

Execution of Criminal Judgments Issued by Military Courts Under Algerian Legislation

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Date of submission: 06/07/2025

- Date of acceptance: 02/01/2026

- Date of publication: 05/01/2026

ABSTRACT:

Like other judicial authorities do, military justice regulates the behaviour of military personnel, who violate regulations and apply criminal sanctions characterized by severe and deterrent penalties during their trial. This necessitates the amendment of military legislation to align with the legal provisions of ordinary legislation for those prosecuted before the criminal judiciary under the Code of Criminal Procedure. The aim is to ensure a fair military trial that upholds the rights and freedoms of individuals facing prosecution.

key words: Defendant, Judiciary, Legislation, Military, Procedure, Prosecution.

Introduction:

To maintain internal security and ensure the continuity of the nation, it became necessary to establish a judicial body to regulate society. This is achieved through imposing penalties on offenders, considering the principle of justice as a mirror of human civilization and progress. Achieving justice is a logical result of an impartial and competent judicial system that guarantees and establishes its foundations¹. Most legislations, including Algerian legislation, have strived for this by incorporating into their legal framework an independent military judiciary distinct from the ordinary judiciary, which specializes in crimes committed by specific individuals. Therefore, how are these individuals prosecuted, and what procedures must be followed against them?

This will be clarified by examining the following points:

First, there are rules of jurisdiction for military crime.

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¹-Salah Eddine Jabbar, "Jurisdiction of the Military Judiciary," Faculty of Law, University of Algiers, online article, accessed November 11, 2022, p. 181.

The jurisdiction of the military judiciary is defined according to law. A military judge must apply these legal provisions¹. Based on the types and criteria of jurisdiction specified by the law. In fulfilling their duties, military judges adhere to the Military Justice Law, which defines their powers and jurisdiction as investigative judges, prosecutors, or trial judges. This adherence takes place as follows:

Subject to the Military Judiciary Law:

The procedures to be followed before these entities are defined in a specific law, which regulates the behaviour of individuals subject to this sector. These entities have jurisdiction to examine the following cases during peacetime:

- *- Violations related to security organization: Any perpetrator of a crime or an accomplice, whether civilian or otherwise, is subject to the legally prescribed penalties, whether primary, complementary, or security measures.

- *- The military judiciary prosecutes all participants in criminal acts, regardless of the type of act committed, whether in service or within military institutions².

Thus, this field operates under strict regulations that cannot be violated by those responsible³. The military prosecutor determines whether prosecutions should be initiated based on assessing whether the act falls within their jurisdiction⁴.

Subject to the Criminal Procedure Code:

All judges are obligated to apply the legal rules to maintain order. They must enforce the Criminal Procedure Code⁵, particularly concerning the types of crimes (felonies and misdemeanours) and the obstacles that may arise in implementing penalties, which may result in the dismissal of a case or the suspension of prosecutions. This applies during investigations, witness testimonies, the execution of summons orders, detention, and holding suspects in custody, except provisions specific to military offenders.

Trial Procedures:

There is no significant difference in applying laws before the military and the general judiciary; the procedures are nearly identical under general law. The process begins with pre-trial actions, followed by the trial and pleadings, leading to the issuance of a verdict and its subsequent implications⁶.

1. Procedure Flow:

¹- Gourab Djamel, The New Military Judiciary Law and the Principle of Fair Trial, Master's Thesis, 2019/2020, Kasdi Merbah University, Ouargla, Algeria, p. 35.

²- Order No. 71/28 dated April 22, 1971, as amended and supplemented by Law No. 18/14 dated July 29, 2018, containing the Military Judiciary Law, Article 56, Paragraph 1.

³- Boubchir Mohamed Amokrane, The Algerian Judicial System, University Publications Office, Algeria, 3rd Edition, 2013, p. 95.

⁴- El-Ghouti Ben Melha, The Algerian Judicial Law, 2nd Edition, National Office for Educational Works, Algeria, 2000, p. 76.

