

# France: Military Justice System

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# France: Military Justice System

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**SUMMARY** Over the years, the French Military Justice System has progressively led to a system in which military justice is combined with that of ordinary justice. The government has sought to treat military personnel in the same manner as ordinary civilians with regard to offenses committed while on duty. The administration of justice does, however, differ depending on whether the service member committed an offense on French territory or on foreign soil. Another major distinction that remains between the military system and the civilian system is that of the competent jurisdiction to handle the administration of justice during times of peace and during times of war. During times of peace, the jurisdiction of all military courts is abolished. During times of war, military courts have primary jurisdiction to deal with offenses.

## I. Introduction

Since the end of the twentieth century, the French military justice system has seen a legislative evolution that has progressively led to the eradication of most particularities that differentiate the military justice system from that of the ordinary civilian justice system.<sup>1</sup> The Law of 21 July 1982<sup>2</sup> withdrew the jurisdiction of military courts on French soil during times of peace for both military and civilian offenses committed by military personnel while on duty and gave this jurisdiction to civilian courts specialized in military matters.<sup>3</sup> The Law of 10 November 1999<sup>4</sup> created the Tribunal aux armées de Paris, a unique court competent to hear matters involving offenses committed by military personnel while on foreign soil.<sup>5</sup>

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<sup>1</sup> *Transfert des compétences du Tribunal aux armées de Paris à une formation spécialisée du TGI de Paris*, Secrétariat Général pour l'Administration, Ministère de la Défense, <http://www.defense.gouv.fr/sga/rubrique-actualites/transfert-des-competences-du-tribunal-aux-armees-de-paris-a-une-formation-specialisee-du-tgi-de-paris> (last updated June 28, 2010).

<sup>2</sup> Loi n°82-621 du 21 juillet 1982 relative à l'instruction et au jugement des infractions en matière militaire et de sûreté de l'Etat et modifiant les codes de procédure pénale et de justice militaire (consolidated version 2007), <http://legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000504202>.

<sup>3</sup> *Transfert des compétences du Tribunal aux armées de Paris à une formation spécialisée du TGI de Paris*, *supra* note 1.

<sup>4</sup> Loi n°99-929 du 10 novembre 1999 portant réforme du code de justice militaire et du code de procédure pénale (consolidated version 2007), <http://legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000580549>.

<sup>5</sup> *Transfert des compétences du Tribunal aux armées de Paris à une formation spécialisée du TGI de Paris*, *supra* note 1.

The French military justice system is therefore organized according to whether the country is in a time of peace or a time of war. In addition, the administration of military justice, with regard to offenses committed by military personnel, makes a further distinction based on whether the service member committed the offense on French soil or on foreign soil, as well as whether the service member was on duty or off duty.

During times of peace, the administration of military justice is performed by civilian courts with a specialized training in military matters.<sup>6</sup> At war, the country's military justice administration is completely administered by military courts.<sup>7</sup> In order to be considered at war, Parliament must make a declaration of war in accordance with section 35 of the French Constitution of 1958.<sup>8</sup> According to French legislation, armed forces operating or stationed in a foreign country are considered to be acting in a time of peace even if they are engaged in an armed conflict or in a peacekeeping mission.<sup>9</sup>

## II. Recent Changes to Military Justice System

In 2011, the French Senate adopted the Law Relative to the Allocation of Litigation Proceedings and the Reduction of Certain Jurisdictional Procedures.<sup>10</sup> The object of the law was to further enable a rapprochement between the civilian criminal law system and the military criminal law system as well as to integrate the military justice into civil law justice during times of peace.<sup>11</sup>

The law also aimed at aligning the administrative situation of military personnel with that of other public servants in regards to their administrative situation after a criminal conviction.<sup>12</sup> Lastly, the sections of this law tend to broaden the procedure for obtaining an opinion from the Minister of Defense, clarify procedural rules and simplify the principal elements of the offense of desertion.<sup>13</sup>

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<sup>6</sup> *Note de synthèse*, SÉNAT, <http://www.senat.fr/lc/lc83/lc830.html> (last visited June 28, 2013).

