

IN THE COMPARATIVE LAW MILITARY CRIMINAL JUSTICE AND THE TURKISH MILITARY JUSTICE SYSTEM

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ABSTRACT

In the history of humanity, Regular armies have also begun to occur together with states. Countries' presence has hardly been able to sustain with success in their armies. The importance of discipline has increased as a result of the armies growth. In ancient times, The person who manage the state has authority to punish to maintain military discipline. Later the authority of punishment was given to commanders behalf of king. In the historical process, military crimes have begun to occur and the authority was occurred which punish these crimes. Military justice made progress in the process and showed changes in positive sense within the environmental human rights.

Military justice systems also differ due to the country's political, cultural, geographical, and legal structure differ. While some countries did not allow for a separate military justice in justice system, some countries are also arranged a private section either completely separate military and civil justice or as a justice regime within the justice. This article examines military justice system which was created in the world and Turkish military justice system.

Key Words: In Comparative Law Military Justice, Military Criminal Justice, Military Discipline Justice

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In The Comparative Law Military Criminal Justice and The Turkish Military Justice System

INTRODUCTION

When it is examined the history of humanity, the discipline of armies which are active and succesful in their mission, it is seen that the armies consisted of excellent staffs. Discipline has been framed and maintained by commanders in every stage¹. In the establishment of military discipline, Military justice has performed many important tasks.

Throught history, many years, Commanders have been using military jurisdiction in behalf of king. Initially, the commanders put the rules and punished anyone they found quilty. In the Roman State, Commander's conspирition to the citizen; in the age of feudalism, feudal lords have the authority to punish citizen in their own courts. Beginning from the 15th century, with the establishment of regular and perpetual army, It has begun to be seen the traces of military justice. In time, military courts have begun to constitute and military criminal laws have been formed. In the world, military justice systemshave growingly come to the present day within the universal principle of law, within the principles of human rights and fair trial. While some countries do not give place to a seperate military justice in their justice system, some countries are continued a military justice system seperate from the civil justice.

As each country has its own historical, geographical, political, military features, between the countries' military justice systems are seen differences. Basically formation of countries' military justice is directly proportionate to country's civil justice. For instance, The military justice of countries that adopt legal system of Continential Europe have the characteristic of legal system of Continential Europe However, in themilitary justice of countries that adopt legal system of Continential Europe, there is also differences between each other. In the world, it is not possible to sort out in a certain way to the military justice system, today military justice systems have begun to be covered by considering some features and seperating five groups. In the first part of our work, In the comparative law military justice systems have been classified into five groups and military systems which are accepted the world over have been covered. Within this sorting, military justice of some countries in each group has been covered. In second part, historical development of military justice in Turkey and military justice system was examined. The content of this article is cramped with in comparative law the place of military justice system in countries' justice system, military justice organization and disciplinary justice which is not detailed.

1. HISTORICAL DEVELOPMENT OF MILITARY JUSTICE

State is responsible for providing its own security and lasting of society. While it is ensuring own safety from external threats, it needs the army. Armed forces which established to satisfy this needs formed specific legal system in time. Facility of a active discipline system prompt to form administrative justice system to protect and continue to the states². Military justice formed in order to be repaired in the shortest time and efficiently the disrupted military discipline due to committing

¹Değirmenci, Olgun, Askeri Ceza ve Disiplin Hukuku, 3. Basım, Seçkin Yayınevi, Ankara 2016, s.485

²Işıklar, Celal, TSK Disiplin Kanunu ve Yorumu, 1. Basım, Adalet Yayınevi, Ankara 2015, s.1

a crime of a army personnel. States' lasting is possible with their armies, army's lasting is possible with the discipline. Penal sanctions which is related the only army personnel, are placed to ensure the discipline.

In ancient Egypt, it is seen that the soldiers who frightened and escaped are punished, in ancient Greek people who does not join the army, leave the gun or renvoi, will be punish with various penalties³.

In Roman law, practices related military law are more common. In Roman times, crimes which is only committed by soldiers were crimes as unfitting himself for military service, disobedience, desertion. If any crime except these crimes committed because of military service or by a soldier catagorise as a crime.

