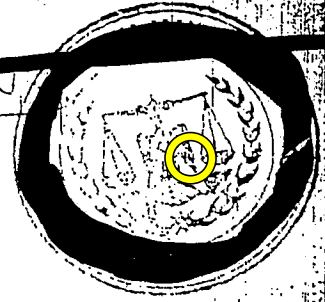


CODE OF MILITARY CRIMINAL LAW 1963



BOOK ONE

officers
MILITARY OFFICERS IN GENERAL

PART ONE

MILITARY PENAL LAW

Art. 1

PERSONS SUBJECT TO THE MILITARY PENAL LAW.

The military penal law has jurisdiction over all military men who are doing military service and are considered so.

The law determines the cases in which the military penal law is applied to the temporarily discharged military men, to the definitively discharged military men, to those assimilated to the military men, to the members of militarily organized civil bodies, and to any other person not belonging to the armed forces of the state.

3) Art. 2

March 18 '8 / 4 / 70, order

DENOMINATIONS "MILITARY" AND " ARMED FORCES OF THE STATE.

a) The word "military" refers to the members of the National Army and to the persons who, by provisions of law, gain such quality.

b) The term "Armed Forces of the state" refers to the National Army as well as to the military bodies which, by provisions of law, gain such quality.

Art. 3

MILITARY MEN IN ACTIVE SERVICE.

1. Unless otherwise is provided by law to the military men in active service is applied the military penal law:

a) relatively to the officers and NCOs, from the moment of notification of the order of appointment until the day of the notification of the order which compulsorily renders him out of service to arms;

b) relatively to the other military men, from the moment of their presentation until the moment they are discharged.

2. The absence of any military man, from the active service for leave, for infirmity, for imprisonment on suspicion, or for any other reason, does not exclude the application of the military penal law;

For the purposes of the provision of this part, "Notification of the order" means the personal notification of this to the concerned person.

Art. 4

MILITARY MEN CONSIDERED
IN ACTIVE SERVICE

According to the military penal law, there are considered in active service:

- a) The officers who are temporarily discharged, or suspended from employment, or who, however, according to the laws which regulate the legal status, are in the position of permanent service, though they are not in active service;
- b) The military men who are in the position of illicit dismissal, desertion or non-appearance to the call, or however, who arbitrarily absent themselves from the service;
- c) The temporarily discharged military men who expiate or detentive military punishment, whether original or substituted for common punishment;
- d) Discharged military men, who are in the position of preventive confinement in a military prison, for an offence subject to the military jurisdiction;
- e) Any other discharged military men who are considered in active service by provisions of law or of military regulations.

Art. 5

MILITARY MEN CALLED TO ARMS.

To the discharged military men who are called to arms, the military penal law shall apply from the moment established for presentation to arms until they shall be discharged.

Art. 6

CESSATION FROM MILITARY SERVICE

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For the purposes of the military penal law, the following military men shall give up belonging to the armed force of the state:

- a) the officers, with effect from the day following to the notification of the order, which establishes the final cessation of the duties of military service;
- b) the other military men, from the moment in which the certificate of discharge shall be delivered to them.

Art. 7

PARA-MILITARY MEN, MEMBERS
OF MILITARILY ORGANIZED CIVIL
BODIES.

The military penal law shall apply to the paramilitary men as well as to the members of militarily organized civil bodies in the cases specified by the respective special laws.

Art. 8

PERSONS TAKEN ON BOARD . . . MILITARY
SHIPS OR MILITARY AIRCRAFT.

The military penal law shall apply to every person taken aboard of military ships or aircraft, from the moment of the notification of his destination to board until the moment of equal landing, or in the case of loss of the ship or aircraft, until the dissolution of the crew;

For the purposes of the military penal law, "military ships" and "military aircraft" are the warships and combat aircraft, the other ships and aircraft which are regularly turned into warships and combat aircraft, as well as other ship or any other aircraft destined to the service of the Armed Forces of the state under a military Commandant.

