

The Jurisdiction of Military Courts: Personal and Subject-Matter Jurisdiction

الاختصاص القضائي للمحاكم العسكرية: الاختصاص الشخصي والاختصاص النوعي

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Abstract:

Jurisdictional rules in procedural law are essential for the validity of legal proceedings, ensuring that necessary procedures are followed to protect the rights of litigants. Violations of these rules, whether initiated by the parties or raised by the court, especially in cases involving public order, can result in the invalidation of legal actions. These rules are mandatory and cannot be waived. Military courts, like civilian courts, adhere to jurisdictional principles of subject-matter (*ratione materiae*) and personal jurisdiction (*ratione personae*). These frameworks, established by law as part of public order, cannot be violated. This paper explores the criteria used by the legislator for handling public prosecutions in military courts, focusing on personal and subject-matter jurisdiction. The analysis is based on Ordinance No. 28/71, which governs military justice, as amended by Law No. 14/18, with a particular focus on the provisions introduced by the latter

Keywords: Military courts, *ratione materiae*, military domains, jurisdiction for military courts

الملخص:

القواعد القضائية في قانون الإجراءات تُعد ضرورية لصحة الإجراءات القانونية، حيث تضمن اتباع الإجراءات اللازمة لحماية حقوق المتقاضين. إن انتهاك هذه القواعد، سواء من قبل الأطراف أو بناءً على إثارة من المحكمة، لا سيما في القضايا التي تمس النظام العام، قد يؤدي إلى بطلان الإجراءات القانونية. وتُعد هذه القواعد إلزامية ولا يجوز التنازل عنها. تلتزم المحاكم العسكرية، شأنها شأن المحاكم المدنية، بمبادئ الاختصاص النوعي (الاختصاص بحسب الموضوع) والاختصاص الشخصي (الاختصاص بحسب الأشخاص). وقد تم وضع هذه الأطر القانونية باعتبارها جزءاً من النظام العام، ولا يجوز انتهاكها. يتناول هذا البحث المعايير التي اعتمدها المشرع في تنظيم الدعوى العمومية أمام القضاء العسكري، مع التركيز على الاختصاص الشخصي والنوعي. ويستند التحليل إلى الأمر رقم 71/28 المتعلق بالقضاء العسكري، كما تم تعديله بالقانون رقم 18/14، مع تركيز خاص على الأحكام المستحدثة بموجب هذا الأخير. الكلمات المفتاحية: المحاكم العسكرية، الاختصاص النوعي، المجالات العسكرية، الاختصاص القضائي للمحاكم العسكرية.

Introduction :

Jurisdictional rules, particularly in *procedural law*, form the cornerstone of judicial systems; these rules are fundamental due to their decisive impact on the validity or nullity of proceedings. They aim to uphold the rights of litigants by ensuring compliance with procedural prerequisites. A breach or violation of these rules, whether invoked by the parties (*inter partes*) or raised *ex officio* by the court, particularly where issues of public order arise, can lead to the nullification of legal actions. Such rules are therefore imperative and cannot be derogated from.

Military courts, like their civilian counterparts, are bound by *jurisdiction ratione materiae* (subject-matter jurisdiction) and *jurisdiction ratione personae* (personal jurisdiction). These jurisdictional frameworks, established by the legislator as part of *public order*, cannot be contravened under any circumstances. This paper examines the criteria employed by the legislator for adjudicating *actiones publicae* (public prosecutions) in military courts, focusing on *jurisdiction ratione personae* and *jurisdiction ratione materiae*. The analysis is grounded in Ordinance No. 28/71 governing military justice, as amended and supplemented by Law No. 14/18, with particular attention to the provisions introduced by the latter.

I. Subject-Matter Jurisdiction (*Jurisdiction Ratione Materiae*)

Definition

Subject-matter jurisdiction is a core tenet of procedural law, particularly in criminal proceedings (*actio criminalis*). Despite its foundational importance, legislative texts often leave the term undefined, delegating its interpretation to jurisprudence and legal doctrine.