⁵- Ihab Mostafa Abdelghani, Defenses in Military Judiciary, Dar Al-Fikr, Alexandria, Egypt, 1st Edition, 2011, p. 120.

⁶- Abdelrahman Barbara, The Limits of the Exceptional Nature of the Military Judiciary Law in Algeria, Doctoral Thesis, University of Algiers, Faculty of Law, 2005, p. 125.

The following steps, considered essential in all actions and prosecutions, are included:

A- Pre-Trial Procedures:

Notification of Summons:

The military prosecutor oversees procedures related to defendants referred directly to them or the military judiciary. This includes summoning witnesses, and experts proposed for testimony.

For the Defendant:

The military public prosecutor is responsible for summoning defendants either directly presented or referred to the military court to attend the session. The summons are delivered to the defendant within the timeframes and conditions stipulated by law. The period between the summons' delivery and the date of the defendant's appearance must be at least eight (8) full days. During wartime, this period is reduced to twenty-four (24) hours, with no additional time allocated for distance considerations.

The summons document must be dated and signed and include the following information:

- The name and title of the authority request the referral decision or direct presentation, as well as the order for the summons issued by the court, along with the session location, date, and time.
- A description of the act being prosecuted, the applicable legal provision, and the names of witnesses and experts the military public prosecutor requested hearing.
- A notification to the defendant, under the penalty of nullity, that if they fail to appoint a defence counsellor, one will be appointed for them automatically.

The defendant must be informed that they, or their defence counsel, must notify the military public prosecutor of the list and addresses of witnesses they request to be heard. This must be done through a statement submitted to the court registry at least eight (8) days before the session.

For Witnesses and Experts:

The summons for their attendance is issued upon the recommendation of the military prosecutor, who deems it necessary to hear their testimony. The procedure follows the same process as that applied to the defendant, ensuring the inclusion of the following essential information in addition to the signature and date:

- The name and title of the requesting authority.
- The name, surname, and residence of the witness or expert.
- The date, time, and location of the session they must attend, specifying their status as a witness or expert.

The summons must also warn that failure to appear, refusal to testify, or false testimony will result in legal penalties. If the summoned individual does not comply

with the delivered summons, coercive measures through law enforcement may be used against them.

c. Notification of the Formation of the Military Court:

The military public prosecutor notifies the designated military assistants for the formation of the army court or reserves assistants, if necessary, as well as the lawyers, of the date, location, and time of the session.

The appointment of military assistants participating in the military court and the Court of Appeals for a one-year term is done through a joint decision issued by the Minister of National Defense and the Minister of Justice, Keeper of the Seals.

The Minister of National Defense periodically issues a seniority list of officers and noncommissioned officers eligible to serve as military assistants at each military judicial authority. This list is available to each judicial body and updated with every transfer. Reserve military assistants may also be called upon to attend sessions to provide replacements when necessary.

The selection of military assistants for the formation of military judicial authorities must consider the rank or grade of the defendant on the day of the trial. In cases involving multiple defendants, the highest rank and seniority are considered.

A military court is established in each military region. This judicial body comprises a trial chamber, a military prosecution office, investigation chambers, and a court registry. The court consists of a judge serving as president, holding at least the rank of judicial council advisor, and military assistants. In felony cases, the court includes two judges, military assistants, and the president.

c. Conducting Additional Investigations:

If the initial investigation is deemed insufficient or new elements emerge after the inquiry's conclusion or direct referral, the court president may conduct the necessary investigations either on their initiative or at the request of the defence or the defendant¹.

The reports or documents collected during the additional investigation are submitted to the court registry and added to the case file, making them available to the prosecution and the defendant's defence counsel. Both parties are notified of this submission by the court registry. The military public prosecutor may access these documents at any time but must return them within twenty-four (24) hours².

Second: Trial Procedures

According to Articles 285 to 315 of the Code of Criminal Procedure, their provisions are applied before the military court unless they conflict with the procedural rules outlined in the Military Justice Law.