First of all, Military criminal justice with the sense of today started to occur in 15th century. In Italy, France, and Spain which was occurred their regular army for the first time, the formation of military crime service slowly began to appear. In this period, the person who makes rule, issues the judgement and punish, is commander. Only king can interfere the commander. In 16th century, councils of war seen in Italy and Spain, provided contributions development of military justice. Councils of war consist of five or seven officers. Duty is adjudge about person subject to military law and make suggestions to the commander⁴.

In the sense of the law systematic, first well coordinated military penal codes are France Military Penal Code which was effectuated in 1857 and German Military Penal Code in 1872. In Germany, Military justice was removed with the Weimar constitution(1919) which was prepared after first world war. The court martial that implements The military penal code was removed because of its very hard, later court martials that also assigned the judges was founded. In England, it is accepted that military justice started with the mutiny act dated 1689. In this period, The British military justice was consisted of 13 juries. The United States also accepted British military justice in 18th century.

In the first half of the 20th century, it is possible to see the formation of the military justice organs in states that have army. Military justice and appellate courts were founded with the law in 1941 in Italy and in 1945 in Spain. In 1938 in Bulgaria, military courts was constituted in four regions, military court of appeals was formed, later in 1949 military court of appeals have been turned into circuit of the court of appeals. Military courts in Hungary and military court of appeals were founded in 1912, in 1945 the region is moved into a military courts' system and military court of appeals is closed⁵.

³Erman, Sahir, Askeri Ceza Hukuku, 6. Basım, 1974, s.17,18

⁴Gedik, Hüseyin, 2010, Âdil Yargılanma Hakkı Bakımından Türkiye'de Askerî Mahkemelerin Durumu ve Geleceği: Karşılaştırmalı Hukuk Açısından Bir İnceleme, Yüksek Lisans Tezi, Ankara Üniversitesi, Sosyal Bilimler Enstitüsü, Ankara, s.44-84

⁵Erman, a.g.e, s.3

In The Comparative Law Military Criminal Justice and The Turkish Military Justice System

Many countries contain the military criminal justice in itself have made arrangements in relation to military justice in their constitutions. Military justice has been investigated in a detailed manner with the constitution of 1887 in Holland and changes in 1947. In the constitution of Belgium, arrangements are available in relation to military justice. The authority to make regulations relation to military justice with the constitution of Spain dated 1945 has been given to legislative organ⁶.

When it is entirely examined the historical development of military justice entirely, within the process of military justice, to find a separate place within the justice system of the States, to guaranteed under the Constitution and it was observed that steps were taken to be made in accordance with the universal law principles.

2. MILITARY JUSTICE SYSTEMS

Today military courts by institutions and qualification of court members are subjected to two basic distinctions as Anglo-Saxon justice system and Continental Europe legal system⁷.

2.1. Anglo Saxon Justice System

Anglo saxon justice system's the most important distinguishing features in terms of the formation of the courts are that being lack of a permanent quality, being formed for the solution of the problem by competent body, actually lawyers who work in the courts being the category of legal adviser, participating in the activities during the tasking in courts for solution of the point in question controversy.

In the England legal system which adopted Anglo saxon justice system, military courts, only being established as a border for the solution of asserted controversy, after this controversy was solved and adjudged, the duty of the relevant court ends⁸.

In this legal system, military courts formed from legal adviser and officer members who being legal expert instead of judge and jury. In England, except legal adviser (Judge Advocate), the committee consists of a civil judge assigned by ministry of justice and available in court staff and officers decide as a collective⁹.

Military courts can be established in everywhere as it is contemporary. Troop commander or position formed with this reason decides the establishment of courts.

The courts which have different institution were formed due to the submitting variety of crime and punishment. For instance, in United States that implements the Anglo saxon justice system, summary court martial can punish liberty binding punishment near the other punishments the most

⁶Köprü, Orhan, "Mukayeseli Hukukta Askeri Yargı", Askeri Adalet Dergisi, sayı 93, 1995, s.6

⁷Yayla, Mehmet, "İnsan Hakları Perspektifinden Avrupa'da Askeri Yargı Sistemlerinin Gelişimi", Uluslararası Askeri Yargıtay Sempozyumu Askeri Yargıda Güncel Eğilimler, Ankara 2014, s.54

⁸Glisen, John, Nail, Sucu, "Askeri Hukukun Genel Evrimi Üzerine Genel Bildiri (II)", Yargıtay Dergisi, Cilt 8, Sayı 3, 1982, s.316

⁹Yayla, a.g.m, s.54

in a month. While only a officer(not lawyer) works in this court, there are a military judge and five officer members in the special court martial¹⁰.