Jurisdiction in general terms (*jurisdictio sensu lato*) refers to the legal authority to investigate and adjudicate disputes as prescribed by law (*ex-lege*). It encompasses the distribution of judicial functions among various courts and within individual judicial entities. Jurisdiction has also been defined as the power of a court to decide on a dispute presented before it, with the absence of such power leading to a finding of incompetence.

Subject-matter jurisdiction specifically pertains to the allocation of judicial competence within the same order of courts, based on the nature (*natura*) or type (*genus*) of the dispute. It reflects the *ratio legis* (legislative rationale) for ensuring that courts handle disputes according to their subject matter, irrespective of monetary value. The criterion here is the *natura controversiae* (nature of the

controversy) or the legal relationship at issue, emphasizing the specialized competence of courts in addressing specific types of cases¹.

1. Subject-Matter Jurisdiction Under Ordinance No. 71/28

Subject-matter jurisdiction, as a core aspect of public order, plays a critical role in the administration of justice. The legislator has meticulously delineated the jurisdiction of judicial bodies to adjudicate specific types of disputes, ensuring that each type of case is addressed by the appropriate forum. Any violation of the rules governing subject-matter jurisdiction results in the nullity of the proceedings.

In military courts, jurisdiction is explicitly outlined in Ordinance No. 71/28, which governs military justice, under Chapter II titled “Jurisdiction of Military Judicial Courts.” Specifically, Article 25 addresses jurisdiction in times of peace. This provision affirms that *permanent military courts* are competent to adjudicate offenses directly related to military discipline, as defined in subsequent sections. It further extends jurisdiction to all principal offenders (*auctor delicti*), co-offenders (*correi*), and accomplices (*socii criminis*), whether they are military personnel or civilians.

Article 25(3) further stipulates an exception to Article 248 of the *Code de Procédure Pénale* (Code of Criminal Procedure). It grants *jurisdiction ratione materiae* to military courts to hear cases involving crimes against state security, as defined by the Penal Code, provided the penalty exceeds five years of imprisonment. However, for misdemeanors, military courts are competent only when the offender is either a member of the military or an individual assimilated to military status.

Chapter III, titled “Jurisdiction in Times of War,” extends the competence of military courts, as per Article 32, to encompass all offenses against state security committed during wartime.

While Article 25(2) refers to offenses committed “during service,” the legislator does not provide a precise definition for this term. However, it can be inferred to mean any offense committed in the execution of orders issued by a military authority. This interpretation aligns with the principle of *ratione officii*, whereby the nature of the offender’s duties determines jurisdiction.

The legislator has expanded the scope of military jurisdiction to include offenses committed by civilians against military personnel. This broader competence introduces potential *conflictus jurisdictionis* (conflicts of jurisdiction) between military and civilian courts.

¹ Awad Ahmad Al-Zoubi, *Principles of Civil Procedure: A Comparative Study*, Volume I, 2nd Edition, Dar Wael Publishing, Jordan, 2008, p. 89.

In a landmark decision, the Supreme Court addressed this issue, establishing critical jurisprudence on the matter. The court held that crimes perpetrated by military personnel against other military members—or by civilians against military personnel—fall under the jurisdiction of military courts, provided the offense arises from the performance of military duties (*ratione muneris*).

2. Subject-Matter Jurisdiction Under Law No. 18/14

Law No. 18/14, which amended and supplemented Ordinance No. 71/28 governing military justice, introduced significant refinements to the framework of subject-matter jurisdiction. Article 25 of the amended law categorizes specific offenses as "violations related to the military system," irrespective of the identity of the perpetrator. This classification extends the jurisdiction of military courts to any principal offender (*auctor delicti*) or accomplice (*socius criminis*), whether they are military personnel or civilians.