¹- Mohamed Mohieddin Awad, *The Fair Criminal Trial for Human Rights*, Vol. 5, Issue 9, Arab Journal for Security Studies, Arab Center for Security Studies and Training Publishing House, Riyadh, 1990, p. 10.

²- Military Law, Article 129.

The court convenes at the location, date, and time specified by the president based on the request of the military public prosecutor. The trial procedures are conducted as follows:

1. The president's authority to maintain order in the session:

The president is entrusted with maintaining order during the session. Attendees must be unarmed and bareheaded. If any attendees display approval or disapproval, the president orders their expulsion. If they disobey, the president may order their detention, regardless of their status, for a period not exceeding 24 hours¹.

2. Presence of the Defendant:

The president orders the defendant to appear without any restraints. The defence lawyer assigned to the case must also attend. If the defence lawyer does not appear, the president appoints one upon the defendant's request. The appointment of a lawyer is mandatory if the offences being prosecuted constitute a felony or a misdemeanour with a maximum penalty exceeding five years.

The defendant personally summoned for an infraction must appear before the court. If they fail to attend without providing a valid excuse acceptable to the court, the court may render a judgment in their absence, considered if it is rendered in their presence.

If the defendant's health prevents them from attending or if serious reasons hinder their presence, the court may order their interrogation at their location, with the assistance of their defence counselling if necessary. The president interrogates the presence of a court clerk and public prosecution, with an official record being prepared².

Suppose that the detained defendant refuses to appear before the court. In that case, they are formally warned to comply with the order of justice in the name of the law by a law enforcement officer designated by the president. The officer prepares a report documenting the warning notification, the reading of this article, and the defendant's response. If the defendant refuses to comply, the president, after reading the report during the session, orders the trial proceedings to continue in their absence.

3. Pleadings:

The proceedings during the trial are subject to the authority of the following entities.

• President's Authority in Managing Pleadings:

The court's president is empowered to manage the pleadings to uncover the truth. They may request the submission of any document deemed necessary or summon any person whose presence is considered essential, even using summons orders if needed. If the public prosecutor or the defence requests that new witnesses be heard during the pleadings, the president decides whether to listen to them. The summoned witnesses do not take an oath; their statements are mere information.

¹- Article 130 of the Same Reference.

²- Articles 141 and 141 bis of the Same Order.

• **Conduct of Pleadings:**

The president begins by interrogating the defendant and receiving witness testimonies. Military court members may ask questions necessary to the defendant and witnesses, but these questions must be relayed through the president. Members are prohibited from expressing their opinions. The defendant or defence counsel may also question codefendants and witness them through the president. Moreover, the public prosecutor can ask the defendant and witnesses directly.

After the in-session investigation, the public prosecutor and the defendant's defence counsel are heard. The public prosecutor may respond to the defence's arguments if deemed necessary. The final word always belongs to the defendant and their defence counsel. The president asks the defendant if they have anything further to add to their defence.

If the pleadings are not concluded during the same session, the president orders the hearing to be adjourned to a date and time they specify. Defendants and witnesses who were summoned to remain at the court's disposal are required to appear without being renotified¹.

Interrupting the investigation and pleadings in a case is only permitted in cases of necessity, such as to provide rest for the judges, witnesses, or defendants or to allow the public prosecutor and defence to prepare additional clarifications needed owing to the duration of the pleadings or the number of witnesses. The court may also order an adjournment for a subsequent session, either on its initiative or at the public prosecutor's request.

Third: Issuance of Criminal Judgments

Once the pleadings are concluded, the presiding judge orders the closure of the pleadings and the removal of the defendant from the courtroom. The court members then proceed to the deliberation chamber to issue the judgment. During this time, the court members must only speak with someone or separate from one another once the decision is issued. Deliberations are conducted without the military public prosecutor, the defendant, the defence, witnesses, and the court clerk.

This stage marks the final step in military trial procedures. The judgment is issued either during the same session in which deliberations occurred or at a later date, in which case the present parties are informed of the judgment's announcement date.

