

**MILITARY JUSTICE IN GREECE; HISTORICAL EVOLUTION,
CONTEMPORARY INSTITUTIONAL DEVELOPMENTS AND
FUTURE PROSPECTS.¹**

SOTIRIOS KYRKOS (LLB, MA., LLM, PhD Cand.)

Military Judge,

Deputy Public Prosecutor, Athens Air Force Military Court

Advisor, Military Justice Department, Hellenic Ministry of National
Defence.

One of the oldest instances of the administration of military justice in ancient greek history can be traced in the 4th century B.C; in 330 B.C., Filotas, the leader of the cavalry of the Macedonian Army and close friend of Alexander the Great, was condemned to death by a military tribunal on the grounds that he didn't act to suppress a conspiracy against king Alexander. Turning to modern times, it is remarkable that already in 1822, during the first months of the Greek uprising against the Ottoman rule, the first National Convention held in the ancient site of Epidavros, issued a decree by which the French military legislation, subject to the necessary modifications, would be applicable in order to maintain order and discipline within the revolutionary corps. After the establishment of the modern independent Greek state in 1828 and the formation of regular armed forces, the 1st Governor of Greece Ioannis Kapodistrias decided to extend the application of French military and naval penal legislation. In

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Σχετικοί δικτυακοί τόποι:

<http://www.law.yale.edu/news/12999.htm>,

http://www.law.yale.edu/Military_Justice_in_Greece.pdf

fact the above legislation never entered into force officially. Therefore, the administration of military justice remained a function subject to the discretionary power of the military leaders. In 1860 the first official military penal legislation entered into force, whose field of application was restricted to the territorial army. Penal matters concerning the Navy continued to be governed by the French legislation.

The obsolete character and the serious deficiencies of the established system of administration of military justice, which became more obvious during the following decades, forced the government to initiate a drastic reform of the whole institutional frame. For this reason, a new draft bill was proposed in 1939, which was submitted for approval and became law in February 1941, by the time Greece was fighting against the invasion of the Axis powers. Since Greece was placed under occupation by the invading forces from April 1941 and was forced to demobilize the regular Army, the new legislation applied only for the forces loyal to the legitimate government, which fled to the Middle East. After the liberation of Greece in 1944 and the end of the Civil War period which followed right after, the suspended military legislation of 1941 entered finally into force in 1950. Of course, the hard historical conditions under which the new system of military justice was called to function left upon the whole institution its indelible mark. Military justice was used primarily as a drastic mechanism for carrying out “emergency state” practices, usually to the detriment of internationally acknowledged principles (right to fair trial, independence and impartiality of the tribunals etc.) .This unfortunate practice culminated during the years of military rule (1967-74), a period during which a vast range of crimes “against the security of the State” were subject to the jurisdiction of the military courts, which were allowed to function deprived of the personal, functional and juridical guarantees

which form an inextricable part of a juridical system governed by the Rule of Law.

The restoration of democracy and the promulgation of the new Constitution of 1975 must be considered as a turning point and an evolutionary milestone for military justice in Greece. For the first time in greek constitutional history, it was clearly stipulated in art. 96 of the Constitutional Charter that military justice would be administered by special military courts consisted by majority of military judges, endowed with personal and functional guarantees ,like their civilian colleagues. Another significant constitutional change was the establishment of an obligation for the military courts to provide sufficient written reasoning for their judgments and decisions, so that they could be subject to effective juridical control by the higher courts (the Supreme Court included).Moreover, the constitutional legislator made clear that non-military persons would never be subject to the jurisdiction of the military courts, no matter the crimes allegedly committed by them (with the exception of certain crimes against the security of the state and only in cases of state of emergency officially proclaimed by the government and ratified by the parliament under the relevant constitutional provisions).

In our days, the landscape of greek military justice, compared with the initial stages of its formation and function, has changed dramatically .Military courts in Greece retain an extended jurisdictional authority, covering not only special military crimes but also the vast majority of crimes included in common (civil) penal legislation (provided that they are perpetrated by military personnel). This fact puts upon the shoulders of military judges an additional burden; in order to function in conformity with the primary mission of military justice (i.e. the preservation of order

and discipline within the armed forces) the military judge ,before delivering his or her judgment upon a pending case, has always to take into consideration and balance the special significance that this judgment might have, not only for the accused or the victim but also for the armed forces, as an important mechanism of the state. At the same time he or she has to take into account the possible repercussions of the judgment, not only in the restricted environment of the military but also to the broader social scene. This conclusion applies especially in cases where serious crimes of non-military nature, committed by military personnel, are brought before military courts. Of course, by no means should the judge allow himself to set aside the principle of legality or sacrifice the rights of the accused upon the altar of some kind of “higher state interests”. After the radical transformation of greek military penal legislation in 1995, covering both substantial and procedural matters, the Greek military judge is fully equipped with the constitutional guarantees which would allow him to adjudicate in conformity with the law in force, the internationally acknowledged norms and most of all his or her conscience and perceptions of legality.

As regards the future of military justice in Greece, one should admit that this is inextricably linked with broader social, political and geopolitical developments in both national and international level. There are voices which raise the argument that military justice is an historical relic, a constitutional “luxury” with no place in a modern state. The same voices support the argument that the duties of military justice should be transferred to the common criminal justice system, creating a special section staffed by civil judges, as it is the case in some other countries. Others maintain that the historical role of the institution has not been exhausted, provided that the jurisdictional range of military justice will be

restricted to crimes of military nature only. Regardless the validity of the above arguments, it is obvious that the *raison d'etre* of the system of military justice is the administration of justice *for* the armed forces , though not necessarily *within* the armed forces. Therefore, I believe that, even if military justice will sometime in the future cease to exist as an independent or autonomous branch of the juridical mechanism, the intrinsic features and peculiarities of military life and the importance of the role of the armed forces will always indicate the need for some kind of special juridical treatment.