Conversely, if an offense does not qualify as a violation of the military system, jurisdiction reverts to the ordinary judicial system. This distinction reflects the legislator's acknowledgment of criticisms leveled at Article 25(3) of Ordinance No. 71/28, which granted broader jurisdiction to military courts. The revised provisions ensure a clearer demarcation of competence, limiting the jurisdiction of military courts to offenses intrinsically linked to military functions or discipline. Crimes against state security, when committed by civilians, now fall under the exclusive jurisdiction of ordinary courts.

Article 25 of Law No. 18/14 explicitly affirms the jurisdiction of military courts over offenses classified as military violations, regardless of whether the offender is a civilian or military personnel. However, crimes falling outside this category are adjudicated by ordinary courts.

The legislator retained key substantive criteria (*criterium materiale*) from Ordinance No. 28/71 to determine the jurisdiction of military courts:

1. **The Service Criterion (*criterium servitii*):** Jurisdiction is established if the offense occurs in the course of military service or while executing orders issued by military authorities.
2. **The Location Criterion (*criterium loci*):** Military courts have jurisdiction over offenses committed within military installations, barracks, or other facilities associated with the armed forces.

While retaining these criteria, the revised law diverges from its predecessor by assigning jurisdiction over crimes against state security to ordinary courts when such offenses are committed by civilians. This amendment aligns the military justice system with principles of proportionality and the separation of judicial competences, correcting ambiguities in the earlier ordinance.

Law No. 18/14 also introduced an important clarification in Article 29, significantly expanding the definition of military domains. These now include:

- Permanent or temporary military installations and barracks.
- Facilities utilized by the armed forces for operational or administrative purposes.
- Naval vessels and military aircraft, regardless of their location.

II. Personal Jurisdiction

This section addresses the concept of personal jurisdiction, its application under Ordinance No. 71/28, as amended and supplemented, and its development in Law No. 14/18 governing military justice.

Definition of Personal Jurisdiction

Personal jurisdiction, like subject-matter jurisdiction (*jurisdictio ratione materiae*), is a foundational principle in procedural law, particularly in criminal proceedings. Despite its significance, the legislator has not provided a precise statutory definition, leaving its conceptualization to jurisprudence and legal scholarship.

Generally, jurisdiction is understood as the legal authority of a court to hear and determine cases. In the context of personal jurisdiction, it refers to the identification of individuals who are subject to a court's authority. Within military justice, this jurisdiction pertains to those who may be prosecuted before military courts, provided the requirements for subject-matter jurisdiction are met.

Simply put, *jurisdictio ratione personae* addresses which individuals—whether military personnel or civilians—may be tried by military courts for specific offenses. The establishment of personal jurisdiction is as essential as that of subject-matter jurisdiction to validate military judicial competence.

1. Personal Jurisdiction According to Ordinance No. 71/28

Upon scrutinizing Article 3 of Ordinance No. 71/28, which incorporates the Military Justice Code, it becomes evident that the legislator has anchored the determination of personal jurisdiction for military courts on a specific criterion based on the status of the individuals committing the offense.

Article 3 states: "This law applies to military personnel from various branches and services and to individuals equivalent to military personnel associated with these branches and services. The term 'embarked person' refers to any individual aboard a naval ship or military aircraft, regardless of their status."²

This clause illustrates that the Algerian legislator considers the status of the person as the decisive factor in establishing the personal jurisdiction of military courts. Moreover, Articles 26, 27, and 28 from the same law indicate that this criterion does not apply universally but is limited to specific individuals or groups possessing a military status, notably:

- Individuals on active duty, those in attendance or on deposit, and those absent with or without authorization prior to a decision.
- Individuals not on active duty but still under the disposition of the Ministry of National Defense and drawing a salary.
- Individuals equivalent to military personnel³.
- Young soldiers, conscripts under detention, re-enlisted volunteers, exempted individuals, and those placed on reserve.
- Reservists, including those assimilated to military personnel.
- Individuals called to service or recalled, from the moment they join the assembly point until their return home.
- Individuals appointed as military personnel in hospitals, prisons, or public force guards before their conscription or administratively assigned to a unit.
- Individuals considered to be, in any capacity, part of the crew of a naval vessel or military aircraft.
- Individuals listed on the service roster and performing duties without a legal or contractual link to the army.