Art. 9

DETERMINATION OF RANK OF THE
ASSIMILATED AND PERSONS ON BOARD.

For the purposes of the military penal law, the para-military men or any other person on board a military ship or aircraft shall be considered as having the rank, to which, respectively, correspond the assimilation or the rank in which they were placed in the order of embarkation.

Art. 10.

TEMPORARILY DISCHARGED MILITARY MEN
ASSIMILATED TO MILITARY AND MEMBERS
OF MILITARILY ORGANIZED CIVIL BODIES
CONSIDERED NOT BELONGING TO THE ARMED
FORCES OF THE STATE.

Apart from the cases referred in the preceding articles, the temporarily discharged military men, the definitively discharged military men, those assimilated to military men and the members of the militarily organized civil bodies shall be considered, for the purpose of the military penal law, persons not belonging to the Armed Forces of the state.

Art. 11.

PERSONS NOT BELONGING TO THE ARMED FORCES OF
THE STATE.

The persons not belonging to the Armed Forces of the state who concur to commit a military offence shall not be subject to the military penal law;

2. Besides the cases defined in the law, the punishments established for military men shall be applicable to the persons not belonging to the Armed Forces of the state who commit any of the acts prescribed in the articles: 78, 120, 124, 125, 126, 129, 166, and 168, by substituting the military punishments for common punishments according to the provisions of art. 55. Nevertheless, the judge has the power to reduce the punishment.

Art. 12

OFFENCE COMMITTED DURING THE SERVICE
AND DISCOVERED OR TRIED AFTER IT.

The military penal law shall apply to the military offences committed during the military service, though are discovered or tried when the offender is discharged or is not belonging to the armed forces of the state.

Art. 13

MILITARY ENLISTMENT; INABILITY;
DOING ACTIVE MILITARY SERVICE.

The military penal law shall apply to the persons belonging to the armed forces of the state, though, subsequently to the offence committed, is declared the nullity of the enlistment or their inability to belong to the same force; and, in the main, to anyone who is doing active military service.

Art. 14

OFFENCES COMMITTED ABROAD.

1. The military penal law shall apply to the persons subject to it, even for the offences committed in occupied foreign country, stay or transit of the armed forces of the state, being observed the international conventions and usages.

2. Apart from the cases foreseen in the preceding paragraph for the offences committed in foreign country, the persons subject to the military penal law shall be punished according to the said law.

Art. 15

MATTER GOVERN ED BY OTHER
MILITARY PENAL LAW.

The provisions of this code shall apply even to matters governed by the military penal law of war and by other military penal laws unless otherwise is provided by them.

PART II

MILITARY PUNISHMENTS

CHAPTER I

CLASSIFICATION OF MILITARY PUNISHMENT

Art. 16

PRINCIPAL MILITARY PUNISHMENTS

The principal military punishments are:

- a) Death *according to explain art. 434 &*
- b) Military imprisonment

2. The military penal law shall determine the cases in which for the military offences shall apply the punishment of imprisonment for life as well as imprisonment.

Art. 17 *

DENOMINATION AND CLASSIFICATION OF THE MILITARY IMPRISONMENT.

The terms "detentive punishments" or "punishments restrictive of personal liberty" include, besides the punishments laid down by the first paragraph of the art. 91 of the penal Code, even the military imprisonment.

Art. 18

MILITARY ACCESSORY PUNISHMENTS

The military accessory punishments are:

- a) Cashiering *رخصة*
- b) Removal
- c) Suspension from employment *ارضية*
- d) Suspension from the rank

CHAPTER II

PRINCIPAL MILITARY PUNISHMENTS

Art. 19

PUNISHMENT OF DEATH

1. The punishment of death shall be executed by shooting in the chest, in a military place;

2. The punishment of death shall be carried out by shooting in the back, when the conviction entails cashiering.

Art. 20

MILITARY IMPRISONMENT.