Appellate courts are also founded to examine the decision of trial court in legal system of England and USA.

Courts being contemporary and founded specifically conflicts with the judge policy. This problem has been tried to be solved by means of predetermine the members and appointment in a certain time and determining court's terms of reference with the law. However, it is evaluated that this arrangements are not enough to overcome the deficiencies within the principle of independence and fair trial and the ECHR¹¹.

2.2. Continental Europe Justice System

Criminal Justice System of states that possessed the Continental Europe's legal system have a set of distinguishing features. These countries' military justice organs are not temporary, they are such as the permanent. Authorized and attendant courts that entitled investigation and prosecution was determined by laws either statute of defendant or in imputed crimes before committed an crime.

Courts area of jurisdiction is determined as geographically or according to institution of troops. Judge advocates are also assigned before crime. Officer members who taken in charge in this countries' military justice were assigned for a length of time before the event. In the military courts of some Europe countries, besides judge advocates officer members with assignment take in charge¹².

In countries that accepted this system, superior courts that controled the decisions of first instance military justice organs are organized. In this superior courts, while some of members consist of judge advocate, in some countries, all members consist of civil judges. For instance, while members of court of appeals consist of civil judges in Azerbaijan, in our country, a separte court of appeals is arranged and members consist of judge advocates.

3. CLASSIFICATION OF MILITARY CRIMINAL JUSTICE ACCORDING TO ONLY BEING MILITARY OR CIVIL

While state carries on and achieves its goal needs legal order. Aim of the state is to raise the walfare level of its citizen, make the society happy and ensure the safety of individuals. While state makes real all of these uses legal system. For this, principle of seperation of powers that determine judicial bodies'place in the state organisation has gained importance.

Military justice, today, has undergone changes as a result of the effect in its statue in civil justice or opposite, principle of seperation of justice, the principle of the unity of justice and

¹⁰Gedik, a.g.e, s.85

¹¹Yayla, a.g.m, s.54

¹²Yayla, a.g.m, s.55

In The Comparative Law Military Criminal Justice and The Turkish Military Justice System

development of international human rights. In some countries, while military justice merged completely or partially with civil justice, in some countries it goes on as a separate justice system. Due to each country has its own unique characteristics, countries have designed their military justice and incumbent organs in different models with regards to in the civil justice. In this title, military justice systems come up with regards to places in civil justice and organizations. Some countries can host more than one system's features in it. It is difficult to classify undetermined boundaries due to differ countries' penal codes and justice systems¹³.

3.1. Military Justice Systems That Have Organization Independent From Civil Justice

In the world in some countries, military justice completely organized separate and independent from civil justice. Both trial court and superior court or courts are organized as having military quality and deactivated civil justice. In other words, both trial courts and superior courts act independent from civil justice. In countries that have this justice system, separate penal code and separate rules of procedure that belongs military justice done and signed. Today this system is argued with the aspect of suitability court's human rights principles with the judge's independence and objectivity warranties. Civil justice in Turkey arranged as both trial court and court of appeals as separately from civil justice and formed procedure act with military penal code that belongs itself. Some countries that implement this system are; Switzerland, Turkey, Russian Federation, Germany(only from the point of adjudication)¹⁴.

3.2. Military Justice Systems That Have Organization Partially Independent From Civil Justice

In this system, military law judgement is shared between civil courts and military courts. While some countries in this model incorporate military courts as trial court, a separate justice system was not adopted as superior court. They only secured uniformity as superior court by regulating civil justice. While anew some countries separate one or a few appellate courts board to cases that belong to military courts, some countries have not chosen to shape of composing such special board. For instance, in the Spain superior court, a special section has been created for military justice cases. In also Slovakia, military justice is only designed as trial court¹⁵. Some countries that applied this system are; England, Slovakia, France, Ireland, Spain¹⁶.