² Article 3 of Ordinance No. 71/28, dated 26 Safar 1391 (corresponding to April 22, 1971), which contains the amended and supplemented Military Justice Code.

³ Article 26 of Ordinance No. 28/71.

- Individuals expelled from the army but still subject to one of the special statuses of military personnel mentioned in Articles 26 and 27 of Ordinance No. 28/71.
- Members of the command navigation crew⁴.
- Prisoners of war.

The term “assimilated military personnel” in the Military Justice Code refers specifically to two groups:

- Civilians working alongside military personnel and paid by the Ministry of National Defense.
- Military personnel not on active duty but still under the administrative authority of the Ministry.

Thus, personal jurisdiction is vested in military courts for offenses committed by these individuals due to or during the performance of their duties (*ratione officii*).

Regarding crimes occurring within military establishments, irrespective of the perpetrator's status—whether civilian or military—personal jurisdiction for adjudicating these offenses is conferred upon military courts.

It is also pertinent to note that the legislator has connected the issue of personal jurisdiction that vests in military courts with the circumstances of the offense’s commission. Article 82 specifies that jurisdiction is established for military courts upon the presence of any of the following conditions:

- The offense is committed by a military person during service.
- The offense occurs within a military establishment.
- The offense is committed at a host's premises.
- There is a connection between offenses.
- A state of emergency is declared.

The term "host" encompasses any non-military natural or juridical person who allocates their private property or premises for the accommodation of military personnel due to specific

⁴ Article 27 of Ordinance No. 28/71.

operational circumstances or for official duties. Given this compulsion, any offense occurring at such premises falls under military jurisdiction, irrespective of its nature.

The term "connection" refers to the relationship linking multiple offenses, which does not prevent each offense from being treated independently. Therefore, if the principal offense falls under the jurisdiction of military courts but is linked to several other offenses governed by general law, jurisdiction reverts to military courts.

Additionally, military courts have jurisdiction over offenses committed by juveniles. According to Algerian law, a juvenile is defined as anyone under 18 years of age at the time of the offense, as stipulated in Article 2 of Law No. 15/12 concerning child protection.

Finally, it is crucial to consider the provisions of Article 249 of the Code of Criminal Procedure, which assign jurisdiction to the criminal court for felonies and related misdemeanors, infractions, and acts described as terrorist or subversive committed by juveniles aged 16, referred by a final decision of the indictment chamber.

In summary, an analysis of Article 25 underscores that it does not exclude juveniles and is formulated in general terms. Since criminal law prohibits interpretation or extrapolation, juveniles are also subject to the jurisdiction of military courts if they commit offenses related to the military system during peacetime, regardless of whether they are principal offenders or accomplices.

2. Personal Jurisdiction According to Law No. 18/14

Under Law No. 18/14, which amended and supplemented Ordinance No. 71/28, there is a notable expansion in the scope of personal jurisdiction for military courts. This expansion is articulated in Article 2 of the law, which states:

"The provisions of this law apply to all military and civilian personnel under the authority of the Ministry of National Defense."

This clause extends the jurisdiction of military courts to encompass not only military personnel but also civilian employees of the Ministry of National Defense. This is specifically relevant when these civilians commit offenses that contravene the established military regulations or the broader military system.

Moreover, Article 26 of the same law delineates the specific categories of individuals considered as military personnel within the legal framework of this statute, including:

- Active military personnel
- Contracted military personnel: This encompasses individuals who are employed under contract, performing national service, or have been recalled from the reserves.
- Individuals on duty or detached: Those who are either actively serving or are detached from regular service but still under military jurisdiction.
- Individuals not actively serving or on special leave: This includes military personnel who are on leave or not currently engaged in active duty but still fall under the jurisdiction due to their official status.

