship under §55 (3) SG. It could not be reviewed whether the elements were present in the petitioner's case, as he had only filed for dismissal for inability to serve under §55 (2) SG. Nor did any regulations providing for a career soldier's dismissal on grounds of homosexuality exist under §55 (2) SG.¹¹⁸

There seem to have been different views within the BMVg regarding this last statement, to put it cautiously. In direct reference to the lieutenant's complaint, in March 1990 the personnel office observed that lieutenants serving as career soldiers could be dismissed for homosexuality under §46 (4), but an equivalent regulation for fixed-term officers was lacking. The discrepancy was "hardly satisfactory."

¹¹⁵ BArch, BW 2/31224, the lawyer for a lieutenant, complaint and grounds for complaint, sender and date redacted.

¹¹⁶ *Ibid.* By way of explanation, §55 (2) SG only applies to fixed-term soldiers.

¹¹⁷ BArch, BW 2/31224: BMVg, VR I 5. Notice of appeal, addressee and date redacted.

¹¹⁸ *Ibid.*

The office repeated its internal suggestion to allow the petitioner dismissal under §55 (3) SG, applying a “broad interpretation” to the concept of “special hardship.”¹¹⁹

The lieutenant did not file for dismissal due to special hardship, however, but continued serving in the troops, specifically on a regimental staff. After a year or so he requested assignment as a platoon leader and instructor, which the personnel office denied him with reference to the officer’s homosexuality being on record. Again the lieutenant filed a complaint. The case ultimately reached the Federal Administrative Court, and it is this circumstance alone that research has to thank for the coming to light of the lieutenant’s earlier request for dismissal due to inability to serve. Under normal conditions, procedures that touch on personal or medical matters can no longer be found in the available source material. As always in its rulings, the court began its ruling with a detailed account of the plaintiff’s service history, allowing it to be recounted here.¹²⁰

7. “Homosexuality and Military Service in Germany.” A SOWI Study from 1993

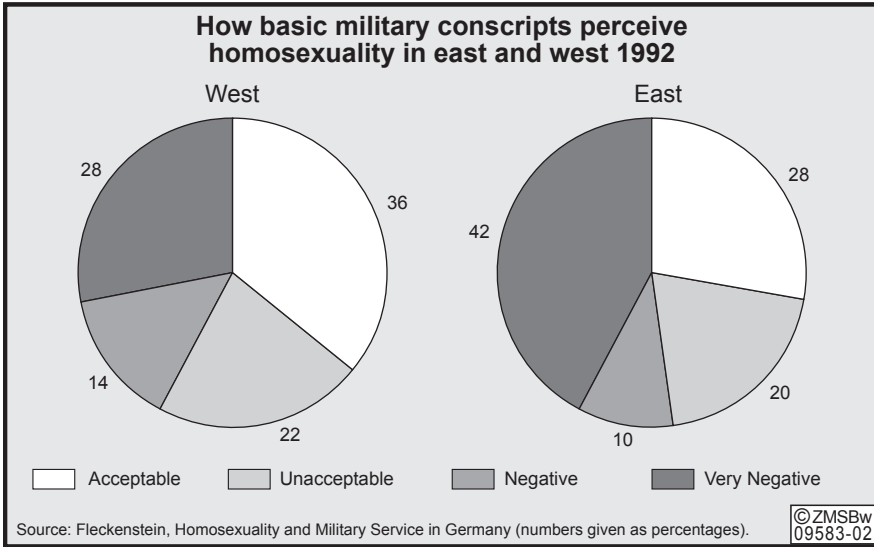
In 1993 a study on “Homosexuality and Military Service in Germany” by the Bundeswehr Institute of Social Sciences (SOWI) came out, based in part on a survey it conducted on the “sexual morality” of conscripts. (SOWI was responsible at the time for surveying soldiers about a wide range of topics, work that the ZMSBw continues today.) In 1992, the institute asked 433 soldiers from western Germany and 882 from the five “new states” of eastern Germany (as they were commonly referred to at the time) to anonymously state their opinion about cohabitation without marriage, prostitution, abortion and homosexuality. Close to 32% of the young soldiers in the west and 28% in the east found homosexuality “acceptable.” 20% in both east and west found it “unacceptable.” Ten percent in the west and 13% in the east viewed it as “negative,” while 35% and 42% rated it “very negative,” respectively.¹²¹ Young soldiers from the east showed a clearer rejection of homosexuality, with those in the west tending toward greater acceptance.

Evaluating the differences between two groups in a Germany that had been reunited just two years before raises methodological questions that were left unaddressed in the SOWI study, chief among them the division into east and west. At

¹¹⁹ BArch, BW 2/31224: BMVg, P II 1, 2 March 1990.

¹²⁰ BVerwG, 1 WB 61/90: Federal Administrative Court, 1st Military Service Senate, ruling from 8 November 1990. Found on www.jurion.de.

¹²¹ Fleckenstein, “Homosexuality and Military Service in Germany.”



the time the survey was conducted, many soldiers from eastern Germany were serving in barracks in the West; on Sundays they would travel by car or train from Saxony or Mecklenburg to Lower Saxony or Schleswig-Holstein, to return home the following Friday afternoon. Anyone scanning the barracks parking lots of Baden-Württemberg, Hessen or Lower Saxony could not fail to notice the number of east German license plates, which were often in the clear majority. If barracks location was a deciding factor in classifying the soldiers as coming from the west or east, a great number of soldiers of East German origin and socialization would thus have fallen under “West.” In this case the values for western Germany would have been much more strongly influenced by East German socialization than vice versa. The collected data would hold greater validity if, on the other hand, one’s place of birth or residence was the deciding factor in the east-west classification. Yet even a quick glance at the graphic depiction of the survey results when divided by geography reveals the similarity between the two – the differences between east and west were not that serious after all. If the geographical division is done away with, the indisputable finding remains that two-thirds of all young men performing basic military service looked on homosexuality as either “unacceptable,” “negative” or “very negative.”¹²²

These results were subsequently used throughout the 1990s by the BMVg, the armed forces themselves, the legal profession and administrative court judges

¹²² “Homosexuality and Military Service in Germany,” Table 2.

alike when they attributed a gay superior's anticipated loss in authority to a lack of acceptance among younger soldiers. This disapproval of homosexuals, now scientifically proven, came first in a line of reasoning that was then used to substantiate risks to discipline and order in the units as well as their combat readiness, and ultimately to justify restrictions against placing homosexuals in positions of authority. The survey data and familiar conclusions were last cited in January 2000 as part of the federal government's response to questions from the Federal Constitutional Court concerning the action brought by First Lieutenant Winfried Stecher.¹²³

While the survey data may have kept aging, the conclusions drawn from it remained unchanged. In the late 1990s the ministry debated whether to commission a new study including a survey of soldiers; there was general agreement among the offices involved about the need for a sociological study to evaluate the "issue of acceptance." The question was whether or not the commission should remain in-house with SOWI or sourced externally. In 1999 the staff departmental leader at Füs I postponed the decision until the Federal Constitutional Court had ruled in First Lieutenant Stecher's case.¹²⁴ This meant that in 2000 the BMVg had been relying on the same survey results since 1992.

In 1993, SOWI Director Professor Bernhard Fleckenstein drew on the survey for a paper on the German position regarding homosexuality and military service in the UK city of Hull. Even now the German military continued to be a "male society in tightly confined quarters," Fleckenstein argued, echoing General Major Manfred Würfel's contention from that February.¹²⁵ Military personnel policy was "geared toward preventing any problems that might arise for communal life in the troops due to homosexually oriented soldiers from occurring in the first place."¹²⁶ Concretely, Fleckenstein lectured on policies concerning the treatment of homosexual officers and NCOs that this study has already considered in some detail.

The presentation also raised the sharp critique coming from "interest groups" who faulted the Bundeswehr with lagging "far behind the current state of social development" and "leading the charge in social intolerance." In their eyes, jurisprudence had to date been in violation of the constitutional principle of equality, proceeding along lines that amounted to "discrimination against homosexual sol-

¹²³ BArch, BW 1/502107, no pagination. BMVg, State Secretary, draft response to Federal Constitutional Court, Az 2 BvR 2276/98, undated, here p. 4.

¹²⁴ BArch, BW 1/502107, no pagination: BMVg, PSZ III 1, 5 January 2000.

¹²⁵ Fleckenstein, "Homosexuality and Military Service in Germany," p. 2 and Table 2. The major general's quote comes from the *Der Spiegel* article "Versiegelte Briefe."

¹²⁶ "Homosexuality and Military Service in Germany." The German original is available in BArch, BW 2/32553.

diers that went so far as destroying their professional existence.”¹²⁷ Fleckenstein took an opposing stance:

Notwithstanding the political sloganeering so typical of press releases, the question that lies at the heart of the matter is whether military personnel leadership will continue to be left with discretionary powers of its own in evaluating the fitness of its leaders and instructors. The primary mission of personnel management is a strong and capable Bundeswehr. This aim takes constitutional priority. Based on real-life observation, Bundeswehr leadership cannot close its eyes to the fact that homosexual soldiers – especially those in positions of authority – still fail to gain acceptance in the armed forces without complication.¹²⁸

The Minister of Defense was also not obliged in the current legal landscape “to actively implement homosexually oriented soldiers’ (purported) claim to equal treatment against prevailing opinion – and thus potentially at the cost of troops’ ability to function.” The service also had a “duty of care toward the other 98% of men in the armed forces at least who were heterosexual.” A younger soldier had put it to the SOWI director as follows: “I respect the intimate realm of my comrades; I also have a right to be spared the intimate realm of others.”¹²⁹

8. Case by Case, or Blanket Rejection?

In a statement about the SOWI paper, Section I 1 in the BMVg’s legal department stressed from the outset that homosexual soldiers were unquestionably given promotion or assignment in accordance with their suitability. “It is true, however, that despite changing opinions within certain sections of society, the sort of suitability required [...] for higher-value assignments cannot unreservedly be affirmed for homosexual soldiers after considering their individual case.”¹³⁰ The sources give contradictory answers as to the policy of individual case inspections; not only did the positions shift over a longer period of time, but different departments and sections within the ministry in Hardthöhe took opposing standpoints nearly simultaneously. In 1993, for example, Section VR I 5 gave prominence to a policy of “considering the individual case when it comes to homosexual soldiers.”¹³¹ Just a few

¹²⁷ “Homosexuality and Military Service in Germany,” 8. In the paper Fleckenstein quotes from a press release by the Gay Federation in Germany from 27 January 1993.

¹²⁸ “Homosexuality and Military Service in Germany.”

¹²⁹ *Ibid.*, 9.

¹³⁰ BArch, BW 2/32553: BMVg, VR I 1, 2 March 1993.

¹³¹ *Ibid.*, BMVg, VR I 5, 29 March 1993.

weeks before, the spokesperson for the Ministry of Defense himself had confirmed to the press that homosexual soldiers were not “uniformly discriminated against” but instead received “case-by-case examination” when leadership positions were involved.¹³² Yet another paper put out at nearly the same time by Section Füs I 4 includes no mention of individual case examinations when “detaching” homosexual superiors from positions as leaders, instructors or educators.¹³³ The same section had put out a position paper three years before in 1990 that explicitly rejected “any exceptions” to denying homosexuals assignment as commanding officers or instructors.¹³⁴

A great deal of official commentary from the section records the same unambiguous position, as with a 1986 G1 memo draft regulating all matters pertaining to homosexuality. The memo states that “an officer or non-commissioned officer whose homosexual tendencies become known can no longer remain in his service post as a leading figure in the troops. He must be given an assignment in which he is no longer in a position of authority over predominately younger soldiers.”¹³⁵ The clarity of phrases like “can no longer” or “must” allowed no room for interpretation or possibility for decision on a case-by-case basis. The policies of dismissing officer cadets under §55 (4) SG and officers up through the third year of their service under §46 (4) SG likewise show up in the paper in unaltered form.

The G1 draft was never implemented; Chief of Defense Wellershoff decided to shelve the matter instead. According to him, there was “no need to act at present,” and he considered the “time and place inappropriate.”¹³⁶ In a nutshell, “[if done, it would be done] as inconspicuously as possible *but not, under any circumstances, now!*”¹³⁷ Exactly one year later in November 1987, the personnel department again decided against the need for regulations in the form of a ministry decree or G1 memo. “Treatment on a case-by-case basis was both possible and sufficient” due to the limited caseload, and the problem also had to be approached “carefully” as “regulation could be perceived as revealing and discriminating.”¹³⁸

132 Ministry of Defense: The number does not come close – No “blanket” discrimination against homosexuals, 27 January 1993, 10:22 a.m., BArch, BW 24/14249.

133 BArch, BW 2/32553: BMVg, Füs I 4, 3 February 1993.

134 BArch, BW 2/31224: BMVg, Füs I 4 to P II 5, 25 June 1990.

135 BArch, BW 2/31225: BMVg, Füs I 4 to minister via the parliamentary state secretary, 22 October 1986, annex, identical to BArch, BW 2/31224: BMVg, Füs I 4, July 1986.

136 Ibid., BMVg, Füs I 4, 10 November 1986; Ibid., BMVg, StAL Füs I, handwritten note from a conversation with the chief of defense, 4 November 1986.

137 Ibid., BMVg, a further handwritten note on a conversation with the chief of defense, 4 November 1986 (emphasis in original).

