Criminal proceedings in the military courts

Table of contents

Jurisdiction of the Military Courts Judicial application of the military courts authority The Military Court System Court Composition Management of IDF criminal investigations Indictment process The defendant's right of representation in the military courts Court Proceedings in the Military Legal System The right of Appeal

Jurisdiction of the Military Courts

The IDF operates an internal judicial system, separate from the State of Israel's general judicial system. Its legislative basis is the Military Justice Law, which was promulgated by the Knesset in 1955. This law established amongst other things, specific provisions concerning the structure, jurisdiction and procedure of the military courts and also organized the activities of investigating institutions leading up to trial.

Furthermore, the Military Justice Law codifies an array of military offenses that fall within the scope of the military court's jurisdiction, in addition to general criminal offenses recognized by the State of Israel. The principal consideration in favor of the existence of a separate legal system in the IDF relates to the army's unique nature, embracing specific values, such as camaraderie and military discipline.

Due to the army's unique nature, military judges are required to have formerly served in the IDF, as they will be called upon to decide upon specific issues that are raised within its framework and that are related to its operations and special norms of behavior.

An additional reason for the existence of a separate military legal system is the degree of efficiency acquired. Whilst not impeding any rights of the accused soldier, the military system is accelerated and more suitable than the civilian system in managing proceedings against service members standing trial. The system's efficiency is far more imperative than that of the public's, as a disciplined and efficient military is certainly a requirement in times of conflict and emergency.

Judicial application of the military courts authority

Military courts are authorized to hear all cases that involve IDF service members, in the regular and reserve services. Indictments relating to all offences against the laws of the State of Israel, including general jurisdiction relating to offenses committed anywhere in the world in times of war and peace. In the case of non-military offenses, parallel jurisdiction exists between the civilian and military court systems.

Under such circumstances, the forum of trial rests in the discretion of the Military Advocate General, and is determined according to the degree of correlation between the offense and military service. In certain cases, military courts also hold jurisdiction over civilians employed specifically by the military under contract; those who have received weapons from the army under certain conditions and restrictions; and those belonging to the reserve forces.

The Military Court System

The Military Court system includes three regional courts of first instance, corresponding to the regions of military Command: the Southern, Northern and Central courts. A special court exists in cases relating to officers with the rank of Lieutenant Colonel and above and all offences committed by officers or soldiers which may warrant the death penalty.

Court Composition

Military Courts of first instance are generally comprised of three judge panels. The head of the panel is a professional judge, with a legal education and judicial experience. The judge belongs to the military courts unit and is appointed by the president of the State of Israel, in a process that is similar to the appointment of judges in the State's civilian legal sector.

The two other members of the panel generally do not have a legal background and are officers who serve in the units belonging to the court's regional district. Court decisions are passed by a majority and are subject to appeal.

Hearings held in the Military Court of Appeals are generally presided over by a three judge panel, with at least two of the judges having a legal background. Most judges at the Military Court of Appeals have a great deal of judicial experience acquired while previously sitting in a military court of first instance.

Management of IDF criminal investigations

Criminal investigations are carried out by designated bodies that are distinct from its civilian counterpart. Principal amongst these investigatory bodies leading up to trial is the investigative branch of the Military Police. This is an independent unit within the IDF not subordinate to the various military Commands. The authority to open investigations rests independently with the branch commander, the Military Advocate General and the Command General, each according to their own individual discretion. Furthermore, military orders define a list of offenses that require investigation by the Military Police. In the case of misdemeanors, investigations are carried out by regular IDF officers outside of the Military Police.

Indictment process

The evidence gathered by the Military Police during criminal investigations is transferred to the Prosecutorial Division of the Military Advocate General's Corps – a specialist Corps comprised of legal officers, who evaluate the evidence gathered and decide whether to submit an indictment to the military court, transfer the case to disciplinary jurisdiction or to order the closure of the case. The IDF disciplinary jurisdiction is limited to cases that are less serious (and carry a lighter sentence) than those adjudicated at a criminal trial.

The defendant's right of representation in the military courts

The judicial process before the military court begins by submitting an indictment according to the instruction of a senior military advocate. The indictment thereafter served to the accused, and at that time the soldier is informed of his entitlement to legal representation at trial. All defendants indicted in the military courts, except those appearing for traffic offences, are entitled to free legal representation by the Military Defense Counsel Division. Those who prefer private representation may do so, provided that their lawyer has been certified to appear before a military court.

Court Proceedings in the Military Legal System

Military court proceedings are essentially identical to those of the criminal justice system in the State of Israel. Deliberations begin with the reading of the indictment to the accused and his response. In those cases where the defendant pleads guilty – submissions are heard from both sides concerning the punishment and then a sentence is passed. Should a defendant plead innocent, a full evidentiary trial is held. Each side presents witnesses who are then cross-examined by the opposition. The trial is conducted according to the existing law of evidence customary in Israel by the adversarial system, which determines strict rules on the submissibillity of evidence and its presentation in court.

The right of Appeal

Final decisions given by the Courts of First Instance are subject to appeal to the Military Court of Appeals. Both a convicted soldier and the prosecution have the right to appeal. In certain circumstances it is also possible to appeal the decisions of the Military Appeals Court to the Israeli Supreme Court after receiving special permission by the Supreme Court. Permission is generally only granted when there arises an important, difficult or novel legal issue.