

The American Military Justice

Based on the *United States Constitution* and the general military criminal law of the *Uniform Code of Military Justice (UCMJ, US Code Title 10, Subtitle A, Part II, Chapter 47)*, US military jurisdiction includes all members of the US armed forces on active duty, private military contractors (2007), and in certain cases also family members and civilian employees. In addition to disciplinary violations and criminal offenses with a military connection, other offenses such as tax fraud, domestic violence or sexual harassment/assaults can also be punished - the federal structure in the USA allows military justice and ordinary jurisdiction to act autonomous and independently.

In contrast to ordinary federal court proceedings, however, **military courts**¹ (courts martial) are convened on an ad hoc basis by the responsible commander, who also has discretionary powers over various levels of upstream administrative and punitive military law measures; the jury (panel) is significantly smaller with usually only three members of the military, and there are separate review/verification options (*Court of Appeals - US Court of Appeals for the Armed Forces/CAAF - US Supreme Court*).



The military judges and the lawyers/prosecutors involved as legal experts belong to the *Judge Advocate General's Corps (JAGC)*, **the supreme judicial authority of the US armed forces**; this maintains its own training facilities and is divided into independent authorities depending on the type of service (*US Army*², *US Air Force*, *US Navy/Marine Corps*) - there is also a *US Coast Guard Legal Program*. The litigation of the military court proceedings follows the *Manual for Courts Martial, MCM* (procedural rules) and the *Military Rules of Evidence, MRE*, so that - according to the usual, constitutional provisions on the burden of proof - guilt must be proven "without reasonable doubt". A so-called "Article 32 investigation" (MCM) is therefore usually carried out before charges are brought, with the relevant investigative authorities such as the *Criminal Investigation Division (CID)* or the *Naval Criminal Investigative Service (NCIS)* supporting the JAGC; currently (for the US Army alone) around 1,600 Judge Advocates are on duty, supplemented by almost 400 lawyers in the *Civilian Attorney Program*.

The **military commissions** are responsible for punishing violations of the laws of war (*Art. 21 UCMJ*), in particular against so-called *enemy combatants*: shaped (1778) by the American Revolution and first becoming common (1846) during the Mexican-American War, hostile behavior towards the USA (2001) or coalition partners is also recorded, which is not necessarily negotiated before military/martial courts (including, but not limited to, murder, poisoning, rape, mutilation, desecration of religious sites, or even terrorism and the use of guerrilla tactics against civilians). The *Office of Military Commissions*³ of the *US Department of Defense* is currently responsible for convening such commissions, with its own court system, corresponding separate procedural and evidence regulations and the authorization provided by the *US Military Commissions Act (2009)*.



The **Military Tribunals** (1945-1949) in **Nuremberg (IMT)** and **Dachau**, for example, should also be seen in this context, initiated by the American military government (*Supreme Headquarters, Allied Expeditionary Forces, SHAEF*) and carried out in the aftermath of the Second World War (on the basis of *Control Council Law No. 10* in conjunction with *Ordinance No. 7*) to prosecute German war resp. domestic crimes that could not be tried by German courts.

¹ See: <https://vwac.defense.gov/military.aspx>

² See: <https://www.jagcnet.army.mil/Sites/JAGC.nsf>

³ See: <https://www.mc.mil/>

Between 1948 and 1955, Germany also had **American courts on German soil**, established by the *U.S. military government* under *Regulation No. 31*, with jurisdiction over all civil matters involving American military personnel and with the authority to hear all cases involving criminal matters to drag. They could impose penalties up to death. The **American zone of occupation** had eleven judicial districts⁴ (including Augsburg), each equipped with judiciary bodies of up to three judges, as well as a court of appeal in Nuremberg with a presiding judge and eight judges. *Law No. 20* combined these district courts into one court in 1951, reduced the number of districts⁵ and moved the court of appeals to Frankfurt. When the provisions of the Occupation Statute ended with the *Paris Agreement in 1955*, the jurisdiction of the American military government also ceased to operate. Only in Berlin did the Allied privileges remain due to the four-power status⁶, so that the *US Court for Berlin* was set up by *Law No. 46 of the United States High Commissioner for Germany of April 28, 1955*, which, however, only was extremely rarely active. In the meantime, the **NATO troop statute** (*Status of Forces Agreement/NTS*) of June 19, 1951, in conjunction with the supplementary agreement (*NATO SoFA Supplementary Agreements/ZA-NTS*) of 1959, which has since been amended several times, regulates the stay and interests of foreign armed forces on German soil.

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In 1997, officer in charge of the *Law Center in Augsburg* and command judge advocate for the 66th Military Intelligence Group was the then CPT, now LTC (ret.) David D. Velloney, J.D., LL.M. (member of the JAGC 1994 - 2008).



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⁴ Bremen, Berlin, Marburg, Frankfurt (Main), Heidelberg, Stuttgart, Augsburg, Munich, Regensburg, Ansbach and Würzburg

⁵ Bremen, Berlin, Frankfurt, Stuttgart, Munich, Regensburg, Nuremberg

⁶ Law No. 7, Jurisdiction in Reserved Territories, March 17, 1950