<sup>7</sup> *Id.*

<sup>8</sup> Constitution du 4 octobre 1958, <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/la-constitution/la-constitution-du-4-octobre-1958/texte-integral-de-la-constitution-de-1958.5074.html>.

<sup>9</sup> *Séminaire Internationale à Rhodes concernant la Juridiction Militaire*, Direction des affaires juridique, Ministère de la Défense et des Anciens Combattants, 26 juin 2011, Reference: Lettre ISMLLW 478 F 4 du 14 février 2011, p. 3, <http://ismllw.org/conferences/QUESTIONNAIRE%20RHODES/France.pdf>.

<sup>10</sup> Loi n° 2011-1862 relative à la répartition des contentieux et à l'allègement de certaines procédures juridictionnelles [Law Relative to the Allocation of Litigation Proceedings and the Reduction of Certain Jurisdictional Procedures], Dec. 13, 2011, [http://www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=57F9A013617C41A0C6A3C85B78FBEEA2.tpdjo17v\\_3?idArticle=JORFARTI000024960644&cidTexte=JORFTEXT00024960344&dateTexte=29990101&categorieLien=id](http://www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=57F9A013617C41A0C6A3C85B78FBEEA2.tpdjo17v_3?idArticle=JORFARTI000024960644&cidTexte=JORFTEXT00024960344&dateTexte=29990101&categorieLien=id).

<sup>11</sup> *Séminaire Internationale à Rhodes concernant la Juridiction Militaire*, *supra* note 9, at 3.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 4.

Section 32 of the law abolished the Tribunal aux armées de Paris and transferred its mandate and powers to the division of the Tribunal de Grande Instance (TGI) de Paris that is specialized in military matters.<sup>14</sup> Thus, during times of peace, the permanent military tribunal of the armed forces as well as the permanent High Court of the armed forces have been abolished.<sup>15</sup>

Section 32 also modified the Code of Military Justice<sup>16</sup> by permanently assigning the jurisdiction to hear trials on felonies and misdemeanors committed by military personnel while on duty to civilian courts.

The Minister of Defense did, however, seek to continue to take into account the realities of military activities in foreign operations by maintaining specific rules for armed conflict in an international context.<sup>17</sup> On its official website, the Minister of defense enumerates three elements in order to demonstrate this willingness to take into account the realities of an armed conflict in another country:

1. The existence of a specialized division of the TGI of Paris which guaranties the efficiency, knowledge and taking into account of these realities for the treatment of files.
2. The upholding of the requirement of an advisory opinion from the Minister of Defense before any criminal proceedings are taken against military personnel.
3. The confirmation of the procedural exception that makes it impossible for a victim of an offense committed by a service member to make the service member appear before a judge.<sup>18</sup>

Before the implementation of the changes in 2011, in a report prepared by the legal affairs office (Direction des affaires juridiques du Secrétariat general pour l'administration, SGA) of the Ministry of Defense for the International Seminar on Military Law in Rhodes, the department also claimed that in the medium-term a legislative reform of war-time legislation was being considered, although there have not been any changes yet.<sup>19</sup> In addition, at the time of writing, there was no reform with regards to the European Convention on Human Rights.<sup>20</sup>

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<sup>14</sup> *Transfert des compétences du Tribunal aux armées de Paris à une formation spécialisée du TGI de Paris*, *supra* note 1.

<sup>15</sup> *Note de synthèse*, *supra* note 6.

<sup>16</sup> CODE DE JUSTICE MILITAIRE, <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070884&dateTexte=20070511>.

<sup>17</sup> *Transfert des compétences du Tribunal aux armées de Paris à une formation spécialisée du TGI de Paris*, *supra* note 1.

<sup>18</sup> *Id.* (translation by author).