138 Ibid., BMVg, P II 1, 23 November 1987.

“Homosexual soldiers’ ‘fitness’ for positions of authority has been denied by a court of the highest instance,” soldiers and the interested public were able to read in a 1991 article that appeared in the military magazines *Heer, Luftwaffe, and Blaue Jungs*.¹³⁹ “An official position could be abused, while soldiers’ lack of acceptance could jeopardize authority, which in turn could disrupt service operations and weaken discipline and fighting power” wrote the author, succinctly summarizing the arguments advanced by the administrative courts and the BMVg before clearly articulating the crucial point: “What matters in any case is that it is possible, not that it is actually so.”¹⁴⁰

The year before in 1990, Füs I 4 had argued that society had a right to “impeccable superiors,” continuing to represent the “baseline position that homosexual soldiers should be removed from assignment as superiors and instructors without exception, and kept at a remove from such assignments.”¹⁴¹ In doing so, the section was plainly rejecting calls for decisions on a case-by-case basis that surface from time to time in the internal papers of the BMVg (including within Section Füs I 4), as well as in published opinions from the 1980s and 1990s.

Come September 1994, on the other hand, Füs I 4 was touting case-by-case decisions as the path of the future in a letter to a staff surgeon who eventually petitioned successfully for acceptance as a career soldier.

On its own, homosexuality cannot be grounds for exclusion from a particular assignment; it is neither a health disorder nor a general criminal offense, nor does it necessarily restrict one’s ability to carry out his duties. Yet it is plain to see that problems and situations of conflict can arise between superiors or soldiers slated for positions of authority in the Bundeswehr who have acknowledged their homosexual inclinations on the one hand, and the heterosexual majority on the other, which is why the Bundeswehr insists on the need for individual assessment in such instances.¹⁴²

January 2000 saw a renewed effort within Füs I 4 to abandon the restrictive policy of blanket exclusion in favor of case-by-case examination, though it was all in vain.¹⁴³ “Other sections have pointed out that this essentially meant aban-

¹³⁹ Haubrich, “Schwul und beim Bund?!” Chapter 1 has already discussed the article in detail.

¹⁴⁰ Ibid.

¹⁴¹ BArch, BW 2/31224: BMVg, Füs I 4 to P II 5, 25 June 1990.

¹⁴² BArch, BW 2/38357: BMVg, Füs I 4, 15 September 1994. The letter would continue to hold sway in the future, with Hamburg Administrative Court citing it in its ruling on 26 November 1997 (AZ 12 VG 5657/95, a copy is available in BArch, BW 2/38353). In 1999, Federal Constitutional Court President Jutta Limbach also requested the paper from Defense Minister Scharping in the course of an action brought by a first lieutenant. BArch, BW 2/38357: President of the Federal Constitutional Court to Defense Minister Scharping, 15 July 1999.

¹⁴³ BArch, BW 2/38358: BMVg, Füs I 4 to the chief of defense, 14 January 2000.

doning the current position. The representatives of the [service branches] were not prepared for that.”¹⁴⁴ One former staff officer active at all levels of personnel leadership, including the ministry, explained that the matter had been decided on “uniformly and without case-by-case examination.”¹⁴⁵ “Military leadership wanted calm to prevail in the troops; when there were individual cases to decide on, they were settled according to current ministerial orders.” There were the orders from 1984 to fall back on, after all. The personnel department at the BMVg, the officer continued, had operated under the premise that homosexuals had to be “removed” immediately from the troops; when he had asked in turn why that was the case, the legal staff from Section P I 1 cited their (alleged) susceptibility to blackmail and “the protection” of young conscripts. From his own vantage point in personnel leadership, the eyewitness recalled finding the treatment of homosexual officers “completely impossible” even in the 1990s. “I never understood it. A group, a minority had been sought out and uniformly excluded.”¹⁴⁶ Suggested language worked out for the chief of defense by Füs I 4 in January 2000 once again ruled out any sort of case-by-case decision-making.¹⁴⁷

All in all, no cogent ministry line on the matter is evident. At times the policy of case-by-case assessment is highlighted, at others it is strictly ruled out. It seems as though referring to case-by-case assessments was itself decided case by case, and depended on the individual stance of whichever section employee or head was responsible for the issue at hand. The contradictory positions allow for multiple interpretations; what is striking, however, is that case-by-case assessment is highlighted for the most part in ministry statements that were directed externally, with unilateral rejection only coming in internal papers. This in turn permits two conclusions:

- (1) The BMVg’s position was never established internally in a binding manner but adjusted either according to fit the need in the present case or the views of the officer responsible, with military command adopting the harshest stance.
- (2) The BMVg’s position hardened over the course of the 1990s under pressure from the military side of the institution; later in the decade the ministry opted for a general and strict rejection of case-by-case assessment, which had been envisaged in 1993 and occasionally before then.

¹⁴⁴ Ibid., as well as an undated draft from Füs I 4.

¹⁴⁵ Interview with Ret. Colonel Dieter Ohm in Meckenheim, 17 April 2019.

¹⁴⁶ Ibid.

¹⁴⁷ BArch, BW 2/38358: BMVg, Füs I 4, recommended wording for the chief of defense for the Military Leadership Council on 19 January 2000, TOP 3.

The exception proves the rule, as the saying goes. The archives themselves proved no exception in this regard, revealing case-by-case decisions as to how gay officers should be treated. One personnel division note from 1990 concerning an air force captain, for example, reads: "Contrary to my previous view, in this particular instance I am now prepared to rescind my fundamental concerns against [the captain's] attending GL FBS C, and thus against his subsequent potential assignment to staff officer."¹⁴⁸

In this case the officer had let his homosexuality be known in 1979; three weeks later the personnel officer had knowingly assigned him to a position of disciplinary authority and promoted him to captain three years later, in 1982. "Taking into account Federal Administrative Court jurisprudence [...] and personnel leadership practices to date, the service would have had to tell the soldier that his homosexual tendencies ruled out any chance at further promotion," the BMVg personnel employee admonished. "In that case the soldier would still have had the chance to reorient himself professionally at twenty-nine years old." Instead, the officer had been installed as a disciplinary superior and promoted. "This must have given him the impression that the service did not attach any fundamental importance to his tendencies in continuing his military career. Accordingly, he refrained from looking around for career alternatives."¹⁴⁹

It was not until four years later during a staff appraisal meeting in 1983 that the officer found out he "wasn't under consideration" for further advancement. The fault lay entirely with the service; the officer had trusted in the personnel decisions. Conserving the soldier's trust in the service's decisions weighed more heavily for the BMVg than sticking to its principals on how homosexuals were treated. In addition, there was no particular interest in adhering to those principals, as the captain's homosexuality was known about "only by a very narrow circle." A great deal spoke in favor of his case.

Three years' probation as a disciplinary superior, a minimum of eleven years (since his disclosure) of proven and inconspicuous service as a troop leader and teaching officer; support and positive behavioral forecasts from multiple disciplinary superiors [...]; discrimination due to disclosure at his own initiative; without it he would likely already be staff officer. Due to these factors [...] P II 1 no longer maintains its original view and recommends allowing the soldier to attend the course.¹⁵⁰

148 BArch, BW 2/31224: BMVg, P II 1, 2 March 1990. FBS C is the basic continued training course for captains offered at the command and staff college in Hamburg, and is required for promotion to staff officer (Major and up).

149 Ibid.

150 Ibid.

Before the decision came out in his favor, the BMVg had initially voted against the captain attending the course in 1989.¹⁵¹ Without Basic Training Course C at the command and staff college, the captain would have spent the rest of his time in the service in the same rank, signaling the end of his career despite an excellent track record – and all due to his sexual orientation. Official correspondence preserved in other files shows that deciding whether or not to admit the captain to the command and staff college had already been a source of controversy at the BMVg in 1986, when the legal staff of Section VR I 1 declined to cosign a rejection worked out by the personnel section in charge of the matter. The document was faulted with failing to consider the case at hand; the officer had been promoted to captain in 1982 “with knowledge of his tendency.” Neither the captain’s superiors nor personnel leadership had expressed any concerns about his attending the college at the time.¹⁵² Four years later, the jurists’ earlier arguments now persuaded personnel management to agree to the captain’s attendance.

Any other officer’s attendance at Basic Training Course C represented a foregone conclusion, an absolute necessity. Admitting a homosexual captain to the course, on the other hand, took multiple ministry offices and four years to consider and decide. The captain swallowed the (initially) negative response, replying in writing that he did not intend to seek legal redress. “That doesn’t mean that I would be in agreement.”¹⁵³ The reasoning behind the officer’s atypical decision to forego legal means reveals a deep and principled, but also unquestioning trust in the lawfulness of the military’s decisions, even if they did elicit personal “unease.”

If the decision is correct, then ultimately there is no basis for disputing it – aside from a potentially subjective feeling, under the circumstances [...] If the decision were unlawful, even legally questionable, why would it be issued in the first place [...]? Why, then, have this established in administrative court proceedings? To my mind the process of clarification – whatever legal process is involved – is something for the office deciding on the matter before it does so.

Reading these lines, one cannot help but picture a somewhat naive officer with an aversion to conflict and a blind trust in his employer. Yet he does finally go on to pull himself together and find fault with the ministry’s position. “Lacking fitness for a position of authority and a lacking fitness for promotion is supported by every

¹⁵¹ Ibid., BMVg decision by P IV 3, 2 January 1989.

¹⁵² BAArch, BW 2/31225; BMVg, VR I 1, 5 December 1986.

¹⁵³ BAArch, BW 2/31224, Captain S. to his commander, 31 January 1989. The following quotes from the same source.

contingency and assumption imaginable, but not by facts.” The captain then laid out his counterargument in full for his commander.

What is an open question for me – though I am party to the affair – is whether bringing to bear every unfavorable *possibility* and negative assumption conceivable, as necessary as that may be for personnel planning, allows one to disregard the facts (insofar as admitting to such a tendency is not already worse than any court conviction); whether “sound public sentiment” can be sufficient cause to neglect legal claims and the preservation/protection of one’s personality rights; whether people with a homosexual orientation do have an *actual* claim to “equal treatment” after all; whether a sovereign authority would in fact – at all times! – have to preserve and protect the rights of the individual in its (administrative) actions, including potentially against “broad acceptance.”¹⁵⁴

The captain then posed the question of all questions, marking the constitutional crux of all administrative court decisions to date: “Can it really be that under the constitution, immutable and inalienable rights and constitutional principles no longer apply before the defense mandate?” With this, the captain had clearly identified the weak point in the argumentation of the service and its legal staff in 1989, ten years before the Federal Constitutional Court agreed to hear a first lieutenant’s constitutional complaint or the European Court of Human Rights found the British armed forces in breach of the European Convention on Human Rights. In 1989 however the captain left it with a letter to his commander, explicitly forgoing the legal option. Instead of confrontation he extended a hand to personnel leadership, writing “I will make every effort not to generalize my conclusions unduly. It pains me to have caused the personnel department and my superiors more work than others with my tendencies.” It remains to be seen whether or not the captain’s concession in turn increased personnel leadership’s readiness to concede. As described above, in 1990 the BMVg reversed its January 1989 decision. Ministry documents on the matter are silent as to whether the captain subsequently attended the leadership course and continued to receive regular promotion and assignment, though a great deal speaks for that being the case. Be that as it may, the significance the chronicle holds for this study lies in the fact that Hardthöhe did actually consider a case on its individual merits and decided accordingly – if only after four years’ of back and forth between various sections.

154 “Non-acceptance” was likely meant here instead of “broad acceptance.”

9. Internal and Political Pressure for Change

“The defendant is obliged to accept the plaintiff in the capacity of a career soldier.”¹⁵⁵ Here the defendant was the BMVg, the plaintiff a staff surgeon at a Bundeswehr hospital, and Hamburg Administrative Court the ruling body.

a.) “Completely Detached from the Individual’s Personality.” A Medical Officer’s Years-Long Struggle for Gay Rights in the Military

Before appealing directly to the Minister of Defense and the parliamentary commissioner for the armed forces in 1991, Michael Müller had in his own words campaigned for years (since 1987) “openly and vigorously” for the interests of homosexuals in the Bundeswehr.¹⁵⁶ Hardthöhe replied in October 1991 that in the case of potential fixed-term or career soldiers, prior disclosure of one’s homosexual orientation eliminated the option of career service. This was not a “negative valuation or assessment of the individual personality,” however.¹⁵⁷ Rather, the “matter of homosexuality in the armed forces must be analyzed in the context of the social reality of German society, completely detached from the individual personality of the homosexual officer.” As in the preceding two decades, in 1991 the BMVg continued to emphasize the potential threat that coming out as homosexual posed to troop discipline and potentially combat readiness, a risk which had to be headed off “early on by having appropriate measures in place from the outset.” The same “naturally” applied for troop physicians in the event that “soldiers who personally rejected the physician now known to be homosexual led to deficits in maintaining health, and thus impaired operational readiness in the armed forces.” At the same time, proceeding in this way “[served] to protect the homosexual superior.”¹⁵⁸

¹⁵⁵ Hamburg Administrative Court, ruling on 26 November 1997, Az 12 VG 5657/97. A copy is available in BArch, BW 2/38353.

¹⁵⁶ BArch, BW 2/38353: Staff Surgeon Michael Müller to the minister of defense, 10 July 1991; reference to his petition to the parliamentary commissioner for the armed forces from the same day in *ibid.*, parliamentary commissioner to the BMVg, 26 August 1991.

¹⁵⁷ BArch, BW 2/38353: BMVg, Füs I 4 to Staff Surgeon Müller, 29 October 1991. Also cited in Hamburg Administrative Court’s ruling on 26 November 1997, Az 12 VG 5657/97. A copy is available in BArch, BW 2/38353.