1. The punishment of military imprisonment shall extend from one month to twenty-four years and shall be served in an establishment provided for that purpose, with compulsory labour;

2. The officers, who for the purposes of the conviction have not lost the rank, shall serve the punishment of the military imprisonment in an establishment different from that destined for the other military men.

CHAPTER III
MILITARY ACCESSORY PUNISHMENTS

Art. 21

1. The cashiering shall apply to all military men. It is a perpetual and deprives the convicted:
 - a) of their military capacity and, unless otherwise provided by the law, of the ability to perform any service, task or work for the armed forces of the state.
 - b) of the decorations, pensions and of the right to decorations and pensions, for the service previously done.

2. The law determines the cases in which the punishment of death entails cashiering.

3. The punishment of imprisonment for life, the punishment of imprisonment for a period not less than 5 years and the declaration of habitual offender or professional offender in the crime, pronounced against military men in service to arms or on leave, for military offences, entail cashiering.

4. In case of punishment of death with cashiering and in the cases referred to in the preceding paragraph, the accessory punishment and the other criminal consequences, caused by the conviction, in conformity with the provisions of the common penal law, shall remain as they are;

Art. 22

REMOVAL

1. The removal shall apply to all military men clothed with rank or belonging to a class senior to the last one. It is perpetual and deprives the convicted military men of the rank and makes them descend down to the position of a simple soldier or of a military of the last class.

2. The conviction to military imprisonment, unless otherwise is provided by Law, causes the removal:

a) for the officers and NCOs, when it is imposed for a period more than three years;

b) for the other military men, when it is imposed for a period of more than one year.

Art. 23

SUSPENSION FROM EMPLOYMENT

1. Suspension from employment shall apply to officers and consists in the temporary deprivation of employment.

2. Apart from the cases referred to in the preceding article the conviction to military imprisonment entails the suspension from employment during the expiation of the punishment.

Art.24

SUSPENSION FROM RANK

1. Suspension from rank shall apply to non-commissioned officers and troop men and consists in temporary deprivation of military rank.
2. Apart from the cases referred to in the article 22, the conviction to military imprisonment entails the suspension from the rank during the expiation of the punishment.

Art.25

ACCESSORY MILITARY PUNISHMENTS
RESULTING FROM THE CONVICTION
FOR CRIMES LAID DOWN BY THE
COMMON PENAL LAW.

1. The punishment imposed upon military men in service to arms or on leave, for one of the crimes laid down by the common penal law, besides the common accessory punishments, entails:
 - a) cashiering, if the case is punishment of death or imprisonment for life, or punishment of imprisonment which, in conformity with the common penal law, entails perpetual interdiction from public offices:
 - b) removal, if apart from the cases referred to in the proceeding letter, the case is crime not committed with Culpa against the personality of the state, or, if the case is one of the crimes laid down by the articles, 366, 382, 398, 400, 405, 409, 413, 480, 484, 485, 486, 496, 500, 501, and 502 of the penal Code, or, if the case is fraudulent bankruptcy; or, if the convicted, after having expiated the punishment, should undergo a detentive security measures different from commitment to a nursing house or to house of custody for mental infirmity or police surveillance.
 - c) the removal, or the suspension from employment or from the rank, according to the provisions laid down, respectively, by the articles 22, 23, and 24, in any other case of conviction to military imprisonment, in conformity with the articles 55, and 56.
2. The declaration of habitual or professional delinquency in the crime pronounced at any time in respect of military men in service to arms or on leave, for offences foreseen by the common penal law, shall entail cashiering.

Art.26

BEGINNING OF THE MILITARY
ACCESSORY PUNISHMENTS.

1. The punishments of cashiering and removal date, to all consequences, from the day in which the sentence becomes irrevocable.
2. The punishments of suspension from employment and suspension from rank date from the moment in which begins the execution of the principal punishment.

Art. 27

LEGAL POSITION OF THE
PERSON SENTENCED TO
DEATH WITH CASHIERING

The legal position of any person sentenced to death with cashiering shall be the same as that of the person sentenced to imprisonment for life.

