

INTERNATIONAL SOCIETY FOR MILITARY LAW AND THE LAW OF WAR

CONFERENCE ON MILITARY JURISDICTION Rhodes (Greece), 28 September 2011 to 2 October 2011

QUESTIONNAIRE

Ref.: ISMLLW 468 E 4

Introductory remarks

If your country or national group responded to our questionnaire on military jurisdiction in 2001, we invite you to add any clarifications in light of the brief and possibly imperfect manner in which the response was reflected in our 2001 Rhodes Seminar report. With regard to matters that need no clarification, it is possible to refer to the answer given in 2001, indicating that there has been no change since then.

Your country or national group is also invited to add any general comments it might have as to the developments currently taking place in military justice. Relevant issues might be the relationship between civilian and military judicial systems, whether there are still good reasons to maintain separate military systems and to which extent differences between the civilian and military systems can be justified. Observations on how these matters are perceived in the general legal and political community in the country, as well as viewpoints from the military lawyers' own perspective are welcomed.

I. General overview

1. Please give a short description of the legal system for dealing with military criminal and/or disciplinary cases (military legal system) in your country, indicating whether your country has:
 - a) military courts (including standing courts or ad hoc court-martials);
 - b) military prosecutors;
 - c) a system of summary punishment by a commanding officer.

Please describe the organisation and functions of the judge advocacy or other legal services which have tasks in military legal proceedings including extra-judicial handling of disciplinary cases.

2. Please indicate whether the military legal system in your country has different rules for wartime and peacetime respectively. If so, how does the legislation distinguish

between peace and war. Details should be reflected in the answers to the questions below.

3. Please indicate whether the military legal system in your country has different rules for units abroad as opposed to at home. Details should be reflected in the answers to the questions below.
4. Please indicate whether there has been any recent discussion, evaluation or reform of your military legal system with reference to human rights such as those laid down in the European Convention on Human Rights or other comparable instruments applicable to your country. Details should be reflected in the answers to the questions below.

II Military Courts

NB! If your country instead of having military courts, has some military or other special element in civilian courts for dealing with military cases, please answer the following questions as far as they are relevant for your system.

1. Please describe the legal basis for and general structure of your military court system, indicating geographical structure, hierarchy, organisation with respect to the services (army, navy, air force, paramilitary such as e.g. "gendarmerie") or individual military units, connections to civilian administrative bodies (ministry of justice, ministry of defence), the civilian courts including the possibility of appeal to the Supreme Court, and other relevant features.
2. Please describe which cases fall under the jurisdiction of the military courts:
 - a) only criminal cases involving military personnel or also civil litigation?
 - b) only military crimes committed by military personnel or also ordinary crimes?
 - c) how military crimes are defined in your law (in opposition to ordinary crimes) (if relevant);
 - d) whether this definition is different in time of war than in peacetime;
 - e) how military personnel (or the categories of persons subjected to military courts) are defined in your law, and whether there are separate procedures for different categories (officers, soldiers, civilians serving within the military etc.);
 - f) whether there is an extension of jurisdiction in time of war as to the categories of persons subjected to military courts;
 - g) whether military courts also have a role in disciplinary cases not considered criminal, such as deciding on appeals regarding administrative disciplinary punishments;
 - h) other relevant features.
3. Please describe the personnel serving with the military courts, with respect to:
 - a) academic or other conditions to be fulfilled;
 - b) civilian or military status;
 - c) military rank;

- d) permanent or temporary service with the court.
4. Please indicate to what extent the military courts are independent, especially with regard to:
 - a) Constitutional guarantees, special laws or regulations;
 - b) Any differences in status or independence between military and civilian judges;
 - c) Whether there is any supreme judicial council or other body tasked with organising and supervising the work of the military courts;
 - d) Whether there are any provisions or arrangements designed to shield the courts from the influence of military commanders.
 5. Please describe the main features of the proceedings before your military courts, indicating:
 - a) Whether proceedings are public;
 - b) Whether or in which cases trials in camera can be held;
 - c) Whether or in which cases the accused has the right to legal counsel at the government's expense;
 - d) What the position of the victim is (is he or she a party to the procedure?);
 - e) Whether the accused can be tried in absentia;
 - f) Whether decisions have to be confirmed by a superior officer;
 - g) Whether sentences are executed by the armed forces.
 6. Please describe if and how decisions by the military courts can be appealed, indicating:
 - a) Possible differences between appeals of decisions on procedure and appeals of judgements;
 - b) Possible differences between appeals based on points of law, fact or merely relating to the punishment;
 - c) Who has the right of appeal (the prosecutor, the accused, the victim, or some other person).
 7. Can a case which has been decided by a final sentence of a military court be reopened?
 8. Is there any system of automatic review of decisions by your military courts?
 9. What are the rules to be followed in case of simultaneous actions brought against a person subject to military jurisdiction and a person subject to civil jurisdiction, e.g. when a civilian is an accomplice to a crime committed by a soldier?
 10. What are the rules to be followed if a person has committed several crimes, some falling under military jurisdiction, others under civil jurisdiction?