¹⁵⁸ All quotes *ibid.* Müller declared the answer unsatisfactory, prompting further letters to the Chief of Defense and Surgeon General of the Bundeswehr in early 1992. BArch, BW 2/38353: Staff Surgeon Michael Müller to General Klaus Naumann and Surgeon General Dr. Desch, 7 January 1992.

Staff Surgeon Müller drew the implications from the unambiguous rejection and filed for early release from service in 1993, using the possibility afforded under the Military Personnel Strength Act as a formal basis. The doctor explained that he could no longer endure the BMVg's contradictions: On the one hand he had served as an instructor and superior for years now, all without any detectable shift in the ministry's baseline position. This meant that going forward he would continue to be subject "to the whims of his superiors." The staff physician's direct superior at the Bundeswehr hospital supported his subordinate's request for early departure. "Based on his outstanding service record," the physician concerned should have been "approved for unrestricted advancement and corresponding prospects." Since neither this nor a "timely individual case inspection" had come about, it followed that the doctor should be released per his wish. Yet the medical officer was not released; simply put, there was a severe shortage of laboratory physicians and he was "urgently needed."¹⁵⁹

When he received written proof of his indispensable service on the ministry's own letterhead, Müller turned the tables and applied for career service. His application was denied, his complaints rebuffed. With that the officer had showed up the BMVg's contradictions in the most blatant form imaginable, giving him ammunition for his legal fight. The German Bundeswehr Association pledged to cover his legal costs.¹⁶⁰ The doctor arrived in court well-armed – and prevailed.

In January 1994 the physician wrote again to the ministry, this time documenting the Bundeswehr's treatment of homosexuality over the course of forty-three pages. Deftly tying various strands into a cogent argument, he succeeded in making even plainer show of the contradictions in the ministry's line of reasoning. Recipients of the polemic included the chief of defense, the chiefs of the services and the surgeon general; five BMVg sections; the office heads for the army, navy and air force; the parliamentary commissioner for the armed forces; the Bundestag Defense Committee; and all four parties in the Bundestag. Müller began by stating that he had worked since 1987 for "equal rights and conditions for homosexual soldiers in the assessment of their [military] eligibility, fitness for service and assignment."¹⁶¹ A letter exchange from 1987 confirms that as a senior officer candidate in

¹⁵⁹ BMVg, decision on Staff Surgeon Michael Müller, 2 February 1994 (copy sent in a personal correspondence).

¹⁶⁰ The action brought before Federal Administrative Court cost 4,775 DM, for example. A letter from the German Bundeswehr Association, 12 May 1999.

¹⁶¹ BArch, BW 2/38353: Staff Surgeon Müller to Chief of Defense General Klaus Naumann 20 January 1994 and verbatim in BArch, BH 1/29162: Staff Surgeon Müller to the Chief of the Army, 20 January 1994. Army Staff commented in writing under the sentence "while in service? With official means?" A duplicate letter to a different addressee at the BMVg is in BArch, BW 1/502107.

the Navy at the time, Müller had in fact asked how the BMVg would assess homosexuals' fitness to serve as officers and superiors before going on to challenge the familiar positions of the ministry repeatedly and eventually coming out himself.¹⁶²

Looking back on his motivations at the time, Müller cited a desire for the same standards of measurement to be applied to him as for others, without his sexual orientation being taken into consideration. All he had really wanted was to be treated "fairly and justly." This was what had led him to fight first and foremost on his own behalf and, unlike others, never hold pretensions of a messianic fight for the rights of all homosexuals in the Bundeswehr. He turned down every media offer – of which there were a number – to appear on talk shows, including on television. Throughout the course of his dispute with the BMVg he enjoyed the support of his superiors in the medical corps, including its surgeon generals.¹⁶³

Hardthöhe responded in April 1994, writing that the BMVg's actions were lawful and had not violated the principle of equal treatment under Article 3 of the constitution. It drew on the SOWI survey from two years previous to do so, according to which half of conscripts viewed homosexuality as "negative" or "very negative." The ministry's practices were in keeping with the constitution in the sense that homosexual soldiers were not uniformly dismissed, nor excluded from every kind of assignment. The staff surgeon responded with another twenty-three page letter essentially laying out the apparent contradiction: The BMVg generally did not consider homosexuals fit for service as superiors or instructors, yet at the same time the Bundeswehr had employed him as an instructor and superior for years.¹⁶⁴ Section Füs I 4 wrote back for the ministry that homosexuality "per se was not grounds for exclusion from a particular assignment," nor was it "a health disorder or a criminal offense," nor again did it necessarily "limit an ability to perform one's duties."¹⁶⁵ What was called for rather were case-by-case examinations "based on the criteria of performance, qualification and professional competence." While the fitness of known homosexual soldiers could not "regularly be affirmed without restriction," "a favorable assignment decision was possible" in the event that inspection "dispelled fitness concerns." In considering individual cases, "homosex-

162 Interview with Dr. Michael Müller, Berlin, 1 August 2019, and letters from Senior Navy Cadet Michael Müller to the BMVg on 2 February 1987, 19 March 1987 and 22 April 1987, as well as replies from BMVg P II 1 on 9 March 1987 and 7 April 1987, and from BMVg P V 6 on 10 July 1987.

163 Interview with Dr. Michael Müller, Berlin, 1 August 2019.

164 BArch, BW 2/38357: BMVg reply on 12 April 1994 and Staff Surgeon Müller's response to the BMVg, the chief of defense, and eleven other addressees on 12 June 1994. A copy is also available in BArch, BW 2/38353 (Copies in BArch, BW 2/38353 and in BW 1/502107).

165 BArch, BW 1/502107, no pagination: BMVg, Füs I 4, 15 September 1994, cited in a ruling at Hamburg Administrative Court on 26 November 1997, Az 12 VG 5657/97.

ual soldiers' constitutional right to equal treatment and the armed forces' interest in an unrestricted ability to serve had to be weighed against each other."¹⁶⁶

This was the first time that the BMVg had conceded "homosexual soldiers' constitutional right to equal treatment" and opened the door to case-by-case examinations that might, if they ended positively, grant access to assignments that had previously been closed off. In reality, the armed forces, personnel leadership and the Ministry of Defense all steadily refused to consider cases on an individual basis throughout the late Nineties, persisting with a general and abstract line of reasoning about potential loss of authority. The Füs I 4 document from September 1994 appears to be an outlier in this context, sticking out from an otherwise steady stream of unambiguous rejections. Evidently the reply had not been discussed or coordinated with other sections and legal staff. Be that as it may, the written proof of the need for case-by-case decisions would later prove useful to the plaintiff in Hamburg Administrative Court.

The BMVg legal staff relied on their standard repertoire of arguments before the judges in Hamburg, albeit adapted to the physician's specific case. The lawsuit could not succeed, they argued, if only because that the plaintiff had made his continued willingness to serve contingent on conditions that the Bundeswehr was not able to satisfy, namely fundamental changes to the armed forces' personnel policy by granting equal treatment to homosexual and heterosexual medical officers. To this extent an "open difference of opinion" stood between the plaintiff and the accused. The plaintiff was not "suitable without restriction" for assignment as a career officer because "he 'was neither inclined nor capable' to control his sexual preferences and tendencies to the degree required for permanent assignment as a medical officer."¹⁶⁷

The judges found reason to object; ruling now in 1997, they determined instead that the refusal issued to the plaintiff was unlawful and violated his rights. He was entitled to be taken on as a career soldier, for which he indisputably fulfilled the preconditions. It simply "was not acceptable to deny a soldier's fitness to enter career service solely on the basis of his stated homosexuality, if his service record did not offer the slightest indication that the soldier concerned might lack the requisite fitness." Such was the case at present.¹⁶⁸

¹⁶⁶ Ibid.

¹⁶⁷ BArch, BW 2/38353: BMVg response to the complaint, quoted in Hamburg Administrative Court in its ruling on 26 November 1997, Az 12 VG 5657/97.

¹⁶⁸ BArch, BW 2/38353: Hamburg Administrative Court, ruling on 26 November 1997, Az 12 VG 5657/97.

Did the ruling represent the turning point sought by the plaintiff? No. Even now, nothing changed. The BMVg was able to retreat behind the fact that the case concerned a lab doctor at a Bundeswehr hospital and could not be applied to the troops.¹⁶⁹ Lower Saxony Superior Administrative Court concurred with BMVg opinion in a suit brought by a staff sergeant similarly seeking appointment to career service, ruling that the Hamburg verdict could not be applied to other suits that revolved around whether homosexual soldiers were fit to be used as instructors.¹⁷⁰

Seeking to prevent a landmark decision on the case at the Federal Administrative Court, the lawyers in Hardthöhe did everything within their power to limit the impact of the Hamburg ruling. The Hamburg court explicitly left a direct path open for a leap-frog appeal which the BMVg then took, bringing the case before the high tribunal. The lawyers in Bonn must have gauged their chances a second time before withdrawing; the ministry announced it would now accept the plaintiff as a career soldier. This meant the suit was dropped,¹⁷¹ and a landmark decision where the stars were misaligned for the BMVg was avoided.¹⁷² Still committed to the goal of “fair, just and equal” treatment, the staff surgeon and his lawyer now sought to have Federal Administrative Court resolve whether any restrictions would be set on future assignments in career service – Müller made acceptance of his letter of appointment contingent on exclusion of these restrictions.¹⁷³ Acting consistently he did then in fact decline it, explaining that his future assignments would continue to come under restriction. The Federal Administrative Court would not go along, however. “Changing the object of the proceedings from a matter of principle regarding acceptance [to career service] to the question of future assignment” was not possible on appeal.¹⁷⁴

169 See for example the BMVg’s application to dismiss the suit, cited in Lüneburg Administrative Court in its ruling on 3 June 1999, Az 1 A 141/97, p. 3.

170 Lüneburg Superior Administrative Court, ruling on 16 December 1998, Az 2 M 4436/98. For a detailed account see *Neue Zeitschrift für Verwaltungsrecht Rechtsprechungs-Report* 11/12 (1999): 772–773.

171 The Associated Press entitled their report “Suit by homosexual Bundeswehr soldiers finished. Federal Constitutional Court sees no reason for proceedings after acceptance.” AP report from 15 January 1999, a copy is available in BArch, BW 1/502107 and BW 2/38353.

172 The observation that “a landmark decision potentially ruling against the BMVg could thus be avoided” can be found in BArch, BW 2/38353: BMVg, Füs I 1, 19 January 1999.

173 BArch, BW 2/38353: BMVg, Füs I 1, 19 January 1999.

174 AP report from 15 January 1999, copy in BArch, BW 1/502107 and BW 2/38353. For a retrospective account of the affair see BArch, BW 1/503302: BMVg, PSZ I 8, 20 June 2002.

The disputed 1997 verdict from Hamburg thus did not have any resounding impact on other legal disputes. It remained unique, the exceptional case of a medical officer at a Bundeswehr hospital. In its subsequent rulings on other cases, the Federal Administrative Court stuck by the old restrictive line.

For his part, Staff Surgeon Dr. Müller did not leave it at position papers and letters to the Ministry of Defense but made a further effort to connect with other soldiers and show strength in unity. It was with this goal in mind that his name and picture appeared in *JS*, a magazine put out by the protestant military chaplaincy, in an article entitled “Gays in the Military.”¹⁷⁵ Müller’s plan had the desired effect, with the article providing an initial spark. Out of what to date had only been small circles of personal acquaintances and friends between the two Bundeswehr universities there now emerged a national network of gay soldiers, resulting in the Federal Working Group of Gay Soldiers, or BASS.

b.) The Federal Working Group of Gay Soldiers

A photocopy stored in the federal archives of a January 2000 press report in the *Berliner Morgenpost* about the “Federal Working Group of Gay Soldiers” contains the handwritten remark “Füs I: Is this working group known to us?”¹⁷⁶ The ministry had known about the circle since 1995 as it turned out, although there was more. The group of gay soldiers had actively sought contact with the BMVg since 1996, writing repeatedly to the defense minister and military leadership with offers to talk.

What eventually became a national network started out through personal contacts, the kind of democratic organization often referred to as “grassroots” in the U.S. and Great Britain. In keeping with German naming standards, the movement of gay soldiers dubbed itself the *Bundesweiter Arbeitskreis schwuler Soldaten*, abbreviated to BASS. More than “twenty gay and lesbian soldiers both former and active” attended a first informal meeting in January 1996 in Munich.¹⁷⁷ The following year, BASS recorded sixty-three new members.¹⁷⁸ The initial impetus, one of the founders recalled, came from networks of gay officers that had arisen independently

¹⁷⁵ Spiewak, “Schwule beim Bund.” The article is discussed at length in chapter 2.

¹⁷⁶ BArch, BW 2/38354: BMVg, Füs I 4, photocopy of the article “Schwulenfeindliche Studie nicht von der Bundeswehr.”

¹⁷⁷ Press briefing by the Federal Working Group of Gay Soldiers, 4 February 1996. A copy is available in BArch, BW 2/38354.