These categories are explicitly recognized regardless of whether the individuals are present, on authorized or unauthorized leave, during the period covered by a prior amnesty.

This expansion of personal jurisdiction is significant as it clearly stipulates that both military and certain civilian personnel affiliated with the Ministry of National Defense are subject to military court proceedings, underscoring the inclusive and comprehensive nature of military jurisdiction as defined by the updated legal framework.

The article 26 in paragraph 2 elucidates the scope of "civilian personnel" within its jurisdiction to prevent any ambiguity. It specifies that this designation pertains to civilians employed by the Ministry of National Defense who are governed by relevant statutory regulations. This precise definition ensures clear delineation of jurisdictional boundaries.

Furthermore, the same article defines an "embarked person" (*persona imbarcata*) in its concluding section as: "An individual present, in any capacity, aboard a naval vessel or military aircraft." This definition expands the jurisdictional reach of military courts to include not only traditional military personnel but also any individuals on military maritime or aerial platforms, irrespective of their formal role or status.

This expansion also incorporates categories not previously covered under Ordinance No. 71/28. Article 28 of Law No. 14/18 stipulates that the following groups are amenable to military court jurisdiction:

1. Embarked Persons: Individuals aboard naval or military aircraft, serving in any capacity.
2. Service Roster Personnel: Individuals listed on military service rosters who are performing duties, regardless of legal or contractual obligations to the military.
3. Command Navigation Crew Members (*membra nautarum imperii*).

4. Prisoners of War (*captivi belli*).

Article 28 significantly broadens the jurisdiction of military courts, encapsulating all personnel associated with the Ministry of National Defense or engaged in operations with the *Armée Nationale Populaire* (ANP). This includes not only military personnel but also administrative staff, contractors, and those involved in contractual obligations such as procurement, supply, and public works.

Conclusion:

In conclusion, while the Algerian legislator has demonstrated significant commitment to jurisdictional principles within the Code of Criminal Procedure, striving to protect the rights of all parties irrespective of their status, the jurisdictional framework governing military courts reflects distinct criteria not found in general law. These criteria—whether *ratione materiae* (subject-matter jurisdiction) or *ratione personae* (personal jurisdiction)—prioritize public interest, state security, and national stability over the universal application of general legal norms.

Although the principle of equality before the law requires that all citizens be treated equally and subjected to the same legal framework, without discrimination based on occupation or rank, the legislator has introduced specialized procedural rules tailored to the unique nature and sensitivity of the military profession. These rules, however, have been criticized for their application to civilians in specific contexts. Civilians are subjected to military court procedures when they commit offenses affecting military security, work in collaboration with military personnel, are employed by the Ministry of National Defense, or otherwise fall within the circumstances enumerated in the law.

To address these concerns, it is recommended that jurisdiction over crimes committed by civilians in such cases be reassigned to civilian courts, even if those crimes are connected to military offenses. The distinctive procedural framework of military courts is intrinsically linked to the unique nature of the individuals they are designed to prosecute—namely, military personnel. Civilians, therefore, should be tried before courts of general jurisdiction, adhering to standard jurisdictional rules, rather than being equated with military personnel and subjected to military court procedures. This distinction would not only align with foundational principles of legal equality and fairness but also preserve the specialized role of military courts as forums uniquely suited to address the operational and disciplinary requirements of the armed forces.

References

Laws:

- Ordinance No. 28/71 dated 26 Safar 1391 AH (April 8, 1971), containing the Military Justice Code.
- Law No. 18/14 dated 16 Dhu al-Qi'dah 1439 AH (July 29, 2018), amending and supplementing Ordinance No. 28/71 containing the Military Justice Code.
- Ordinance No. 66/155 dated 18 Safar 1386 AH (June 8, 1966), containing the Code of Criminal Procedure as amended and supplemented.

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- Awad Ahmad Al-Zoubi, *Principles of Civil Procedure: A Comparative Study*, Volume I, 2nd Edition, Dar Wael Publishing, Jordan, 2006.