Art. 28

CONVICTION FOR OFFENCES COMMIT-
TED WITH ABUSE OF PUBLIC OFFICE

In case of conviction for military offences, the provisions of article 104 of the penal Code shall not apply:

PART-III
MILITARY OFFENCE

CHAPTER-1

OFFENCE COMMITTED AND ATTEMPTED

ART. 29

MILITARY OFFENCE

1. Every violation of the military penal law is offence:
2. It is exclusively military offence any act which, in its material and constituting elements, is not, wholly or in part, deemed to be an offence by the common penal law.
3. The offences seen by this Code, and the offences for which every other military penal law comminates one of the punishments referred to in the article 16, are crimes.

*AMMEND
see law no. 8
of 8/4/18
Art.*

Art. 30

DISCIPLINARY INFRINGEMENT

Violations of duties of service and of military discipline not constituting an offence, are forseen by the law, or by the military regulations approved with decree of the President of the Republic, and punished with the punishments established therein.

Art. 31

IGNORANCE OF MILITARY DUTIES

No military man may allege ignorance of the duties concerning his military status.

A e e g n

Art. 32

PERFORMANCE OF A DUTY

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1. For military offence, in place of the article 33 of the penal Code, the provisions of the following paragraphs shall apply;
2. Nothing is an offence which is done in the performance of a duty imposed by law or by an order of the superior or by a competent authority.
3. If an act constituting an offence is committed by order of a superior officer or by order of another authority, the person who has given the order shall be liable for the offence;
4. In the case referred to in the preceding paragraph, the military men who carried out the order shall also be liable for the offence, when the execution of this constitutes clearly an offence.

Art. 33

imposition

LAWFUL USE OF ARMS

1. A military man shall not be punishable if, for the purpose of performing a duty of his office, he employs or orders the employment of arms or other means of physical coercion when he is compelled to do so by the absolute security of repelling violence or overcoming resistance.
2. Other cases in which the military man is permitted to use arms or other means of physical coercion.

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Art. 34

(PRIVATE DEFENCE)

1. For the military offences, in place of article 34 of the penal Code, the provisions of the following paragraphs shall apply:
2. Whoever has committed an act constituting a military offence, having been compelled by the necessity of repelling from him or from another person an actual and unlawful violation, provided that the defence is proportionate to the offence.
- 3/ A military man shall not be punishable if he commits one of the acts referred to in the third and fourth part of the second book for having been compelled by the necessities:
 - a) to defend his own properties against the authors of robbery, extortion, or detention of a person for the purpose of robbery or extortion, or pillage
 - b) to repel the authors of scaling, breakage or fire to the house or to the other dwelling-premises and their environs, if such happens at night; or where the house or the dwelling-premises or their environs are in isolated place, and there is fear for the personal security of those who live therein.

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4. If the act is committed at the moment of repelling the authors of the scaling, breakage or fire to the house or to the another dwelling-premise or to their environs and not recurring the conditions forseen by letter b) of the preceding paragraph, the punishment of death with cashiering shall be replaced by imprisonment not less than ten years; the punishment of imprisonment for life shall be replaced by imprisonment from six to twenty years; and the other punishments shall be reduced by one third to half.-

Art.35

DEFINITION OF VIOLATION

For the purposes of the military penal law, the word "Violation" comprises murder, though attempted or preterintentional, hurt, assaults, ill-treatments, and any attempt to offend with arms.

Art.36

SPECIAL CASES OF MILITARY NECESSITY

No military man be punishable if he commits an act constituting an offence, having been compelled by the necessity to impede mutiny, revolt, pillage, devastation, or however, acts which endanger the security of the place, ship or aircraft.

Art.37

EXCESS COMMITTED WITH CULPA

Where, in committing any of the acts referred to in the articles 32,33,34, last paragraph excluded, and 36, the limits established by law or by order of the superior or of other authority or imposed by necessity are exceeded, the provisions relating to offences committed with Culpa shall apply where the act is considered an offence committed with Culpa by the law.