¹⁷⁸ Statement to the press by the Federal Working Group of Gay Soldiers, 27 January 1997. A copy is available in BArch, BW 2/38354.

at the two Bundeswehr universities in Munich and Hamburg in the 1990s before growing quickly. Initially it had more been a way of spending free time together and swapping experiences, with the activities first taking an increasingly political bent after 1995. At the end of that year the two circles met in Hamburg; in the meantime another small group of soldiers impacted by personnel measures had formed around Staff Surgeon Michael Müller. Out of this informal core a series of regular regional meetings took shape in Munich, Berlin, Hamburg, Cologne and Kiel, finally coalescing into a founding meeting on the premises of a gay counseling service in Cologne. The group soon had soldiers representing every career group and region joining. It principally drew public visibility through street parties and parades, also by distributing informational fliers and actions.¹⁷⁹ BASS took on the typical organizational form of an association, hosting general meetings and featuring a speaker's council, with Dr. Müller serving as the first chair and initial driving force behind the network. Müller was succeeded by Major Bernhard Rogge in 1997 when the former stepped down due to a heavy professional workload. The group took aim at "exposing and combatting discrimination based on sexual orientation. Tolerance and acceptance should be ordered."¹⁸⁰ The path to this led via "constructive engagement with the responsible Bundeswehr offices," "political lobbying," and as large a media presence as possible.¹⁸¹ The ministry itself viewed the association's goals in the narrower light of equal rights and treatment for homosexuals in personnel decisions.¹⁸² Based on conversations with its former members, Jens Schadendorf characterized BASS primarily as "an informal network for swapping experiences with somewhat vague goals."¹⁸³

179 Summarized from an email from Erich Schmid to the author, 5 December 2017.

180 Press briefing by the Federal Working Group of Gay Soldiers, 4 February 1996. A copy is available in BArch, BW 2/38354.

181 Statement to the press by the Federal Working Group of Gay Soldiers, 27 January 1997. A copy is available in 2/38354. BASS had the media's attention since its founding. *Magnus* magazine, which aimed at a gay target audience, issued a full report in April 1996, quoting from the same press release. "The somewhat stiff sounding words from the press statement, which shouldn't be changed, have their cause. The topic is explosive and Bonn is trying by every means possible to keep it out of the headlines, so the general public can only be spoken to in carefully formulated statements at first. In this complicated situation, BASS is trying to bring something into movement, cause for wonder in and of itself in light of all the bureaucratic stones laid in their path." Glade, "In Reih und Glied!" 10–11. Division Füs I 4 at the BMVg kept a copy of the article for its archives, BArch, BW 2/38355.

182 BArch, BW 2/38354: BMVg, Füs I 4, 1 February 2000.

183 Schadendorf continued that over the "few years of its existence it had quickly and steadily shrunk in size" and "later disbanded almost unnoticed." Schadendorf, *Der Regenbogen-Faktor*, 71.

To Dr. Müller's mind, the aim of the organization had been to bring interests together, not to confront the ministry. The group had "not been seditious,"¹⁸⁴ even if the BMVg saw things differently. Former BASS members recounted two different currents within the group: One did not want to put pressure on the ministry but offer it "a way out that would save face," while others argued for applying exactly this kind of pressure, whether through legal action, holding court in the media and public, or bringing politicians onboard. The organization ultimately opted for a combination of the two. The organization disbanded in 2001 once equal treatment before the law had been achieved, although that same day some members decided to found a new representative body. The new organization, the Working Group for Homosexual Members of the Bundeswehr (AHsAB), got its start in 2002. Led by its first chair, Alexander Schüttpelz, the group avoided any further confrontation with BMVg, looking instead to play the role of a partner in dialog to the ministry.¹⁸⁵

The group's struggle for equal rights also played out within the armed forces themselves, with BASS offering counseling, assistance and support to lesbian and gay soldiers and military administrators "in all matters of discrimination based on their sexual identity."¹⁸⁶ The group also publicly advertised its regional and federal meetings in the German Bundeswehr Association magazine *Die Bundeswehr*.¹⁸⁷

The speakers council wrote multiple letters to the Minister of Defense, chief of defense and chiefs of the services on BASS letterhead, censuring the BMVg's manner of determining suitability and fitness for assignment for "discriminating against loyal and duty-conscious soldiers [in a way that was] no longer acceptable."¹⁸⁸ The supreme court case law the ministry cited "time and again" in upholding its position could be shown to still draw on judgements from the 1960s, prior to reform of the "shameful" §175 StGB. German society's growing acceptance and tolerance of homosexuals over the past two decades had found as good as no reflection in the Bundeswehr to date.

Fear of discovery leaves its imprint on a large number of Bundeswehr members, a number of whom are serving in leadership positions – even within the BMVg itself [...] Assessments with

¹⁸⁴ Interview with Dr. Michael Müller, Berlin, 1 August 2019.

¹⁸⁵ Interview with Navy Commander Alexander Schüttpelz, Berlin, 24 January 2019. For more on the AHsAB based on conversations with activist members, see Schadendorf, *Der Regenbogen-Faktor*, 73–74.

¹⁸⁶ BASS press statement 27 January 1997, BArch, BW 2/38354.

¹⁸⁷ See for example an invitation to a regional meeting on 18 June 1999 in Berlin, and ten days later in Cologne. Printed in *Die Bundeswehr*, 6/1999, 29.

¹⁸⁸ BArch, BW 2/38353: BASS to Defense Minister Rühe, 27 January 1997, signed Major Bernhard Rogge. A copy is also available in BArch, BW 2/38354.

marks that are far above average are rendered obsolete the instant that the personnel department or branch headquarters receives news of homosexuality. Why then go to the trouble of case-by-case inspection? Or does case-by-case inspection not exist in the first place?¹⁸⁹

BASS also received support from the Gay Federation in Germany (SVD), which helped in drawing up and printing flyers, among other things.¹⁹⁰ In 1993, the SVD sent its national spokesperson and eventual Bundestag representative Volker Beck to advocate on the soldiers' behalf before Defense Minister Volker Rühe. Nine years after the Wörner–Kießling affair, Beck now looked to call attention to “what continued now to be an unbearable situation for gays in the Bundeswehr.”

The claim that soldiers are citizens in uniform, the guiding principle for an Army in a democratic state, has not been redeemed so long as gay citizens in the Bundeswehr continue to be treated differently than their heterosexual counterparts based on their sexual identity when it comes to promotions or receiving security clearance [...] We consider the soldiers and conscripts of the Bundeswehr intelligent and democratically minded enough to “expect them to accept” gay instructors and superiors as well. The Bundeswehr’s current practices amount to capitulating before prejudice.¹⁹¹

Beck demanded that Rühe “finally [grant] equal rights to gay conscripts, soldiers and officers.”

Soldiers regularly paid a high price for their activities in BASS, usually with the end of their professional path forward in the armed forces. Letters sent to the Minister of Defense, individual branch chiefs or personnel office represented a decisive step out of the private realm and into the public world of the service, bringing legal consequences for one’s career. Anyone who resolved to do so while knowing the consequences was an activist in the best sense of the term, a person who was no longer fighting for his or her own future alone but setting it on the line with the broader aim of breaking down discrimination. One former company head and founding member of BASS interviewed by the author had not gone public as other officers had, and had kept cover instead, recalling that “everything had to be kept strictly separate from service.”¹⁹²

Most of the officers who were active in BASS departed the service regularly, and many today hold positions of leadership in the broader economy. Others stayed

189 Ibid.

190 In its written exchange with the BMVg, BASS also gave the SVD’s address in Berlin-Brandenburg.

191 BArch, BW 2/38355: Gay Federation in Germany to Defense Minister Rühe, 27 January 1993, signed by the group’s federal spokesperson, Volker Beck.

192 Interview with Lieutenant Colonel D. in Berlin, 31 March 2017 and 12 February 2018.

on in the armed forces to become career soldiers, keeping their sexual orientation to themselves outside the protected circle of like-minded peers and steering clear of attention. Today, as of 2020, the first officer to attend BASS' first meetings in 1996 has since gone on to achieve the rank of full Colonel/Captain at Sea. Yet those who took up the struggle for homosexual rights against the BMVg, whether publicly or internally, still looked out on bleak professional prospects in 1996. They became anathema to the service, as the following case of an officer in a mechanized infantry unit shows.

c.) A Letter to the Minister and Its Consequences: A First Lieutenant's Career Comes to an End

In 1998, a report in *Berliner Zeitung* announced the case of a young officer who had been removed from assignment as a platoon leader and transferred to a post on staff the year before.

First Lieutenant Erich Schmid is no longer able to train recruits. Despite good marks in service, the twenty-seven-year-old fixed-term soldier, a former platoon leader in a mechanized infantry battalion from Brandenburg, was moved to a desk job by his superiors. In addition, the Bundeswehr will not accept the highly promising officer for career service. The reason? Erich Schmid is gay. Homosexuals are not fit to serve as instructors or for leadership positions, according to the Ministry of Defense. Erich Schmid had a brilliant career before him.¹⁹³

The personnel measures that brought an end to Schmid's military career were triggered by letters sent by the officer in 1996 to the Minister of Defense, the chief of defense and the chiefs of the services. Writing on BASS letterhead, the first lieutenant protested the fact that the BMVg's handling of its homosexual soldiers could "no longer be reconciled with current constitutional norms." A "prejudice-free debate" and "constructive dialogue" were "urgently required."¹⁹⁴ None of the addressees ever responded.¹⁹⁵ BMVg files contain a response from Füs I 4 written on

¹⁹³ Bruhns, "Homosexualität wird bei Outing zum 'Eignungsmangel'."

¹⁹⁴ A letter from BASS to Minister Rühe and Chief of Defense Hartmut Bagger signed by First Lieutenant Erich Schmid on 21 October 1996 in BArch, BW 2/38354. An identical copy of the letter to Chief of the Army Lieutenant General Helmut Willmann is available in BArch, B 2/38358 and is also cited in ruling BVerwG, 1st Military Service Senate, Court opinion, WB 48.97 on 18 November 1997.

¹⁹⁵ Interview with Erich Schmid, Berlin, 5 December 2017. Schmid's letter to the chief of the Army has on it a number of handwritten notes, including "Who is this? Stationed where?" "Please arrange legal review," "no offer to talk from our end" as well as "if necessary no reply." BArch, BW 2/38358.

behalf of all the recipients, stating that the Bundeswehr's position was in line with the current legal situation and consistent with the Basic Law, or constitution. It was not based on prejudice nor did it constitute discrimination, as charged. This meant there were no grounds for a change in position, "obviating the need for further discussion."¹⁹⁶ The chief personnel office replied in place of the minister and chiefs of the services and invited the officer in for a staff review. Yet instead of the "constructive dialogue" the first lieutenant was hoping for, the personnel manager now revealed to him that his career was at an end.

"Despite a partial shift in social perception," homosexuality "continued as before to signal a lack of fitness in the view of personnel management." With this in mind, the first lieutenant could expect to be removed as a platoon leader and assigned to a post without leadership responsibilities. He would not receive any other leadership responsibilities for the duration of his time in the service, nor "contrary to original intent [would he] be taken on as a career soldier with his lack of fitness now becoming known."¹⁹⁷ (Strictly speaking, career service was not "intended" but a firm offer. As a conscript in 1989, the officer candidate testing center had made Schmid a binding offer of acceptance for career service without further selection procedures after successfully completing an officer's training course and his course of study.¹⁹⁸ BMVg notes confirm this version of the story; the chief personnel office had given its word in 1990.¹⁹⁹) According to another note from the personnel section, the first lieutenant had insisted that he continue to serve as mechanized infantry platoon leader, and company commander over the mid-range. For its part, the section insisted on transferring him to a "service post without leadership responsibility at the earliest possible convenience."²⁰⁰

Schmid recalled that personnel leadership had instructed his commander and company head to ask whether he was the author of the letter, which he confirmed. "I revealed to them at the same time that I had written as someone affected [by the matter]. Both reacted with great composure." His superiors had been somewhat

¹⁹⁶ BArch, BW 2/38358: BMVg, Füs I 4 to BASS c/o SVD Berlin Brandenburg, 28 November 1996.

¹⁹⁷ BMVg, P III 2: Note on staff review meeting from 7 January 1997, copy available in BArch, BW 2/38358. Copies of all relevant papers and written exchanges concerning First Lieutenant Schmid's case are available in BArch, BW 2/38358. They confirm the course(s) of action detailed in the military service senate's ruling in November 1997.

¹⁹⁸ Interview with Erich Schmid, Berlin, 5 December 2017.

¹⁹⁹ BArch, BW 2/38358: BMVg, PSZ III 6, 12 April 2000.

²⁰⁰ Ibid., BMVg, P III 2: Note on staff review meeting from 7 January 1997. Schmid's formal rejection for career service came via letter, BMVg, P III 2 on 6 June 1997 (available as a copy in *ibid.*). The letter referred explicitly to the fact that he had "stated his homosexual tendencies," and thus did not meet the conditions for acceptance, since he was unfit for assignment without restriction.

surprised by the harsh response from personnel leadership. “From the very first moment, personnel leadership at Hardthöhe showed consistent refusal and went about implementing the letter of the law unconditionally.”²⁰¹ The first lieutenant appealed the decision, following regulation by turning first to his direct superior, the company head. Outside of official channels he also petitioned the parliamentary commissioner for the armed forces in the Bundestag. Schmid wrote that his removal as platoon leader “obviously came about in connection with my openness about my homosexuality.”²⁰² This represented “colossal discrimination” on the part of the ministry. His homosexuality had been known about for over five months now, and had at no point resulted in a loss of authority or “respect,” or in any way interfered with service operations.²⁰³ When that April his company head forbid him from signing documents as his deputy, the first lieutenant appealed directly to the BMVg. “What other surprises do I have to reckon with still? Will there be a ‘mudfight’ or ‘salami slicing tactics’ to deal with?”²⁰⁴

In July 1997 personnel leadership transferred Schmid onto the staff of Light Infantry Battalion 1 in Berlin, though not without giving his new commander advance notice as to the cause being the lieutenant’s homosexuality. Schmid’s current battalion commander wrote an “unsolicited opinion” protesting the transfer, noting that he “had not managed to find any lack of fitness [in the first lieutenant]; on the contrary, within a short time he had proven his capability as a leader, instructor and educator among conscripts.”²⁰⁵

The former officer still recalled the support of his commander and all the company heads at the time.²⁰⁶ Once his letter to the BMVg became an official matter and his commander and company head had asked him about it, word about his homosexuality “got around the battalion very quickly.” Schmid and his company head agreed to actively inform the battalion officer corps and the company NCO corps, which naturally lead to just about everyone in the barracks finding out instantaneously. It had been a similar situation in the light infantry battalion in Berlin, all the more so as his transfer had come “preceded by his forcible outing by personnel leadership,” as Schmid described it. Given the situation, Schmid brought his life partner along “completely as a matter of course” to events where other offi-

201 Email from Erich Schmid to the author, 5 December 2017, and in what follows.

202 First Lieutenant Schmid, service complaints on 12 March 1997 and 17 March 1997 and to the parliamentary commissioner on 18 March 1997, available as copies in BArch, BW 2/38358.

