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VERBAL NOTE

The Permanent Mission of Finland to the United Nations Office and other International Organisations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights in Geneva and referring to the Office's request, dated 10 May 2013, hereby submits the following information on the implementation of the Human Rights Council resolution 17/2 of 16 June 2011 entitled "Mandate of the Special Rapporteur on the independence of judges and lawyers".

Background information on your national legal system, including personal and subject matter jurisdiction of the military justice system

- 1. Does your country have a military justice system? If yes, please provide detailed information on the constitutional or legislative provisions establishing the military justice system.**

Yes.

In the Military Court Procedure Act (Sotilasoikeudenkäyntilaki, 326/1983) it is said that military court cases shall be dealt with in courts of general jurisdiction (i.e. regular courts) in accordance with the procedure provided for normal criminal cases and with the provisions of the said Act. Military court cases include military offences as well as some criminal matters where the accused is a soldier and the act is committed against the defence forces or another soldier (See A 6 for more details). When considering military cases, the general courts utilise a military configuration, i.e. in addition to a legally trained judge, they have 2 lay judges from the military.

In the Military Discipline Act (Sotilaskurinpitolaki, 331/1983) it is said that, based on an offence defined in the Military Court Procedure Act a disciplinary punishment can be sentenced in a trial or a disciplinary punishment or correction can be imposed in disciplinary proceedings as a disciplinary sanction as provided in the said Act. Appeals considering disciplinary punishments are dealt as military court cases.

- 2. Do military courts form part of the judiciary as a specialised branch? Or is the military justice system autonomous from ordinary jurisdiction and/or attached to the executive power?**

See A 1.

Military courts in Finland are ordinary, general courts utilising a military configuration. In this sense, they could be called a specialised branch of the judiciary. The essential difference between the so

called military courts and courts of general jurisdiction is, however, that the composition of the court is different (see A 3).

There is a separate act (Laki sotilasoikeudenkäyntiasioita käsittelevistä yleisistä alioikeuksista, 327/1983) on which courts of general jurisdiction deal with military court cases. The appellate court for the decisions of these courts is the Helsinki Court of Appeal which also functions as the first instance if the defendant is an officer of the rank of major or above or serves in a corresponding military position. Appeal of the judgment of the Helsinki Court of Appeal shall, as otherwise, be assigned to the Supreme Court.

3. Please provide detailed information on the composition of military courts. Are they made up solely of members of armed forces? Is there a legal requirement for military judges to have undergone a formal legal training? Please provide detailed information as to whether other entities of the military justice, e.g. the prosecutor or the lawyer who defends the accused, are civilian or military.

In the district court the court consists of a chairperson (i.e. civilian judge) and two military members of whom one shall be an officer and the other a warrant officer, a non-commissioned officer or a member of the enlisted personnel or of the ranks (Military Court Procedure Act 10 §).

While formal legal training is not a requirement for the military members, and while the judgment is arrived at by a vote, the military members cannot pass a verdict of guilty if the legally trained judge is to pass a verdict of not guilty. Thus, unlike in the other criminal matters, a defendant may not be sentenced to punishment contrary to the opinion of the chairperson, nor to a more severe punishment than that supported by the chairperson. When handling disciplinary matters (as described in the last sentence of A 1) the court has the quorum with only a chairperson (Military Court Procedure Act 17 §).

In the Court of Appeal the regular composition (normally 3 members) shall be supplemented by two military members who shall be officers of the rank of major or above (Military Court Procedure Act 10 § 2).

In the Supreme Court the regular composition shall be supplemented by two military members; this shall not be done, however, when the case is heard by a section with less than five (other than military) members. The military members of the Supreme Court shall be officers of the rank of colonel or above (Military Court Procedure Act 10 § 3).

As prosecutors in military court cases serve those (civilian) public prosecutors that are determined to do this by the Prosecutor General. In cases where the Helsinki Court of Appeal functions as the first instance a state prosecutor shall serve as prosecutor.

There is no specific regulation for the lawyer who defends the accused in military cases. However, as in civilian cases, the defending lawyer must be legally trained (Code of Judicial Procedure 4/1734, chapter 15, 2 §). The defending lawyer cannot, in practice, be a member of armed forces due to the prohibition of government officials, such as officers, to hold positions or act in a manner that might cause conflicts of interests, such as acting as a defending lawyer for other military personnel (Code of Judicial Procedure 4/1743, chapter 15, 3 §).

4. Does the military justice system have jurisdiction over military personnel only? Does the law that regulate military jurisdiction in your State consider any civilians as military personnel because of their functions? Or because of their presence on or near military facilities?