3.3. Military Justice Systems That Have Specialized Sections In Civil Justice

In this system, countries are included in civil justice by removing military justice systems in peacetime. Specialized sections are formed in civil justice system about military justice. For

¹³For detailed information about the classification of the military justice is also see, SVANİDZE, Eric, "Avrupa'da Askeri Yargı ve İnsan Hakları", Askeri Hakim ve Savcılarının İnsan Hakları Konularında Eğitimleri Ortak Projesi, Şen Matbaa, Ankara, 2012, s.65.

¹⁴ Svanidze, Eric, "Avrupa'da Askeri Yargı ve İnsan Hakları", Askeri Hakim ve Savcılarının İnsan Hakları Konularında Eğitimleri Ortak Projesi, Şen Matbaa, Ankara, 2012, s.65

¹⁵ Yayla, a.g.m, s.56

¹⁶Svanidze, a.g.m, s.65

instance, in Holland one of the civil district courts commissioned with cases that present about army personnel. District court in Holland Arnhem is one of the courts which commissioned. Appellate review is made by military departments of Arnhem court of appeals¹⁷. Some countries in this system carry on military courts for crimes outside the country. Indeed France regulated Paris Military Court as authorized and attendant to judge army personnel's crimes abroad¹⁸. This court does not have jurisdiction related army personnel's crimes in the country. Personnel's crimes in the country stated in France Military Criminal Law and judging is made by specialized section of civil courts.

Today Holland, Hungary and France are some countries that applied this system¹⁹.

3.4. Military Justice Systems That Have Only Military Prosecution's Specialized Sections In Civil Justice

There is not a separate military court organization in this system. So prosecution and appellate review is made in civil justice. Military prosecution organization that authorized to investigate military person is established. Military prosecution organization depends civil justice organization. It is aimed that Military Prosecution organization makes military investigation in active and rapid way. This model is preferred by countries that have soldier in minimum number. Denmark and Moldova are between these countries that applied this system²⁰.

3.5. Countries That Have Not A Separate Military Justice Organization

There is no a separate military justice system that judges military personnel in this system. There is also no special sections that in charge with hearing a case belong to military justice in civil justice. Incompatibility about military personnel is solved in civil justice. The reason of this approach, while it is thought abolition of military justice system that based on law dated 1899, it is stated that there is no need a separate justice system by being envisaged decrease of military cases when it is examined generated arguments as a result of countries's armed forces consist of professional soldiers (heaving of mandatory military duty)²¹.

Some countries that applied this system are; Belgium, Germany (only from the point of adjudication), Czech republic.

4. EXAMINING OF MILITARY JUSTICE ORGANIZATION FROM THE POINT OF SOME COUNTRIES

While making our remarks related to classification of military justice in the world in the third title of our study, it was mentioned features of this categories by gathering up in five categories to

¹⁷Yayla, a.g.m, s.56

¹⁸Ertürk, Recai, "Mukayeseli Hukukta Askeri Yargı Teşkilatı, Askeri Mahkemelerin Kuruluşu ve Askeri Hakimlerin Statüsü", Askeri Adalet Dergisi, Sayı 120, 2004, s.47

¹⁹Svanidze, a.g.m, s.65.

²⁰Svanidze, a.g.m, s.65

²¹Svanidze, a.g.m, s.67

In The Comparative Law Military Criminal Justice and The Turkish Military Justice System

military/civil justice's discrimination. Now, some countries' military justice system in this five categories will be discussed.

4.1. U.S.A

U.S.A's military law and military justice system's beginning are based on English laws of war dated 1774. Some alterations are made in military justice system till 1950. The most extensive alterations are made by United States congress in 1950. Indeed the Us constitution authorised to make regulations to congress in relation to military service and gave mission supreme military command to U.S.A president²². Congress made Uniform Code of Military Justice²³(UCMJ). In 1951, U.S president has implemented martial courts manual²⁴(UCMJ) as a formal guide related to management of military courts. In military penal code are made alterations not only for military crime but also penal codes in other penal codes. In historic process, besides small scale alterations in Uniform Code of Military Justice, have made extensive alterations in 1968 and 2012. Today U.S.A justice system is carried out according to uniform code of military justice and military courts²⁵.

As well as jurisdiction of civil or military crimes of American army's regulars in country or abroad is belong to American military courts, in American civil courts can be present a separate case because of regular personnel's civil crime. Between UCMJ and USA Federal codes or UCMJ and state code can be made simultaneous judgement²⁶.