203 Ibid.

204 First Lieutenant Schmid, complaint to the BMVg P II 5, 23 April 1997. Available as a copy in BArch, BW 2/38358.

205 Cited in BVerwG, 1st Military Service Senate, Court opinion, WB 48.97 on 18 November 1997.

206 Here and the following: Email from Erich Schmid to the author, 5 December 2017.

cers and NCOs brought their own (female) partners. While assigned to the Berlin staff he had with a single exception only ever experienced “proactive” and “energetic, at times even unsolicited, support through assessments and written statements” in his disputes with personnel leadership.

The first lieutenant protested his transfer and the revelation of his orientation to his new commander, and petitioned that his transfer orders to Berlin be revoked:

The BMVg's view that career and fixed-term soldiers with a same-sex orientation cannot be deployed as immediate superiors with training and leadership duties is outdated. Changes in society and everyday military life have disproved the notion that a superior disclosing his homosexuality jeopardizes his authority, and thus troop combat readiness. [Schmid's] homosexuality was also known about within the ranks after all, without this leading to any impairment of authority. What is more, it is discriminatory to insinuate that superiors with a same-sex orientation would see a sexual partner in every subordinate [...] Moreover the division leader informing the commander of [Schmid's] homosexuality over the phone [...] constitutes a massive invasion of privacy, since sexual orientation is an essential component of private life, and therefore must not be made the subject of personnel measures.²⁰⁷

Looking back from a distance of more than twenty years, the former officer drew the conclusion that

unlike most of the others who had run afoul of this before me and gone all the way to the highest courts, I had something at my side that they did not: a firm commitment of acceptance [as a career soldier] that stood shortly before redemption, and which in fact only I could turn down, not the BMVg [...] The idea was that if there was ever a chance to succeed, it was in this form. Knowing the price, signing at the bottom of the letter to the minister in 1996 was the highest possible level of commitment.²⁰⁸

The BMVg filed for the lieutenant's appeal to be decided at the Federal Administrative Court, seeking its rejection:

The claimant's lack of fitness arises from his homosexual tendency. A different baseline assessment does not follow on the claimant's argument that there are no identifiable circumstances

²⁰⁷ Cited in BVerwG, 1st Military Service Senate, Court opinion, WB 48.97 on 18 November 1997.

²⁰⁸ Email from Erich Schmid to the author, 15 November 2018, as well as a follow-up. To Schmid's mind all the soldiers who had gone to court before him went with a disadvantage: “Their homosexuality was used to insinuate a lack of fitness before they tried for a switch in career or status. My case was different. The service had already confirmed my fitness and qualifications. All I had to do was pull the trigger. If I did that, the service would have to revise a decision that had been confirmed multiple times. A new constellation. That was why I went on the offensive with the letter. Ready to bring legal action up to the highest office and to take political action in the highest circles.” Email from Erich Schmid to the author, 5 December 2017.

present in his particular situation to justify the assumption of a loss in authority. At odds with changing social views on homosexuality and increasing tolerance among segments of the population, there still exists a not-inconsiderable risk that nonetheless persistent stereotypical ideas about the conduct of men with homosexual inclinations would be transferred onto the claimant, severely calling his authority into question without his being able to influence it...Informing the commander about the background for the claimant's transfer as his future superior was also lawful. The fact of a homosexual tendency is not an exclusively private matter, but also a matter of fitness and assignment, meaning his next disciplinary superior had to be informed.²⁰⁹

By way of response, the lieutenant argued in a supplementary opinion piece to the ministry that it

failed to recognize that attitudes about sexual behavior are evolving. While taboos continued to exist in the sexual realm, homosexuality or same-sex attraction was not one of them. If the BMVg nevertheless buried him beneath "a bundle of measures" on account of his homosexuality, it would be ignoring societal developments from the past two decades.²¹⁰

None of the soldiers in either the non-commissioned officer training course or the general basic training course he had led indicated a "problem" with his person or his homosexuality, the lieutenant stressed. Quite the opposite; they admired "his conviction and asked how they might support him."²¹¹

The Federal Administrative Court dismissed the lieutenant's appeal submitted by the BMVg for deliberation as "partly inadmissible, partly unfounded." The claimant's transfer was lawful and did not violate his rights. The court had repeatedly found in the past "that it was not legally objectionable not to assign homosexually inclined soldiers as troop instructors." The same held true for the present case.

Even if the way in which homosexual tendencies are viewed has continued to change in segments of society and increasing tolerance is to be noted in this regard, a general level of tolerance existing among soldiers in training, especially conscripts, to an extent that would make the BMVg's calculations seem improper cannot be assumed. It cannot be ruled out for one part of young conscripts or their family members that they would show no sympathy for soldiers with homosexual inclinations being assigned as permanent or temporary instructors, and thus educators. Even with the greater tolerance shown today toward those who are homosexually inclined, behavior which is seen as normal and common among heterosexuals, when coming from a homosexually inclined soldier, might still acquire a significance in the eyes of subordinates that led to gossip, suspicion or the instructor's rejection, and thus difficulties in the service realm. To this extent it is not decisive that no cause for complaint or other

²⁰⁹ Cited in BVerwG, 1st Military Service Senate, Court opinion, WB 48.97 on 18 November 1997.

²¹⁰ Ibid.

²¹¹ Ibid.

objection regarding the claimant's homosexuality arose during his previous assignment as a platoon leader, as stated. What is alone decisive for the claimant's future assignments is the fact of his homosexuality now being known about within the ranks.²¹²

It is striking how closely the key phrases in the ruling mirror others from the 1970s and 1980s. The judges seem to have been trapped in the same time capsule as the politicians, civil servants, jurists and BMVg officers.

The Supreme Administrative Court ruled further that the revelation of the plaintiff's homosexuality by the division head at BMVg personnel headquarters did not constitute a service measure directed against him. The telephone conversation between the division head and the plaintiff's future commander had rather been a "a purely internal affair without other effects."²¹³

The ruling against the first lieutenant reverberated in the media. In April 1998 *Süddeutsche Zeitung* lead with an article entitled "Gay officer not allowed to be a boss."²¹⁴ *Berliner Zeitung* consulted a BMVg spokesperson, quoting his response: A superior would lose his authority if subordinates were to learn of his inclination; soldiers had been known to refuse the commands of gay officers. The spokesperson could not cite specific instances but said that in this way, a gay officer could indirectly contribute to the death of comrades in the field. "How would we explain that to the ones left behind?" Still, the spokesperson conceded "inconsistencies" in the Bundeswehr's stance. "As long as we do not know anything about it, homosexuality does not constitute a lack of fitness."²¹⁵ Love between men was only a problem if the Bundeswehr found out.

For his part, *Berliner Zeitung* quoted First Lieutenant Schmid as saying "I'll go to the Federal Constitutional Court if need be to sue for my acceptance [as a career soldier]."²¹⁶ A constitutional appeal was already in preparation, he said, before another lieutenant's trip to the BVerfG in 2000 led to the BMVg relenting.²¹⁷ A legal opinion sought out from Professor Armin Steinkamm in advance of Schmid's upcoming constitutional complaint had "urgently" advised the ministry "to avoid what would most likely be a defeat in Karlsruhe."²¹⁸

212 BVerwG, 1st Military Service Senate, Court opinion, WB 48.97 from 18 November 1997; also reprinted under the title "Keine gleichgeschlechtlich veranlagten Soldaten als Ausbilder."

213 Ibid.

214 Müller-Jentsch, "Schwuler Offizier darf nicht Chef sein." Filed in BMVg archives under BArch, BW 2/38353.

215 Bruhns, "Homosexualität wird bei Outing zum 'Eignungsmangel'."

216 Ibid.

217 See chapter 7 for a full account.

218 Email from Erich Schmid to the author, 15 November 2018. See chapter 6 for a complete account of Professor Armin Steinkamm's report from January 2000.

The same article quoted Colonel Bernhard Gertz, chair of the German Bundeswehr Association, who told *Berliner Zeitung* that the Bundeswehr had to play the role of “breaking down prejudice, not locking it in place.” “If a superior does his job well, it’s all the same to soldiers who he sleeps with.” Still, as of 1998 Gertz saw the lieutenant as “hardly standing a chance” under current case law. “Yet that could change soon,” the piece concluded. “In late 1997 a gay fixed-term soldier in northern Germany succeeded in petitioning to enter career service. The Bundeswehr filed for appeal, and the case now lies before the superior administrative court in Berlin.” The article quoted a spokesperson for Minister of Defense Rühle as saying that “if the court decides differently, we’ll orient ourselves by that.”²¹⁹

Likely triggered by the newspaper reports about First Lieutenant Schmid, in summer 1998 the subject of homosexual soldiers took to television for the first time, with a BMVg spokesperson reiterating his institution’s well-known position for a morning talkshow on ZDF. The chair of the German Bundeswehr Association contradicted him live on-air: “With all due respect,” the ministry’s position was “sheer and utter nonsense.”²²⁰ Gertz continued that “the way somebody arranges his sexual life can only be seen as relevant to security by someone who is still thinking in the categories of the Cold War. What matters is the kind of personality a superior has; if it is convincing, it’s all the same to the soldiers who he sleeps with.”²²¹

The association also provided legal support to members who were petitioning against transfer or dismissal based solely on their sexual orientation,²²² including the costs of a lawyer for Winfried Stecher’s constitutional complaint in Karlsruhe when the first lieutenant’s insurance did not cover it.²²³ Internally, the BMVg noted that the association chair had promised to bear the lieutenant’s legal costs “up to the final instance.” This led the division responsible at BMVg to conclude that the association’s representatives in the joint spokesperson committee would balk at new, restrictive orders.²²⁴ (This led the BMVg to quash internally the draft for the orders that had been sketched.) Upon more questions from the media, the German Bundeswehr Association stated in 1999 that the employment principals of “suit-

219 Bruhns, “Homosexualität wird bei Outing zum ‘Eignungsmangel’.”

220 Ten days later, the exchange on 16 July 1998 between BMVg armed forces staff spokesperson Joint Staff Lieutenant Colonel Kaatz and Colonel Gertz was reprinted in the weekly magazine *Bundeswehr aktuell* on 27 July 1998.

221 Ibid.

222 Rosa Rauschen, “Schwule bei der Bundeswehr.”

223 Interview with Winfried Stecher, Hamburg, 25 January 2018.

224 BArch, BW 1/502107, no pagination: BMVg, PSZ III 1, 5 January 2000.

ability, qualification and performance” had to be applied for all soldiers. Sexual orientation did not appear in the list of criteria.²²⁵

By way of epilogue, from July 1997 up to the end of his tour of duty in 2002, Erich Schmid remained on the same battalion staff in different posts. In 1999 he was promoted to captain, further proof that as the new millennium approached a general ban on promotion for officers identified as homosexual no longer existed.

Schmid also appealed blockage of his entry into career service at Berlin Administrative Court. In January 2000 the judges requested an official statement from the BMVg, explicitly mentioning the European Court of Human Rights’ September 1999 ruling against the British armed forces and its practice of dismissing homosexual soldiers.²²⁶ Schmid’s suit did not advance any farther; in 2000 the BMVg offered him an out-of-court settlement.²²⁷

Boldly declaring oneself to be homosexual was not the only way to set the restrictive gears in motion – far from it. As a series of events in 1996–1997 shows, spontaneous and unguarded comments also sufficed. A chief petty officer became ensnared in the machinery of “personnel measures” when he asked his personnel manager during a routine staff interview to keep his partner’s interests in mind with a planned transfer; the two had formed a tight bond and were living together. “This highly personal information, intended only for my personnel manager, was now used against me,” the officer wrote in a letter to the Bundestag Defense Committee.²²⁸

The monumental Bundeswehr, which especially in the moments of political upheaval in 1990–91 presented itself as just and trustworthy and acted accordingly, is now tottering and has elicited a deep crisis of trust in me regarding the constitutionality of its personnel policy.²²⁹

In a further letter of complaint to the BMVg the officer denounced the attempt “to litigate my [homosexual] inclination, which I had no choice over.” It was “unjust.” The service had to accept the laws of nature, not turn them into a liability.²³⁰

What was the background to the episode? Immediately after the officer’s confidential talk with his personnel manager at Navy headquarters, his disclosure had

²²⁵ *Rosa Rauschen*, “Schwule bei der Bundeswehr.”

²²⁶ BACh, BW 2/38358: BMVg, PSZ III 6, 12 April 2000. See chapter 6 for a full account of the European ruling.

²²⁷ See chapter 6.

²²⁸ BACh, BW 2/38358: Chief Petty Officer F. to the Bundestag Defense Committee, 10 September 1997.