<sup>19</sup> *Séminaire Internationale à Rhodes concernant la Juridiction Militaire*, *supra* note 9, at 3; *Note de synthèse*, *supra* note 6, at 3.

<sup>20</sup> *Id.*

### III. Description of Military Justice System

At present, civilians and military personnel are treated as equals under the law and are subject to the same investigative and preliminary hearing procedural rules. The majority of military criminal matters are therefore treated by civilian courts.<sup>21</sup>

In contrast to civilians, members of the Armed Forces are subject to both military disciplinary law and criminal law. Disciplinary law is distinct from criminal law: one action can constitute both a criminal offense and disciplinary misconduct.<sup>22</sup> A service member may therefore be disciplined under the military hierarchy and also be subject to a court order/judicial decision.

However, a service member who has taken his retirement, deserted, or is acting out of his rank does not fall within the definition of a service member for purposes of the Military Code and is therefore only subject to civilian proceedings.<sup>23</sup>

#### A. Times of Peace

During times of peace, in order to determine which court has jurisdiction to try military personnel, a distinction must be made as to whether the offense was committed while the service member was on duty or off duty.

Infractions committed under the Code of Military Justice as well as civilian misdemeanors and felonies committed by service members during the course of service fall within the jurisdiction of civilian courts.<sup>24</sup>

Every court of appeal has a specialized section of the TGI charged with judging felonies and misdemeanors committed by on-duty military personnel on French soil during times of peace.<sup>25</sup> The TGI has jurisdiction over all misdemeanors. The criminal trial courts (Cour d'assises) of the TGI have jurisdiction over felonies. The specialized divisions on military matters have jurisdiction to hear cases for offenses committed while military personnel are on duty. Trials for offenses committed by military personnel outside of the country are heard by a specially trained section of the High Court of Paris (Tribunal de Grande Instance de Paris).<sup>26</sup>

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<sup>21</sup> *Transfert des compétences du Tribunal aux armées de Paris à une formation spécialisée du TGI de Paris*, *supra* note 1.

<sup>22</sup> *Séminaire Internationale à Rhodes concernant la Juridiction Militaire*, *supra* note 9, at 7.

<sup>23</sup> *Id.*

<sup>24</sup> *Note de synthèse*, *supra* note 6.

<sup>25</sup> *En quoi consistent les tribunaux spécialisés ? [What Do the Special Tribunals Consist Of?]*, DIRECTION DE L'INFORMATION LEGALE ET ADMINISTRATIVE, <http://www.vie-publique.fr/decouverte-institutions/justice/fonctionnement/tribunaux/quoi-consistent-tribunaux-specialises.html> (last visited July 2, 2012).

<sup>26</sup> *Id.*

The procedure before the TGI follows the Code of Criminal Procedure:<sup>27</sup> the accusation is delivered by the territorially competent Attorney General and civil judges are assigned to hear the case. For the Criminal Trial Courts, there is one president of the court and six assessor judges but no jury.

Decisions made by the courts do not need to be confirmed by a superior officer (Commanding Officer, CO) of the military and the armed forces do not, under any circumstance, have jurisdiction to execute sentences.<sup>28</sup> Appeals follow the ordinary appeal procedure as determined by the Code of Criminal Procedure. Appeals brought before the Court of Appeal are assigned to the specialized military section.<sup>29</sup>

### *1. Military Offenses*

Military offenses differ from Criminal Code offenses and are defined in the Military Code of Justice.<sup>30</sup> This Code outlines four categories of offenses:

1. Offenses tending to exempt their perpetrator from his military obligations
2. Offenses against honor or duty
3. Offenses against discipline
4. Offenses against orders<sup>31</sup>

Military offenses are applicable during times of war and times of peace. However, there may be different punishments or incriminating conditions depending on whether the offense was committed during a time of war or a time of peace.<sup>32</sup> Courts that have jurisdiction to judge service members do not have jurisdiction to judge disciplinary matters.<sup>33</sup>

### *2. Disciplinary Measures*

Military personnel are subject to a specific disciplinary regime that is based on two fundamental principles: efficiency of the military hierarchy and a guaranty against arbitrariness.<sup>34</sup> Chapter 7 of the Code of Defense outlines three different groups of sanctions applicable to military personnel for breach of the Code:

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<sup>27</sup> CODE DE PROCÉDURE PÉNAL, <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006071154>.