The Finnish military justice system has jurisdiction over military personnel and those performing their military service only. In times of peace, there is nevertheless one exception: if a male citizen does not enter compulsory military service as defined in the Conscription Act (1438/2007), he will be tried in the military configuration even though he is still a civilian.

Furthermore, if other than a military court case is committed with the same act than the military court case, and is insignificant compared to the latter, it can be dealt as a military court case in the same process with the actual military court case if this is considered to be appropriate.

There are some minor expansions in the scope of the system at the times of war (SEE A 5).

5. Does the military justice system have jurisdiction to try civilians, other than in the cases provided for in the Geneva Conventions? If so, under what circumstances? Are the rules for exercising jurisdiction different in times of peace and times of war?

See A 4.

The Finnish military justice system has no jurisdiction to try civilians. There are some minor differences in the regulation depending on whether there are times of peace or times of war.

As stated in answer 4, male citizens that do not enter compulsory military service are tried in military courts. In times of peace, this is the only exception to the rule that military courts try only military personnel.

If a state of defence has been enacted (Act on the State of Defence, 1083/1991), military courts may also try non-military officials of the armed forces, other persons than soldiers serving in military forces, people serving in public entities or traffic or communication officials if they have been set under military command and those that have been commanded to work in the armed forces. (Criminal Code 39/1889, chapter 45, 28 §)

While some crimes may be committed only in times of war (e.g. 'escaping as a prisoner of war', Criminal Code chapter 45, 25 §), the rules for exercising jurisdiction do not change between times of peace and times of war.

6. Over what types of crimes does the military justice system have jurisdiction? Is jurisdiction exercised over a military person because of his or her military status, or only in cases where the conduct is considered service-related?

There are three types of situations where the military justice system shall be applied:

- a) Military offences (Chapter 45 of the Finnish Criminal Code (Rikoslaki, 39/1889))
-E.g. service offences, desertion and insubordination. These crimes may be committed by members of the armed forces only.
- b) Following actions are handled in military justice system when the accused is a soldier and the alleged act is committed against the defence forces or another soldier (defined in Military Court Procedure Act 2 §):
 - Some acts relating to homicide and bodily injury (Chapter 21 of the Finnish Criminal Code)
 - Some offences against personal liberty (25)

- Acts of theft, embezzlement and unauthorised use (28)
- Acts of robbery and extortion (31)
- Receiving and money laundering offences (32)
- Forgery offences (33)
- Criminal damages (35)
- Some acts of fraud and other dishonesty (36)
- Some means of payment offences (37)
- Some data and communications offences (38)
- Some offences in office (40)

c) When the conscript refuses to carry out either military or non-military service.

7. Does military justice exercise jurisdiction over military personnel if the victim of the crime is a civilian?

In the majority of cases, no. In those cases the court shall sit in the regular, non-military configuration.

However, in rare exceptions non-military crimes may be tried in military configuration if the main offence is a military offence and the secondary, lesser offence is a non-military offence, in which case the victim of the secondary offence may be a civilian (Military Court Procedure Act 8 §; see A 4).

Independence of the military justice process and respect for human rights guarantees of the International Covenant on Civil and Political Rights

8. Please provide detailed information on the measures adopted by your country to ensure the independence of military judges, including procedures relating to their selection and appointment, security of tenure, and conditions of service, including performance, review and promotion, accountability and professional discipline, and financial compensation.

The Court of Appeal shall, from the proposal of the Commander of the Finnish Army appoint the military members, as well as sufficient number of deputies, of the district court.

The Supreme Court shall, from among persons proposed by the Ministry of Defence, appoint the military members of the Court of Appeal and their deputies (Military Court Procedure Act 11 § 2).

The President of the Republic shall appoint the military members of the Supreme Court (Military Court Procedure Act 11 § 3).

Before undertaking his or her duties in court, a military member shall swear his or her oath as a judge if he or she has not already done so. The provisions of the Code of Judicial Procedure (Oikeudenkäymiskaari, 4/1734) on the disqualification of a judge shall apply to a military member. As military lay judges are equated to regular judges, they exercise independent consideration and their actions may not be monitored any more than regular judges. However, if they apply law manifestly wrong, they are monitored just like regular judges would be monitored.

The term of office of military members is two years (Military Court Procedure Act 11 § 4. mom).

A military member has the right, in return for his or her duties, to collect from State funds a fee for each session day, as well as a per diem and compensation for travel expenses in accordance with the grounds approved by the Ministry of Justice (Military Court Procedure Act 12 §).

Civilian chairperson and civilian members of the composition are normal judges.

9. Is the prosecutor subject to the regular military chain of command in terms of receiving orders for his or her function, or does the prosecutor have a special status in the legal service of the armed forces that guarantees an independence to bring or not to bring a prosecution according to the interest of justice?