Upon pronouncing the judgment, the president reconvenes the parties, ensures the defendant's presence, reads the judgment publicly, and specifies the applicable criminal laws. The judgement may involve the following:

- Immediate release of the defendant (unless detained for another reason) in cases of acquittal, exemption from punishment, or conviction with a suspended sentence.

¹- Articles 153, 154, and 155 of the Same Order.

In cases of conviction or exemption from punishment, the judgment includes the following:

- **(a)** Requiring the convicted individual to cover court costs on behalf of the state, with a decision on physical coercion for nonpayment.
- **(b)** Confiscating seized items and returning them to the state or their rightful owners if presented as evidence.

A person acquitted or convicted cannot usually be retried for the same acts, even if they are described differently¹. However, suppose that during the proceedings, it is discovered from the submitted documents or testimonies that the defendant may be prosecuted for other actions. In that case, the president orders a record to be prepared. After the judgment is issued, the convicted individual and the case documents are referred to the competent authority to decide whether to initiate new proceedings or refer the matter to the appropriate judicial body².

Fourth: Procedures for Executing Criminal Judgments on Military Personnel

If no appeal has been filed, the judgment is executed within 24 hours following the expiration of the appeal period. An exception applies to cases involving the death penalty, as stipulated in Article 222, where the execution of the judgment or decision is suspended during the appeal period. If an appeal is filed, the suspension remains in effect until the Supreme Court issues its decision, subject to the provisions of Article 172 of the Military Justice Law.

Furthermore, despite an appeal, the defendant is immediately released if acquitted, exempted from punishment, sentenced to suspended imprisonment, or fined. If the appeal is rejected, the judgment or decision is executed within twenty-four (24) hours of receiving the rejection decision, except when the sentence is the death penalty³. Once the judgment becomes final, the military public prosecutor orders its execution within twenty-four (24) hours and has the right to request law enforcement assistance. In all cases, the relevant authorities, including the authority that ordered or requested the proceedings and the military authority of the regional command or significant unit within the military court's jurisdiction, are informed of the Supreme Court's decision or the court's ruling. If the military sentence is suspended, the relevant authorities must, within three days of execution, send a summary of the judgment to the head of the unit, formation, or service to which the convicted individual belongs⁴.

Conclusion:

¹- Maamoun Mohamed Salama, *Criminal Procedures*, Dar Al-Fikr Al-Arabi, Cairo, 1976, p. 20.

²-Bouaâchar Kamal and Badaâ Yahia, *Procedures of Prosecution and Trial Before the Military Judiciary in Algerian Legislation*, Master's Thesis, Faculty of Law and Political Science, University of Ouargla, Algeria, 2019/2020.

³- The death penalty for individuals sentenced by military courts is carried out by firing squad at a location designated by the army authority under Decree No. 64/193, dated June 3, 1964, and Decree No. 64/201, dated June 7, 1964. However, the enforcement of the death penalty has been suspended to this day.

⁴- Bouaâchar Kamal and Badaâ Yahia, *Procedures of Prosecution and Trial Before the Military Judiciary in Algerian Legislation*, Master's Thesis, previously cited reference, p. 66.

In summary, the stages of oversight and prosecution before the military judiciary begin with investigation and evidence gathering, which are tasks entrusted to military judicial police officers as defined by the Military Justice Law, which specifies their exclusive powers and duties. This is followed by prosecution, initiated by the army public prosecutor under the authority of the Minister of National Defense as prescribed by law.

The investigation is subsequently conducted by the military investigative judge as a first-level authority, exercising the same powers as an investigative judge under general law, except for conflicting provisions in the Military Justice Law. The indictment chamber acts as a second-level authority, supervising all procedures undertaken by the investigative judge, hearing appeals submitted by the parties, and holding military judiciary officials accountable for their duties.

Finally, judgments are issued and monitored for execution. Thus, while the military judiciary operates independently, it shares similarities with the procedural rules outlined in the Code of Criminal Procedure.

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