III Military Prosecution

NB! If your country instead of having a military prosecution system has some special element in the civilian prosecution system or special rules related to the handling of military criminal cases, please answer the following questions as far as they are relevant for your system.

1. Please describe the legal basis for and general structure of your military prosecution system, indicating geographical structure, hierarchy, organisation with respect to the services (army, navy, air force, paramilitary) or individual military units, connections to civilian administrative bodies (ministry of justice, ministry of defence), the civilian prosecution system, and other relevant features.
2. Please describe which cases fall under the military prosecution if there are differences with respect to the courts (cases falling under military prosecution but not military courts and vice versa).
3. Please describe the personnel serving with the military prosecution, with respect to:
 - a) academic or other conditions to be fulfilled;
 - b) civilian or military status;
 - c) military rank;
 - d) permanent or temporary service.
4. Given that a good understanding of military matters and military life is important for investigating and prosecuting military criminal (or disciplinary) cases properly, it should be described how such military understanding is developed and maintained among the investigators and prosecutors. If the military legal system of your country is not organised as an integral part of the armed forces, please describe the connections between your investigators and prosecutors on the one hand and the armed forces on the other, e.g. with regard to:
 - a) military training of investigators and prosecutors;
 - b) participation in military exercises by investigators and prosecutors;
 - c) regular meetings between military commanders and prosecutors.
5. Military personnel are subject to military discipline, whereas investigators and prosecutors should be free from command influence. If in your country investigators and prosecutors have military ranks, has this connection been seen as problematic from a legal point of view?

IV Summary punishments

1. Provided your armed forces have a system of summary punishment, please describe its legal basis and general structure. Please also indicate whether there are differences between time of war and time of peace (details to be reflected in the

answers to the following questions), and if so, whether the definition of war is the same as with respect to the rules of procedure for military penal cases.

2. Please describe which offences are dealt with by summary punishment and which are brought before the courts, indicating:
 - a) whether there is a distinction in the military law in your country between a criminal offence (civil or military law) and a non-criminal disciplinary offence or breach of discipline; and
 - b) whether the accused has the right to choose between summary punishment or trial by court.
3. Please describe the summary punishments/sanctions laid down by your law, indicating whether there are differences as to the applicability of each sanction with respect to different categories of persons.
4. Are there categories of military personnel to whom summary punishments are not applicable at all? Can summary punishments be imposed against civilians?
5. Please describe the powers of the disciplinary authorities, indicating:
 - a) which command level can impose summary punishments;
 - b) whether there are disciplinary sanctions that can be imposed only by a tribunal or comparable entity;
 - c) whether it is necessary to have the approval of a judge when imposing some specific punishment, e.g. detention under guard;
 - d) whether it is necessary to consult a judge advocate or other legal specialist before imposing specific punishments or deciding specific cases.
6. Does a disciplinary authority have full discretion as to the exercise of his disciplinary powers with regard to summary punishments, or is he subject to orders of a superior?
7. Is it possible for a superior to annul a summary punishment imposed by a subordinate?
 - a) Can he replace the annulled punishment by a new one or change the original punishment?
 - b) To what extent is he bound by the principle of "reformatio in pejus" (not to change the punishment to the detriment of the offender)?
 - c) Is it possible for a superior directly to impose a summary punishment in place of the officer normally competent?
8. Do military personnel have the right to appeal a summary punishment?
 - a) If so, who deals with this appeal?
 - b) Is there a possibility to bring the appeal before a tribunal or a court?
 - c) Are there additional possibilities of appeal, and if so, before whom?
 - d) Will an appeal suspend the execution of the punishment?

9. Does your country have a system of automatic review of summary punishments (e.g. routine control of the legality and reasonability of punishments imposed)? If so, please give a brief description of it.
10. Does the law of your country provide for special disciplinary tribunals (or boards) as opposed to military courts or tribunals for criminal cases, for the military? If not, do you have similar systems for military personnel in their capacity of government employees?
11. If relevant, please describe the functioning of the disciplinary tribunals with respect to:
 - a) the composition of the tribunal;
 - b) hierarchical organisation of instances;
 - c) how a case is brought before the tribunal;
 - d) which office would be responsible for the prosecution; and
 - e) whether the accused has the same rights as before the courts.

V Core international crimes

1. Does your legislation include penal provisions on the core international crimes as defined in the 1998 Rome Statute, including:
 - a) The crime of genocide?
 - b) Crimes against humanity?
 - c) War crimes?
 - d) The crime of aggression?
2. If relevant, please describe the mode of inclusion, like:
 - a) Summary reference to provisions of the 1998 Rome Statute;
 - b) Copying the provisions of the 1998 Rome Statute in an internal Act;
 - c) Integrating the provisions by editing them into your existing legislation, such as e.g. the Criminal Code (transformation);
 - d) Any other solution.
3. Will cases on some or all of the core international crimes be prosecuted before military courts or before ordinary civilian courts? Will it make any difference whether the defendant is a military person or a civilian?