Prosecutors are determined as described in A 3. Thus they are civilian and independent from the defence forces. The Prosecutor General (a civilian official) does appoint 'military prosecutors' but these are regular prosecutors who then specialise in military cases. Thus the military prosecutors are independent to bring or not to bring prosecution according to the interests of justice.

10. May the person, be they military or civilian, have a civilian lawyer? When, after the time of arrest, may an accused person have access to his or her lawyer? May an accused invoke a right to remain silent if questioned? Can an accused have his or her lawyer present during questioning?

See A 3.

Moreover, the accused in military court cases as in any cases can have access to a lawyer as soon as he or she is arrested. The accused may invoke to a right to remain silent. The accused can have his or her lawyer present while he or she is being questioned.

The lawyer must be civilian as members of the armed forces are effectively barred from acting as defence lawyers even if they are legally trained (see A 3).

Furthermore, in case the defendant does not have a legal counsel and, because of the nature of the matter or for any other reason, it can be assumed that he or she alone cannot defend himself properly the court shall appoint a legal counsel for him or her. Counsel may also be provided during the preliminary investigation, regardless of whether the matter will then be handled by the court or not.

11. What guarantees exist to provide that the decision to open an investigation into a criminal complaint, the investigation of the criminal complaint, and the decision regarding whether to prosecute are truly independent and not linked to the chain of command of the complainant in question?

When a crime defined in the Military Court Procedure Act has come to the knowledge of the disciplinary superior (defined in the Military Discipline Act) or when there are otherwise reasons to assume that this kind of act has been committed, the disciplinary superior must without delay make sure that preliminary investigation is to be hold.

The standing order on preliminary investigations in brigades by the Legal Department of Defence Command states that the preliminary investigations should be handled by a person not a part of the chain of command to the person being investigated (11.1 § of the standing order).

If the preliminary investigation shows that the actions of the person investigated are too serious or legally complicated the case is turned over to a military prosecutor, who is not part of the military (see A 9).

Furthermore, preliminary investigation is also to be held when the prosecutor so orders. If the matter is not – after the preliminary investigation – delivered to the prosecutor for prosecution, the disciplinary superior must inform the prosecutor of his or her decision, after which the prosecutor may, if the nature of the matter so requires or there are other special reasons to do so, bring the matter to the prosecution.

In addition, in military court cases the prosecutor has to bring charges for the offence even if the injured party does not report it for the bringing of charges. Moreover, unlike in most other cases, in military court cases the prosecutor has to bring charges even in conditions such as little significance of the offence in question (defined in more detail in Section 7 of the Chapter 1 of the Criminal Procedure Act, 689/1997).

If it turns out that the offence cannot be handled in the military disciplinary process, if the offence is not a military offence at all, or it is of a very serious nature or objectivity so requires, the case is turned over to the police for investigation.

12. If a military or civilian is arrested for a crime that falls under the jurisdiction of the military justice system, would that person have all of the rights set out in article 9 or the International Covenant on Civil and Political Rights (ICCPR)? Would an accused person have all of the rights set out in the ICCPR regarding fair trial?

Yes.

13. In addition to the criminal aspects of military jurisdiction, can the victim of a criminal act bring an action for damages before a military court? Before civilian court?

If the victim of a crime is a civilian, the case usually cannot be tried as a military case. However, civilians can bring these matters to civilian (general) courts like they normally would. In rare exceptions, civilian matters can be tried in military configuration (see A 7).

The victim of a (military) criminal act can bring an action for damages both before a military and a civil court depending on whether the claim is made in connection with the military charge or separately. As in normal criminal cases in Finland, a civil claim arising from the (military) offence for which a charge has been brought may be heard in connection with the charge. In this case the action for damages would be handled by the military court. If such a claim, on the other hand, is made separately, the provisions on civil procedure, including the handling in civilian court, apply.

14. Does an accused person have a right to appeal a verdict of guilty or the sentence imposed by a military court as provided for in the ICCPR? If so, is the court of appeal civil or military? Is there any civilian judicial oversight of the military justice process (e.g. at the level of the court of appeals, the supreme or highest civilian court of the State)? What is the nature of the review of a verdict and sentence by an appeals court, military or civilian?

See A 3.

If a verdict is appealed, it is processed in the court of appeal in a military configuration as well (Military Court Procedure Act 1 § and 3 §). However, in this context it should also be noted that in the Court of Appeal as well as in the Supreme Court the majority of the members of the court are civilian. All the regular limitations (as set forth in the A 3) apply.

The Permanent Mission of Finland to the United Nations Office and other International Organisations in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurance of its highest consideration.

Geneva, 12 July 2013

Office of the United Nations High Commissioner for Human Rights
Geneva