²²⁹ *Ibid.*

²³⁰ BACh, BW 2/38358: Chief Petty Officer F. to the BMVg, 19 June 1997.

sent all the familiar bureaucratic wheels spinning. The officer was now “fit only with restriction,” and could not “be installed as a direct superior in the position of a commander, instructor or educator.” He would also be removed from his current course immediately.²³¹ The soldier filed numerous complaints, including one to Parliamentary Commissioner for the Armed Forces Claire Marienfeld, contending that the Bundeswehr’s actions violated the principle of equality set out in Article 3 of the constitution. He felt he had been “branded a ‘second-class’ person,” and that it played “no role how good or bad a soldier he was.” It was “high time to recognize that the ‘problem of homosexuality’ existed in the Bundeswehr as well.”²³²

The commissioner’s office replied that the decision taken by Navy headquarters “had been confirmed in its legality by court decision in numerous comparable cases.”²³³ This meant personnel management’s method of proceeding had not been “inappropriate for the matter.” What was more, the soldier had revealed his sexual disposition “without needing to do so.” The measures had been taken “to avoid possible reactions within your milieu – rejection, provocation, exposure to teasing – from the outset, and thus to rule out risking a loss in authority and impairing discipline.” The office of the commissioner then turned to the underlying principles in the officer’s case: The Bundeswehr had an obligation to remain mindful of the broader antipathy to homosexuality that still existed within society. “It cannot be the mission of the Bundeswehr to become a vanguard for society’s acceptance of homosexuality.”²³⁴ The defense ministry similarly turned back the officer’s complaints.²³⁵

A spectacular series of events from 1999 showed that rash statements could cost soldiers their careers even while they were on holiday. While watching “Summer Special ’99 – Hot Vacation,” an RTL II show filmed on Mykonos, a captain at a Bundeswehr hospital recognized two of his soldiers. The head of a paramedic training company, one of the soldiers the captain spotted on the show was a staff sergeant in training in his company. The captain reported to the hospital director that the two soldiers had admitted to being gay on TV and “candidly [described] the possibilities that Mykonos offered for their orientation.” This made the staff sergeant “subject to attack” and “untenable” for his intended assignment as an

²³¹ BArch, BW 2/38358: Navy Headquarters, note from 29 October 1996.

²³² BArch, BW 2/38358: Chief Petty Officer F. to parliamentary commissioner for the armed forces, 3 December 1996.

²³³ Parliamentary commissioner for the armed forces to Chief Petty Officer F., 9 January 1997.

²³⁴ *Ibid.*

²³⁵ BArch, BW 2/38358: BMVg, P II 7, to Chief Petty Officer F., 12 July 1997. It could not be established whether the soldier continued to pursue the matter through legal action. No record of a court decision has turned up to date.

instructor and platoon leader.²³⁶ It took just two days for the hospital to petition personnel to change the sergeant's planned assignment "in order to maintain discipline and out of concern for the soldier"; he was "no longer tenable" as an instructor and platoon leader. In making its request, the hospital stated explicitly that the sergeant's sexual preferences had "not previously come to light in any form whatsoever in the service realm."²³⁷ The staff sergeant appealed the same day, objecting that his authority had never been called into question. "I have kept and will in the future keep my service and private lives strictly separate."²³⁸

d.) "In the Name of the People: The Plaintiff Is Legally Entitled to Be Accepted for Career Service."

Other soldiers pursued a legal route in fighting for their rights as well. In 1998, media attention fell on a staff sergeant from a mechanized reconnaissance unit. The case dated back three years to 1995, when MAD discovered the man's sexual orientation during a routine security check and reported it. Throughout his entire career in the service the sergeant had not come out as homosexual at work, nor drawn notice or been outed as such. Now, however, his "limited fitness for career development" was certified in reference to his sexual orientation, leaving him unfit for career service.²³⁹

In 1997 the BMVg rejected his complaint.²⁴⁰ The sergeant then filed suit, contending that his fundamental rights to equal treatment, freedom to choose a profession and equal access to public office had been violated. It was "constitutionally problematic to read a lack of acceptance among subordinates that was merely asserted or supposed into the term 'fitness'."²⁴¹ The Ministry of Defense applied to have the suit dismissed, arguing that

²³⁶ BArch, BW 2/38357: Report from 8 September 1999 (Further details have been avoided to protect those involved).

²³⁷ Ibid., Request to Army Headquarters on 10 September 1999.

²³⁸ Ibid., Complaint from 10 September 1999. Neither the outcome of appeal proceedings nor subsequent personnel measures could be determined.

²³⁹ Ibid., BMVg, PSZ III 6, 12 April 2000. Focus magazine also ran a piece entitled "Gays in the Bundeswehr." See chapter 5 for MAD's role in this particular case.

²⁴⁰ BArch, BW 2/38358: BMVg, PSZ III 6, 12 April 2000.

²⁴¹ Grounds for complaint from 11 September 1997, quoted in Lüneburg Administrative Court, decided 3 June 1999, Az 1 A 141/97. A copy is available in BArch, 2/38357.

a homosexual soldier's fitness for assignment to positions of leadership [...] raises fundamental doubts even in the abstract, without that depending on whether official duties have been observed to date. The abstract risk of a loss of authority exists independently of whether the social attitude toward homosexuality has changed among large segments of the population.²⁴²

The way the judges from the first court were leaning could already be gleaned from the temporary order they issued to the Ministry of Defense on 7 September 1998 to leave the staff sergeant in service past his upcoming regular departure on 30 September 1998, pending conclusion of the lawsuit.²⁴³ When the BMVg then petitioned to have the decision repealed by the next highest instance,²⁴⁴ the sergeant was dismissed after his service ended.

The main proceedings still had not been decided on, however, and in June 1999 the Lüneburg judges from the first court ruled clearly in favor of the plaintiff, unwilling to be cowed by the edicts of the superior court. "In the name of the people [...] The action is admissible and well-founded. The plaintiff has a legal right to be accepted for career service."²⁴⁵ The court opinion lambasted the service's position as violating the plaintiff's fundamental rights. The Basic Law, or really its interpretation by the Federal Constitutional Court, had placed a person's sexuality under the constitutional protection of the free development of personality guaranteed in Article 2 as part of the private sphere, in conjunction with the inviolable dignity of man guaranteed in Article 1. It would thus contravene the Basic Law "to tie the plaintiff solely and exclusively to his sexual identity, which is completely inconspicuous both in and out of service, at his expense."²⁴⁶

The link to homosexuality as "the sole remaining reason for rejection" constituted a violation of Articles 1 and 2 of the Basic Law, as well as the prohibition against arbitrariness under Article 3. "Within the scope of the free and democratic constitutional order established under the Basic Law, with its emphasis on human dignity," a soldier "cannot have his suitability denied and consequently be sidelined, ostracized or discriminated against on the basis of inconspicuous sexuality alone." This violated the plaintiff's right to dignity as a person "with a form of sexuality that happened to be different (than is characteristic of the majority of peo-

²⁴² BMVg application, *ibid.*

²⁴³ Lüneburg Administrative Court, ruling on 7 September 1998, Az 1 B 53/98.

²⁴⁴ Lower Saxony Superior Administrative Court ruling on 16 December 1998, Az 2 M 4436/98. In detail, see *Neue Zeitschrift für Verwaltungsrecht Rechtsprechungs-Report*, 11/12 (1999): 772–773.

²⁴⁵ Lüneburg Administrative Court, ruling on 3 June 1999, Az 1 A 141/97. A copy is available in BArch, BW 2/38357.

²⁴⁶ *Ibid.*

ple).²⁴⁷ The judges confronted the ministry with its own orders from 1994, which stated that “on its own, homosexuality cannot be grounds for exclusion,” as well that the Bundeswehr decided on a case-by-case basis.²⁴⁸ The “possibility of a loss in authority first arises independently of [...] sexual preference – whether homosexual, lesbian, or heterosexual – when the superior [...] does not understand how manage his sexuality.”²⁴⁹ As evidence the judges cited cases of sexual harassment involving an inspection chief’s pursuit of female soldiers and a regiment commander pursuing a female civilian employee. In the plaintiff’s case, a “‘risk’ that was not even tangibly present but only feared generally” could not be inferred to his detriment. Rather, the BMVg had “itself conceded that the plaintiff had to date managed his official duties particularly well.”²⁵⁰

The judges in Lüneberg put a hole in the wall of the administrative courts’ “cemented case rulings” against homosexual soldiers. The alarm bells were sounding at Hardthöhe as the personnel department convened,²⁵¹ though it was not a crisis session yet – that would not come until six months later. *Focus* magazine reported a “triumph in court: The thirty-year-old became the first gay soldier to bring the force to its knees.”²⁵² The ministry was not “kneeling,” however, but appealed the decision at Lower Saxony Superior Administrative Court (also seated in Lüneberg). The first decision from June 1999 had not entered force of law yet. Nor was a decision ever reached – another lawsuit overtook the pending appeal.²⁵³

e.) A Lieutenant Is Removed as Platoon Leader, 1998

Twenty-nine-year-old Winfried Stecher had every reason to be satisfied. His career as a Bundeswehr instructor was both challenging and fulfilling. He was valued by superiors and subordinates alike. He was even designated a model soldier. All gone and done for. A superior

²⁴⁷ Ibid.

²⁴⁸ BMVg Füs I 4, from 15 September 1994, Az 35-04-00.

²⁴⁹ A copy of the ruling contains the handwritten remark “false argumentation” next to this sentence, presumably from the BMVg. Lüneburg Administrative Court, ruling on 3 June 1999, Az 1 A 141/97. A copy is available in BArch, BW 2/38357.

²⁵⁰ Lüneburg Administrative Court, ruling on 3 June 1999, Az.: 1 A 141/97. A copy is available in BArch, BW 2/38357.

²⁵¹ The four sections in the personnel department were invited to the meeting, as was the policy division at legal affairs and Füs I 4. BArch, BW 2/38357: BMVg, PSZ III 6, 1 January 1999.

²⁵² “Schwule in die Bundeswehr.”

²⁵³ For a full account see chapter 6.

asked Stecher whether he was homosexual. His “Yes sir” went down in the personnel files; Stecher wound up behind a desk.²⁵⁴

Even as a cadet at Air Force Officers’ School, former classmates recalled Winfried Stecher showing true leadership qualities. A staff sergeant with significant experience training troops, Stecher joined the officer’s career track the undisputed informal leader of his class. It was not simply prior experience that made Stecher the classic “alpha” but his personality alone – a true leader, as another former student put it. Everyone had been positive Stecher would continue on his way through the air force to a successful career. Things turned out differently. Those who knew him at officers’ school and in the troops recalled Winfried Stecher as a soldier with all his heart and soul, someone whose entire life was in his career. Stecher had planted both feet firmly on the ground of serving as an officer, and it was *his* Bundeswehr that pulled it out from under him.

Beginning in 1996 Lieutenant Stecher first built up, then led an anti-aircraft platoon at an air force base battalion. In February 1998 an otherwise outstanding record of achievement was turned on its head when, as reported in *FAZ*, a MAD communication revealed the lieutenant’s sexual orientation.²⁵⁵ Confronted about it directly by his squadron chief, the lieutenant confirmed his homosexuality; he had lived with his dedicated partner for a long time. He again replied in the affirmative when the battalion commander asked him the same question.²⁵⁶ Looking back, Stecher recalled that his superiors were interested “primarily in his life partner’s rank, and even more in his military branch.” Their interest grew out of the directive governing superior–subordinate relations: If Lieutenant Stecher’s partner was an NCO or a nonrated soldier in the air force, or even worse from his own barracks, the regulations would have taken hold, making Lieutenant Stecher guilty of a breach of duty. His superiors were palpably relieved to hear his partner was a petty officer in the Navy.²⁵⁷ The battalion commander then spoke with soldiers from the anti-aircraft unit; none of the soldiers reported any problems with their platoon leader’s homosexuality, instead they voiced their trust in him and spoke out against a possible transfer.²⁵⁸ Some men within the platoon went further, taking the initia-

254 *Rosa Rauschen*, “Schwule bei der Bundeswehr.”

255 For a detailed account of MAD’s role in this particular case, see chapter 5.

256 BArch, BW 1/502107, sheets 65–118: Constitutional complaint of First Lieutenant Stecher from 23 December 1998, case facts, here sheet 69.

257 Interview with Winfried Stecher, Hamburg, 25 January 2018.

258 *Ibid.*, as well as BArch, BW 1/502107, sheets 114–115, Annex 12: Kdr ObjSBtLw to Lieutenant Stecher, 20 April 1998.

tive to write a letter to the commander which twenty-one then signed, speaking out for a second time against their leader's planned dismissal.

Lieutenant Stecher has at all times led his platoon in the way one would expect of a platoon leader [...] If [his] transfer is intended as a way of protecting subordinates we see no need, as there have not been any incidents in the past that might have pointed to his homosexuality. If it turns out to be the case that Lieutenant Stecher is transferred after all because he kept quiet about his homosexuality, we would like to give some food for thought that in our view, the private and official sides of a superior should be kept clearly separate from one another. In our view the way in which Lieutenant Stecher is being dealt with is highly discriminatory.²⁵⁹

Stecher himself could not think back to any negative reactions from within his squadron either; he had experienced “unconditional support and encouragement.” One incident stayed with him in particular, where an enlisted man from another platoon, “heavily tattooed and generally [considered] the toughest of the bunch” came up to him and said: “If anyone says anything to you, he'll have me to deal with!”²⁶⁰ On 20 April 1998, the battalion commander informed the Bundeswehr personnel office of Stecher's case in writing via the division commander. He also wrote to Stecher, informing him that after “thorough investigation and seeking legal expertise” he had to report the facts of the matter “due to the prevailing legal position in the BMVg.” The personnel office would “decide on further measures or consequences.”²⁶¹ The battalion commander stressed that he had passed along the words of the enlisted men and troop spokespersons in favor of the lieutenant's remaining, and that he himself did not expect “any homosexual advances from your end toward the soldiers in your platoon” nor see any susceptibility to extortion.²⁶² In fact, the battalion commander had recommended that the personnel office consider

whether a more liberal view was advisable and the claimant remaining at his post [...] might be taken into consideration. The reservations that the Federal Ministry of Defense commonly holds against homosexuals in positions of authority do not apply in the claimant's case. He continues to find acceptance despite his homosexual tendencies and holds the trust of his

²⁵⁹ BArch, BW 1/502107, sheets 65–118: Constitutional complaint of First Lieutenant Stecher from 23 December 1998, here sheet 107, Annex 8: Letter from the enlisted men of Platoon II / Air Force Base Battalion 3, 1 April 1998.

