Legal Supervision of Disciplinary Hearings

IDF Military Advocate General’s Corps

http://www.law.idf.il/647-2351-en/Patzar.aspx

Disciplinary law is the most severe method available to the commander for the sake of enforcing discipline within his unit.

The disciplinary process is a legal proceeding for all intents and purposes and is carried out before the commander of the accused, who is authorized and qualified to act as a "judging officer". Where the accused is found guilty, the commander is authorized to impose a sentence in accordance with the powers conferred upon him in the Military Justice Law. There are two ranks of judging officers, senior and junior, each having differing punitive authority.

Within the procedural framework, the accused has the right to present his version of events and to bring relevant witnesses and is entitled to consult with a lawyer. However, the soldier is not entitled to legal representation by a defense attorney or to rely upon the rules of evidence customary in criminal proceedings. For this reason, it is an obligatory requirement for the commander to safeguard the fairness and objectivity of disciplinary proceedings.

Disciplinary law imbues upon presiding officers authority to punish, limited according to the nature of the offense committed. It should be stressed that not every case warrants a disciplinary trial. Situations in which the Military Police have already opened an investigation, parallel disciplinary proceedings will not be conducted. Also, not every offense may be judged in a disciplinary procedure. Offences concerning matters of the soldier's function such as insubordination, non-fulfillment of military orders, conduct unbefitting and similar behavior are generally dealt with by the disciplinary process. Offences of a more serious nature are dealt with in the military courts.

It is important to add that disciplinary proceedings take place as a command procedure. Conviction in a disciplinary proceeding does not entail a criminal record, and is thereby distinguished from a conviction by a military court.

As a result of prolonged and comprehensive administrative process the General Staff Command concerning disciplinary law was amended and went into effect in January 2009. The revised format incorporated many general commands into one simple chronological command, detailing the disciplinary process from beginning to end and any exceptions or derogations therein.

 In order to safeguard the fairness, quality and effectiveness of disciplinary law within a military context, proceedings are subject to the supervision of the disciplinary department of the MAG Corps.

Legal Supervision of Disciplinary Hearings

Disciplinary hearings are part of day-to-day military experience. Every disciplinary hearing is documented by the judging officer on a pre-determined form. Any soldier who was subject to a disciplinary hearing or judging officer, has the right to approach the disciplinary section of the Military Law School in order to review the proceeding and commensurate punishment. Any illegality or deviation from authority is brought to the attention of the Deputy MAG, who is authorized to amend the judgment, quash it, or return it to the judging officer for rejudication.

The MAG is authorized to quash a judgment handed down in a disciplinary hearing where he is of the opinion that the judging officer was not authorized to hear the matter; or to judge the accused or where he finds that the act or omission for which the accused was tried did not constitute an offense; or where the disciplinary hearing took place in a manner inconsistent with the legal procedure.

The Deputy MAG also has broad powers to intervene in the punishments imposed by judging officers in cases where the officers deviate from their powers or err in imposing, activating, or failing to activate suspended sentences. The Deputy MAG may quash an unlawful punishment imposed or convert such a punishment to one which the judging officer was authorized to impose. The Deputy MAG's powers regarding the supervision of the disciplinary processes in the IDF is unique because of his ability to intervene in the judicial activity of a judging officer.