<sup>28</sup> *Séminaire Internationale à Rhodes concernant la Juridiction Militaire*, *supra* note 9, at 10.

<sup>29</sup> *Id.* at 11.

<sup>30</sup> CODE DE JUSTICE MILITAIRE, <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006071360&dateTexte=20080505>.

<sup>31</sup> *Séminaire Internationale à Rhodes concernant la Juridiction Militaire*, *supra* note 9, at 7 (translation by author).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 13.

- 1<sup>st</sup> group: warning, reprimand, censure, work stoppage and censure by the minister
- 2<sup>nd</sup> group: temporary suspension of function without pay for a maximum of 5 days, temporary relegation in step, and removal from the promotion board
- 3<sup>rd</sup> group: dismissal, termination of employment, cancellation of contract<sup>35</sup>

When disciplinary offenses also constitute infractions under the Criminal Code, military personnel can also be subject to legal proceedings.

The Minister of Defense has the disciplinary authority over all military personnel, which includes the right to impose sanctions.<sup>36</sup> All superiors do, however, have the right to request that a soldier be sanctioned.<sup>37</sup> Disciplinary measures can be appealed according to the administrative process.<sup>38</sup>

### 3. Criminal Offenses

During times of peace, the Department of Defense or military authority can bring to the attorney general's knowledge any offense that was committed by means of a denunciation.<sup>39</sup> (There is no Judge Advocate's office in France.)

The Code of Criminal Procedure provides that the Attorney General must receive an advisory opinion from the Minister of Defense or other military authority before any criminal proceedings against any military personnel are made for an offense committed while on duty.<sup>40</sup> This procedural requirement applies to all competent courts. The exception to this is for a felony or a serious misdemeanor, in which case an opinion is not necessary.<sup>41</sup>

## B. Times of War

During times of war, military court jurisdiction is maintained.<sup>42</sup> There are two types of courts that operate, once a declaration according to section 35 of the Constitution has been made: Territorial Military Courts of Justice of the Armed Forces (Tribunaux territoriaux des forces

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<sup>35</sup> CODE DE LA DÉFENSE, [http://www.legifrance.gouv.fr/affichCode.do;jsessionid=FFC6A23F673674B95CA19F5161123CC7.tpdjo04v\\_1?idSectionTA=LEGISCTA000006166979&cidTexte=LEGITEXT000006071307&dateTexte=20130701](http://www.legifrance.gouv.fr/affichCode.do;jsessionid=FFC6A23F673674B95CA19F5161123CC7.tpdjo04v_1?idSectionTA=LEGISCTA000006166979&cidTexte=LEGITEXT000006071307&dateTexte=20130701) (translation by author).

<sup>36</sup> *Séminaire Internationale à Rhodes concernant la Juridiction Militaire*, *supra* note 9, at 14.

<sup>37</sup> *Id.* at 15.

<sup>38</sup> *Id.* at 16.

<sup>39</sup> *Id.* at 12.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Transfert des compétences du Tribunal aux armées de Paris à une formation spécialisée du TGI de Paris*, *supra* note 1.

armées) and the High Court of Armed Forces (Haut tribunal des forces armées).<sup>43</sup> Thus, during times of war, civilian courts have no jurisdiction to hear matters involving military personnel.

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<sup>43</sup> *Séminaire Internationale à Rhodes concernant la Juridiction Militaire*, *supra* note 10, at 8. For a graphical view of the military court jurisdiction see page 21 of the same report.