Art.38

PUNISHMENT FOR ATTEMPTED crime.

Whoever is guilty of attempted crime shall be punished:

- a) with imprisonment from twenty to thirty years, where the law prescribes the punishments of death with cashiering.
- b) with military imprisonment for not less than fifteen years, where the law prescribes the punishment of death by shooting at the chest.-
- c) with imprisonment for not less than ten years, where the law prescribes the punishment of imprisonment for life.
- d) in all other cases, with the punishment prescribed in respect of the crime, reduced by one-third to two-thirds:

CHAPTER II
THE CIRCUMSTANCES OF THE MILITARY OFFENCE

Art. 39

ORDINARY AGGRAVATING CIRCUMSTANCES

Besides the ordinary aggravating circumstances prescribed in the penal law, the following shall be aggravating circumstances of a military offence, where they are not constitutive elements thereof nor special aggravating circumstances:

- a) having acted for fear of danger, to which the offender has a particular juridical duty to expose himself;
- b) where the military man who committed the offence is clothed with a rank or is a commandant;
- c) having committed the act with the use of military arms or during a military service, or on board a military ship or on board a military aircraft;
- d) having committed the act in the presence of three or more military men or however, in circumstance of place for which public scandal may happen;
- e) where the military man has committed the act in foreign country while he was here for reason of service, or while he was wearing, though unduly, a military uniform.

Art. 40

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ORDINARY MITIGATORY CIRCUMSTANCES

attenuanti

1. Besides the ordinary mitigatory circumstances prescribed by the penal Code, and except the provisions contained in the following article, the following shall be mitigatory circumstances of an offence where they are not constitutive elements thereof or special mitigatory circumstances:

- a) having committed the act for excess of zeal in the performance of military duties.
- b) having committed by a military man who has not completed thirty days of active service, where the case is exclusively a military offence.
- c) having committed the act for ways not conveniently used by the superior;

2. For the military offences, the punishment can be reduced, where the offender is a military man of good behaviour or of proven value.

Art. 41

PROVOCATION

For the military offences, having acted in a state of anger caused by an unlawful act of another person, constitutes a mitigatory circumstance only in the cases expressly prescribed by law.

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Art.42

INCREASE OF PUNISHMENT
IN THE CASE OF A SINGLE
AGGRAVATING CIRCUMSTANCE

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Where there occurs only one ~~mitigatory~~ ^{aggravating} circumstance, and the increase of punishment is not fixed by law, the punishment which should be imposed for the offence committed, shall be increased upto one third;

However, the temporary ^{de} preventive punishment to be applied by reason of the increase shall not exceed thirty years.

Art.43

REDUCTION OF PUNISHMENT
IN THE CASE OF A SINGLE
MITIGATORY CIRCUMSTANCE

Where there occurs only one mitigatory circumstance, and the reduction of punishment is not fixed by law, the following provisions shall be observed:

- a) the punishment of death with cashiering shall be substituted by imprisonment from twenty to thirty years;
- b) the punishment of death by shooting at the chest shall be substituted by military imprisonment from twenty to thirty years;
- c) imprisonment for life shall be substituted by imprisonment from twenty to twenty-four years;
- d) other punishments shall be reduced by not more than one third. $\frac{1}{3}$

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Art.44

LIMITS OF INCREASE AND
REDUCTION OF PUNISHMENTS
WHERE THERE OCCURS MORE
AGGRAVATING OR MITIGATORY
CIRCUMSTANCE

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1. Where there occurs more than one aggravating or mitigatory circumstances, in order to determine the limits of increase or reduction of punishment, the provisions of the penal Code shall be applied.
2. The punishment of military imprisonment to be applied in consequence of the increase shall not, however, exceed thirty years;
3. The punishment to be applied in consequence of the reduction shall not be less than:
 - a) fifteen years' imprisonment where the law prescribes punishment of death with cashiering in respect of the crime;
 - b) fifteen years' military imprisonment where the law prescribes punishment of death by shooting at the chest.