²⁶⁰ Interview with Winfried Stecher of Hamburg, 25 January 2018.

²⁶¹ BArch, BW 1/502107, sheets 65–118: Constitutional complaint of First Lieutenant Stecher from 23 December 1998, here sheets 114–115, Annex 12: Kdr ObjSBtLw to Lieutenant Stecher, 20 April 1998.

²⁶² Ibid.

subordinates. The troops could and would positively support his retention. The superiors (squadron chief and commander) could and would take responsibility for the situation.²⁶³

The squadron sergeant also intervened on Lieutenant Stecher's behalf to the parliamentary commissioner, describing him as an "irreproachable, model officer" distinguished by his "engagement, thirst for action and exemplary leadership."²⁶⁴ All of it – the recommendation of the battalion commander to which the division commander added his name, as well as the letter from the sergeant – came to nought.

The squadron chief's report to the battalion commander set off a chain reaction that ended in regulations taking hold at the personal office. The battalion commander would still likely have been able to achieve an "internal" solution proportional to the case at hand; he was already well on the way to doing so by questioning the "impacted" squadron soldiers himself, before then opting for the path, all too common in the military, of reporting upstairs. "Reporting frees you and grieves the boss" is an old soldiers' saying.

The stone set in motion by the squadron chief's initial report soon turned into an avalanche that ultimately flattened the already derelict edifice of restrictions in place against homosexual soldiers. Yet laying the "blame" at the feet of the squadron boss alone would miss the mark. The entire premise upon which the Bundeswehr, the BMVg, MAD and personnel leadership based its treatment of homosexuality was unhappy, to say the least; sooner or later it had to end in a serious conflict like the one surrounding Lieutenant Stecher. The personnel office decided to transfer the lieutenant to squadron staff. Yet then, in July 1998, he was promoted to first lieutenant, in another sign that the ban on promoting officers identified as homosexual either no longer existed by the late 1990s, or was not applied.

The personnel office's decision met with "outrage, more than anyone from the conscripts in his platoon." "As a loyal subordinate I have to back the decision, but I see lasting damage to motivation and internal cohesion."²⁶⁵ The squadron spokesperson wrote to the parliamentary commissioner with a similar message:

I might have wished that the BMVg [personnel department] would refrain from these measures, as it was not necessary from the point of view of all those directly involved [...] Not simply among those directly affected but a wider circle of soldiers, there is an impression that the current views of the BMVg mean the soldier is being ostracized without due consider-

²⁶³ Kdr OBjSBtLw to PersABw, 20 April 1998, cited in Federal Administrative Court, 1st Military Service Senate in its ruling on 19 November 1998, BVerwG, 1 WB 54.98.

²⁶⁴ BArch, BW 1/502107, sheets 65–118: Constitutional Complaint of Lieutenant Stecher from 23 December 1998, here sheet 107, Annex 9: Letter from Squadron Sergeant 3./OBjSBtLw to the parliamentary commissioner for the armed forces, 22 May 1998.

²⁶⁵ Ibid.

ation of his past accomplishments or personal circumstances [...] It seems that homosexually inclined soldiers are ultimately treated according to the same means and schema, without truly taking the opinions and recommendations of the responsible disciplinary superiors into account, and especially those of spokespersons [...] The number of homosexually inclined soldiers both male and female is likely not insignificant. Yet the restrictive position of the service means that only a few cases reach the public; the majority of those in question do not admit to their tendencies due to the negative consequences. I would like now [...] to request that you [...] look after this matter. It seems requisite given the considerable differences that exist between the general level of social acceptance of this group of persons and that within personnel management, one which can no longer be justified given the general shift within society.²⁶⁶

Stecher appealed his transfer before Federal Administrative Court. In stating the reason for appeal, the lieutenant's lawyer noted that differently from previously decided cases, her client had

kept his homosexuality strictly separate from his official duties as a part of his private sphere. His soldiers expressed confidence in him as a platoon leader and officer while knowing of his homosexuality, and wanted to keep him on as a superior. No security concerns were present, as his admission left him unsusceptible to blackmail. His authority has also always been accepted within the line of duty.

The lawyer continued that it was "unlawful not to use homosexually inclined soldiers as troop instructors as a matter of principle. There has been a fundamental shift in general attitudes toward homosexual tendencies. There is no life experience to show that young conscripts show a lesser degree of acceptance."²⁶⁷ The BMVg, ensconced in its time capsule, responded with the same arguments it had been using for decades: "Homosexuals, meanwhile, are not suitable without reservation as military superiors, since their homosexuality becoming known could have the loss of official authority in their position as a consequence. The BMVg could not accept a potential threat to the armed forces' combat readiness resulting from this."²⁶⁸

Responding directly to the first lieutenant's arguments, the lawyers in Bonn countered that it could not be "ruled out that ideas still in existence about the behavior of homosexuals would also be applied to him, even if he did not provide

²⁶⁶ Ibid., Annex 11: Spokesperson letter from Air Force Base Battalion 3 to the parliamentary commissioner for the armed forces, 4 August 1998.

²⁶⁷ Grounds for petition, cited in Federal Administrative Court, 1st Military Service Senate, ruling on 19 November 1998, BVerwG, 1 WB 54.98.

²⁶⁸ BMVg statement, quoted in *ibid.*

any objective cause. The acceptance that exists among superiors and subordinates at present does not refute this prognosis.”²⁶⁹

In November 1998 the judges at the first military service senate ruled against the first lieutenant, finding his application “admissible” but “unfounded.” The transfer order was “lawful and did not violate the plaintiff’s rights.” A soldier had “no claim on assignment to a particular location or area.” The senate had “repeatedly found that it was not legally objectionable not to employ homosexually inclined soldiers as instructors in the troops,” most recently in November 1997.²⁷⁰

The sole deciding factor for the plaintiff’s future assignment is the fact that his homosexual tendency has become known within the ranks. This alone means that it is no longer limited to the private sphere but has encroached on the official realm of the Bundeswehr. It changes nothing that the plaintiff has not sought explicitly to disclose his tendency outwardly but separate it from the official realm as a part of his private life. Its knowledge within the official realm has made it a part of that realm. Nor does the BMVg’s determination of suitability violate the duty to camaraderie under §12 SG [...] The plaintiff is not being considered generally unfit as a soldier or comrade, but only as a troop instructor.²⁷¹

The judges also rejected the plaintiff’s reference to female soldiers, who at the time had begun to serve in a limited number of areas within the armed forces. Women serving as superiors “could not be compared” to men with a homosexual orientation, as it was not “the risk of sexual advances” that was at issue “but the view of the BMVg that men with homosexual tendencies were still broadly rejected by heterosexual men.” There was a danger this would result in “an unacceptable loss of authority.”²⁷² (One woman in uniform at the time recalled how indignant she had been upon learning in the press about Lieutenant Stecher’s treatment. She had thought to send an inquiry to the defense minister and ask for clarification as to why on the one hand homosexual soldiers, herself included, were allowed to serve while homosexual superiors were discriminated against. It had run contrary to her sense of justice, the physician recalled, although she did not quit the service over the matter.²⁷³)

The judges at the Federal Administrative Court thus continued to stand by the side of the Ministry of Defense in 1998. The lieutenant now took his case to the

²⁶⁹ Ibid.

²⁷⁰ Ruling at Federal Administrative Court, 1st Military Service Senate, 19 November 1998, BVerwG, 1 WB 54.98.

²⁷¹ Ibid.

²⁷² Ibid.

²⁷³ Eyewitness interview, 28 November 2019.

Federal Constitutional Court (Bundesverfassungsgericht, BVerfG), ultimately bringing the entire, decades-old edifice of argumentation crashing down around itself. Yet the armed forces had already lost or scared off any number of well qualified soldiers, NCOs, officers and potential candidates simply because they were homosexual. That was the price the Bundeswehr paid – or perhaps the actual aim of its efforts.

Homosexual men continued to opt for a soldier's life despite knowing the restrictions. From time to time at public presentations, an audience member has uncomprehendingly asked the author how homosexuals could even think of joining the Bundeswehr as career soldiers and voluntarily expose themselves to such a "homophobic milieu." Yet why would a woman or man who wanted to pursue the path of a soldier, whether it was because they were convinced of the Bundeswehr's mission or simply because they wanted to become a soldier, give up on their dreams simply because of their sexual orientation? Setting this wish aside from the very beginning based on the restrictions would be tantamount to giving up on, or discriminating against oneself. One author on a gay website spoke to his own changing opinions in a 1999 article about the BMVg's defensive legal action against homosexual officers.

At eighteen, I could have wished that the Bundeswehr was as intolerant as the Venezuelan Army and sent gay conscripts home. I would even have outed myself for that. But there are also gay people who want to become soldiers. And I can't entirely understand why they shouldn't be allowed to. Maybe the generals are picturing a bunch of shrieking queens throwing cotton balls at tanks. What do I know. And the Bundeswehr isn't exactly known for being a progressive part of society.²⁷⁴

The eyewitnesses the author interviewed for this study still speak about First Lieutenants Erich Schmid and Winfried Stecher in high regard. "They were the first young officers to lift their heads above cover."²⁷⁵ It should always be remembered in this context that Air Force Lieutenant Stecher was outed against his will. In his mind this left him with no choice but to go to war in court and the media – and with firm resolve.

274 Rosa Rauschen, "Schwule bei der Bundeswehr."

275 E.g. interview with Lieutenant Colonel D. of Berlin, 12 February 2018.

f.) Political Pressure

Whether through direct inquiries to the BMVg or indirectly via the parliamentary commissioner, members of parliament repeatedly sought to bring about a change in the ministry's position, or at least maintain pressure. Although they did not succeed in their efforts, the questions coming from the Bundestag forced the officers and civil servants at Hardthöhe to deal with the topic on a recurring basis. Every new solicitation would start the wheels of bureaucracy; draft responses were composed, other ministry sections brought on to sign. The sheer number of inquiries solicited by the Bundestag and the political parties is astonishing; the phrasing in the BMVg's answers less so, nearly always sounding the same. This makes it pointless to reproduce the replies from Hardthöhe here, which echo each other nearly verbatim. What is of interest and relevance here, however, are the names of those who took an early interest in homosexual soldiers' rights, or at least asked the BMVg about their treatment. They include Herta Däubler-Gmelin (SPD) in 1978;²⁷⁶ Helga Schuchardt (FDP) in 1981;²⁷⁷ Wolfgang Ehmke (The Greens) in 1984;²⁷⁸ Andreas von Bülow (SPD) in 1985;²⁷⁹ Herbert Rusche (The Greens) in 1986;²⁸⁰ Jutta Oesterle-Schwerin (The Greens) in 1988;²⁸¹ Vera Wollenberger (Alliance 90/The Greens at the time) in 1993;²⁸² Wolf-Michael Catenhusen (SPD) in 1995;²⁸³ Günther Nolting (FDP, regarding a first lieutenant's removal from the head of a mechanized infantry

276 BArch, BW 1/304284: BMVg, Office of the Parliamentary State Secretary, 21 December 1978 as well as BMVg, parliamentary state secretary to Deputy Herta Däubler-Gmelin (SPD), 23 February 1979.

277 For more on Schuchardt see chapter 4, section 3.

278 BArch, BW 2/31224: BMVg response to Deputy Wolfgang Ehmke's inquiry during question period in the Bundestag on 18 and 19 January 1984. Also available in BW 1/546375.

279 BArch, BW 2/31225: Deputy Andreas von Bülow to the BMVg, State Secretary Würzbach, 28 May 1985.

280 BArch, BW 2/31224: Response of the federal government on 16 December 1986 to the minor inquiry from Deputy Herbert Rusche and the Green Party faction, document 10/6333.

281 BArch, BW 2/31224: Deputy Jutta Oesterle-Schwerin to the Parliamentary Commissioner for the Armed Forces on 28 June 1988; Parliamentary Commissioner to the Chief of Defense regarding the same topic on 15 July 1988; BMVg Füs I 4, 11 October 1988, Draft response for the Chief of Defense to the inquiry from the Parliamentary Commissioner (also in BW 2/32553), *ibid.*, Supporting input from BMVg P II 1 to Füs I 4, 9 August 1988; additionally BW 2/31224: Major inquiry into homosexuals' right to informational self-determination, Bundestag document 11/2586, likewise from 1988.

282 BArch, BW 2/32553: BMVg, Parliament and Cabinet Division, 15 February 1993.

283 BArch, BW 2/38355: Wolf-Michael Catenhusen to Minister of Defense Volker Rühle, 13 September 1995.

platoon in 1997);²⁸⁴ Peter Zumkley (SPD) in 1998;²⁸⁵ Gabriele Iwersen in 1999 (SPD, regarding First Lieutenant Stecher, who was stationed in her electoral district in East Frisia);²⁸⁶ Hildebrecht Braun (FDP, who also took the side of the forcibly transferred lieutenant in 1999);²⁸⁷ Volker Beck (Alliance 90/The Greens) in 1999 and at other points;²⁸⁸ and Christina Schenk (PDS), also in 1999.²⁸⁹ In 1995 Ruprecht Polenz of the CDU raised concerns as the directly elected deputy for Münster about problems arising from discrepancies in the treatment of homosexuals within the joint German–Dutch corps stationed there.²⁹⁰ Finally, in 1997 Deputy Heinrich Graf von Einsiedel (PDS) opened a minor inquiry into “Violence and discrimination against gays in the Bundeswehr.”²⁹¹

The FDP proved especially reliable in its support of gay and lesbian soldiers; as early as 1993 the party’s youth organization submitted a petition at the national congress.

Even today, homosexuals continue to experience discrimination in many areas of life. This is especially pronounced in the Bundeswehr. While gay men have to perform basic military service like any other, fixed-term and career soldiers as well as reservists are blocked from rising in the Bundeswehr if their homosexuality is made public. Homosexual soldiers in the Bundeswehr have their fitness to serve as superiors denied without having their individual cases inspected, even without sexual activity occurring during service [...] The FDP calls on its caucus in parliament to effect a change in the internal regulations at the Federal Ministry of Defense. Moreover, the FDP calls for a clarifying amendment to [§] 3 of the Soldatengesetz. “Sexual orientation” should be included explicitly in the catalog of prohibited forms of discrimination.²⁹²

²⁸⁴ BArch, BW 2/38358: Deputy Günther Nolting to the BMVg, 28 February 1997. A detailed account of the first lieutenant’s dismissal and his transfer to a staff position is given above.

²⁸⁵ In June 1998, in conversation with Lieutenant General Olboeter. BArch, BW 2/38358: BMVg, StAl Füs I, 11 August 1998.

²⁸⁶ BArch, BW 2/38357: Deputy Gabriele Iwersen, comment from 26 January 1999.

²⁸⁷ Ibid., Deputy Hildebrecht Braun to the Defense Committee chairs, 23 June 1999.

²⁸⁸ See for example Deputy Volker Beck to Minister of Defense Scharping, 2 June 1999.

²⁸⁹ BArch, BW 2/38358: Deputy Christina Schenk (PDS), minor inquiry to the federal government, 1 October 1999 (corrected by hand to 5 October 1999), Bundestag document 14/1750. Deputy Schenk had already directed a catalog of questions to the BMVg in June 1999. BArch, BW 2/38357: Deputy Christina Schenk, 8 June 1999.

²⁹⁰ BArch, BW 2/38353: Deputy Ruprecht Polenz to Minister of Defense Volker Rühe on 29 November 1995. See chapter 7 on the subject of the German–Dutch corps.

²⁹¹ BArch, BW 2/38358: German Bundestag, 13th legislative period, minor inquiry from Deputy Heinrich Graf von Einsiedel and the PDS group, Document 13/8676, see also <http://dipbt.bundestag.de/doc/btd/13/089/1308950.pdf> (last accessed 16 May 2019).

²⁹² BArch, BW 2/38355: Federal executive board for the Young Liberals, Application No. 16 for the FDP party congress in Münster 11–13 June 1993.

With the group's consent, the petition was referred to the party's federal committee on peace and security policy "for in-depth consultation." Nine months' time (March 1994) did not witness the birth of any form of resolution, though the topic was still being discussed in committee. The BMVg characterized it as a "businesslike follow-up from the federal party congress."²⁹³ Between the lines that read: "No cause for alarm, the topic will get buried in committee."

The FDP's youth chapter stuck to the topic, issuing a dramatic call in 1997 to "stop the employment ban for gays in the Bundeswehr now!"²⁹⁴ Differently than in 1993–94, both the national party and its parliamentary caucus now responded to the demands of its youth. In July 1997 the difficulties homosexual soldiers encountered in making a career occupied the top slot on the agenda of the FDP's parliamentary working group on security policy, which directed sixteen questions to the BMVg.²⁹⁵ The Liberals continued to pursue the matter after that as well, bringing an inquiry before the Bundestag in October 1999: "The German Bundestag calls on the federal government to guarantee that soldiers are not discriminated against on the basis of their sexual orientation within the working operations of the Federal Ministry of Defense."²⁹⁶

10. Silent Acceptance?

In January 2000, shortly before a BMVg meeting scheduled in light of the multiple petitions, a division at personnel department summarized the regulatory landscape and the ministry's practices to date. Nothing had changed since 1984: "Despite the shift in society's views of homosexuality [...] the *assignment restrictions* associated with soldiers with a homosexual disposition continue to constitute a fundamental

²⁹³ Ibid., BMVg, Parliament and Cabinet Division, 22 February 1994, including a draft agenda for the federal committee on peace and security policy session on 11–12 March 1994.

²⁹⁴ Young Liberals, 17 August 1998. A copy is available in the files of the BMVg in BArch, BW 2/38358.

²⁹⁵ BArch, BW 2/38358: Fax from Deputy Günter Nolting to the BMVg, 17 June 1997, in advance of a meeting of the FDP parliamentary working group on security policy on 23 June 1997. The FDP also inquired as to practices within other NATO armed forces, prompting a series of queries to military attachés. For more see chapter 7.

²⁹⁶ German Bundestag, 14th legislative period, Document 14/1870, inquiry from Deputy Hildebrecht Braun (Augsburg), Günter Nolting, Jörg van Essen, other members of parliament and the FDP caucus: "Bekämpfung jeder Art von Diskriminierung in der Bundeswehr," 27 October 1999, <http://dipbt.bundestag.de/doc/btd/14/018/1401870.pdf> (last accessed 16 May 2019). See chapter 6 for a full account.

lack of fitness. This applies for male and female soldiers alike.”²⁹⁷ This was the first time that the BMVg formulated a position on lesbian soldiers in writing.

The same restrictions applied for lesbians as for their male counterparts: They could not be installed as troop leaders or instructors (the specific positions named were platoon leader, company head and battalion commander); in “certain elevated *troop assignments with a special scope of duty*” such as company sergeant; or posts demanding an “especially close relationship of trust,” as for example an Army doctor. “Soldiers who are assigned to such ‘critical’ posts in ignorance of their homosexual disposition will be *transferred out* upon discovery of their circumstances.” The justification was the same danger of a loss in authority that had been cited for over twenty-five years, and with it

the *jeopardization of troop combat-readiness* [...] It does not matter in this context how the disposition comes to light. Nor does it matter if it is accepted by subordinates in the individual case. Enduring acceptance – especially on deployment – cannot be relied on for reasons of personnel exchange, and because behavior from a homosexual superior that is itself innocuous may be misinterpreted without the superior being able to control it.

Former BMVg State Secretary Peter Wichert noted in retrospect that the Bundeswehr being an Army of conscripts “complicated things somewhat.” The armed forces did not only draw on high-school graduates or tolerant people from large cities but “men from the countryside” with socially conservative views who were far less tolerant and open-minded than others. It was critical to avoid dissatisfaction, even unrest within the ranks.²⁹⁸ Wichert emphasized to the author that “differently from today, where applicants are carefully screened, the Bundeswehr’s highly cursory examinations [at the time] did not allow it to detect xenophobia, racism, homophobia, etc.” There was a significant risk of misconduct toward homosexual soldiers, much greater than today. “The Bundeswehr would have come under heavier public criticism than any other institution,” to Wichert’s thinking.²⁹⁹ It had always been the aim of the military leadership to protect the institution of the Bundeswehr from harm.³⁰⁰

Numerous interviews with gay soldiers who have since retired confirm that, at least in the 1990s, tolerance in the troops was often much greater than the regulations actually allowed for. An officer or sergeant who had been identified as gay

²⁹⁷ Here and in what follows, BArch, BW 1/502107, no pagination.: BMVg, PSZ III 1, 5 January 2000 (original emphases)

²⁹⁸ Interview with Ret. State Secretary Peter Wichert, Bad Münstereifel, 10 April 2019.

²⁹⁹ Email from Ret. State Secretary Peter Wichert to the author, 26 April 2019.

³⁰⁰ Interview with Ret. State Secretary Peter Wichert, Bad Münstereifel, 10 April 2019.

could not technically remain at his post, yet in practice there were any number whose homosexuality existed as an open secret in the barracks, and who continued to serve in positions of authority. Looking back, Wichert saw it in the same way: The reality had clearly differed from what the regulations, or “regulatory maxims,” called for, with different “action maxims” prevailing among the troops instead, and “silent acceptance” serving as the going practice.³⁰¹ In speaking of “action maxims,” Wichert claims a form of tolerance for the armed forces.

There is evidence to support his view, as one written exchange from 1995 attests. The Bundeswehr, wrote section Füs I 4, must “respect the constitutional rights of the individual citizen to develop his personality within our legal system.”³⁰² This “naturally [applied] to soldiers as well, insofar as service operations and combat readiness are not impaired.”³⁰³ These unambiguous terms were directed to Mr. S. from the vicinity of Hannover. (Today one might label him a “concerned citizen” with slight irony.) In 1995 that concern revolved around the Bundeswehr’s approach to homosexuality.

For some months now I have seen how a Bundeswehr captain in my circle of acquaintances carries on a same-sex relationship with another man. This is done with complete separation between the two spheres, i.e. the professional and private. What bothers me, born in 1950 and brought up somewhat old-fashioned, is the fact that a German officer who is undoubtedly in command over many soldiers subordinate to him should have such a lifestyle.³⁰⁴

In its response the Füs I 4 thanked the man for his letter, initially striking an obliging tone. Even if society’s attitude toward homosexuality had changed in recent decades, he “was almost certainly not alone [in his rejection] of the behavior he described.” The Bundeswehr “naturally had to consider” this attitude in how it dealt with homosexual soldiers. Yet then the argumentation shifts. It cites the constitutionally enshrined right to the free development of personality as quoted above, before drawing the clear conclusion that “as long as this officer’s behavior [did not have] any impact on his service,” it was not subject “to any service assessment.”³⁰⁵ So long as private matters remained private and did not encroach on one’s office, the BMVg saw no need to act. It did so only when someone turned “activist,” in Wichert’s words, i.e. made a demonstrative show of his own homosexuality to actively campaign against personnel management, or even went public

301 Ibid.

302 BArch, BW 2/38355: BMVg, Füs I 4 to Wolfgang S., 24 October 1995.

303 Ibid.

304 Ibid., Wolfgang S. to the BMVg, 11 October 1995.

305 Ibid., BMVg, Füs I 4 to Wolfgang S., 24 October 1995.

on behalf of all homosexuals. In that case the personnel office, and if necessary the ministry, would decide strictly according to the “regulatory maxims.” “We could not allow the rules to be broken in a way that was obvious to everyone.”³⁰⁶

The question of whether something can be talked about or not was (and remains) the decisive gauge for acceptance in society. The same applies within the armed forces. Openly admitting one’s homosexuality was the major step along the path that would lead to the regulations taking hold. Anyone who outed himself sent up red flags for personnel leadership. As long as homosexual officers and NCOs simply went about their lives without shouting it out from the proverbial rooftops, they could make their way through the armed forces, even up to the highest echelon, with surprising ease.

A career in the military did come at a price, though: The pressure of having to conceal and dissemble at work did not let up at the end of the day or the barracks gate, but reached deep into the private realm and family life. Soldiers who were never able to speak about their weekends or vacations unselfconsciously, even within the free and easy milieu of fellow soldiers, who had to take care either not to mention a life partner or always replace “he” with “she” carried a tremendous burden throughout their lives and service. That burden often took a heavy toll, leading to mental illness in some soldiers; in 1999 *Die Zeit* was still forcibly criticizing the “psychological self-mutilation that the Bundeswehr inflicts on its soldiers.”³⁰⁷ Nearly twenty years previous in 1981, FDP deputy Helga Schuchardt had accused the defense ministry of “practically inciting homosexual soldiers to hypocrisy.”³⁰⁸

In 1996 gay magazine *Magnus* spoke with a fixed-term soldier introduced as Franz. Franz did not see “any contradiction between being gay and being a soldier,” and could not understand men “who rejected the Bundeswehr based solely on their being gay. These people don’t seem to possess any other characteristics aside from their sexuality.”³⁰⁹

Many gay soldiers wished for a more open and unencumbered life, free of secrecy. On the other hand, obviously not every homosexual or bisexual man wanted to make his intimate life public. Many held no intention of revealing their sexual preferences to their families or friends, much less their employer, preferring instead to live out their desires discreetly, even anonymously. If they were soldiers,

³⁰⁶ Interview with Ret. State Secretary Peter Wichert, Bad Münstereifel, 10 April 2019.

³⁰⁷ “Helden wie wir.”

³⁰⁸ *Der Spiegel*, “Berufliches”: Michael Lindner, 176.

³⁰⁹ Glade, “In Reih und Glied!” The BMVg retained a copy of the article for its archives, BArch, BW 2/38355.

the service's expectations for them not to let on about their homosexuality was more than acceptable; the discretion demanded of them fully matched with their own life plans. Every man and woman has an obvious right to his or her privacy, applying in particular to one's intimate affairs. Many men and women have also lived by the principle of maintaining a strict division between their professional and private lives. The Military Counterintelligence Service (Militärischer Abschirmdienst, MAD), on the other hand, did not draw an explicit distinction between the professional and the personal, and classified sexual behavior along with susceptibility to blackmail as potential security risks in need of investigation.