In USA military justice, military criminal justice and military discipline justice carried out according to same code and procedure law. There is no a separate justice law due to indiscipline. In case of breach of discipline, Commander can not sue about person who performed indiscipline, may warn as verbal and written, penalise warning, punish without judgement(As.C.K. m.15) or conduct to military court²⁷.

Commander can choose one of these type of sanctions. According to law's 15th article, commander should make an offer person who commits the crime and person should accept this offer to punish himself the commander. Person who committed the crime have rights to be judged in military courts without accepting directly offer of punishment. Therefore, commanding officers have judicial discretion in feature about a soldier who violated the law of military justice works. After commanding officer completed the investigation he can not start any proceedings, can inflict a disciplinary punishment or bring into military court²⁸.

²²Gedik, a.g.e, s.85-88

²³It is also expressed as The law of military justice.

²⁴It is also expressed as military courts' field manual.

²⁵Gedik, a.g.e, s.85-88

²⁶W. Arnold, Scott, "ABD Askeri Yargı Sistemi", Uluslararası Askeri Yargıtay Sempozyumu Askeri Yargıda Güncel Eğilimler, Ankara 2014, s.67

²⁷ M. Egeland, Andrew, "Amerikan Askeri Yargı Sistemi", Askeri Yargıtay'ın 85'nci Kuruluş Yıldönümü Sempozyumu, Ankara 1999, s.83

²⁸Gedik, a.g.e, s.85-88

It is said that president of a court-martial to commanding officer(doyen) who have authority of bringing action in military courts and have authority to establish military justice. The president of USA, defence minister, army, commander of corps and division can sue in the capacity of president of a court-martial in general court-martials, special and summary court-martials. Commander of brigade, regiment and platoon can sue in special court-martial also commander of company and platoon can sue in summary court-martials in the capacity of president of a court-martial. Presidents of a court-martial have charges that choosing member of jury, determining which military court will interest what type of crimes, whether they approve sentences given by military courts or not. While presidents of a court-martial fulfill these duties, they have obligations full observance of laws. Important arrangements are made in laws to keep away from all kinds of enterprise that can effect fair trial. Otherwise, presidents of court-martial's responsibility will rise²⁹.

Military courts is not perpetual as the American military justice system adopted Anglo saxon justice system. At the end of the investigation it is set up with the order of commanding officers who called as president of court-martial for each event and it dissipated after the decision. Three types of military courts are envisaged according to degree of penalties that will be imposed in American military justice system. These are General courts-martial, Special courts-martial and Summary courts-martial.

Summary courts-martial consist of an active doyen then defendant(a commander who generally have rank of lieutenant colonel). This officer is not legal expert. Court is set up to deal with petty crime. The federal rules of civil procedure which applied in other courts are not required in these courts. Penalties which are imposed by courts are prison sentence for noncom and soldier most 30 days, external service up to most 45 days, restriction to limits up to 45 days, two thirds pay cut and downgrading minimum salary. Member of armed forces can object to being on trial in Summary courts-martial and can transmit his willing of trial to competent authority³⁰.

In Special courts-martial can consist of judge advocate with jury or without jury. If case will be hear with jury, at least three juries have to be present. Penalties that the Special court-martial will impose are that imprisonment up to a year, pay cut up to a year, degradation in pay grade and the crime of expulsion from armed forces. Instead of hears which questions are investigated in judgement in most of civil criminal actions, hears which prosecution and the defence is available hold. Judge advocate play an arbitrator role between prosecution and the defence. Defendant is considered innocent until the prosecution makes good his charge. This court have to obey codes of practice as civil court. The jury can also conclude like a judge advocate who conclude a case about dependant. Dependant has right to choose that concluding his case in front of judge or jury³¹.

²⁹Andrew, a.g.e, s.83-85

³⁰W. Arnold, a.g.m, s.70

³¹W. Arnold, a.g.m, s.70

In The Comparative Law Military Criminal Justice and The Turkish Military Justice System

General court-martial is all time high court-martial in USA. These are the courts that vesting for personnel of armed forces' crimes which is proved and can punish from the peak. These courts correspond high criminal court in judicial justice and can impose penalties which are imposed by Special court-martial, besides, it has authority to impose every type of penalties including death penalty for specific offences. If trial will go to with jury, at least 5 member of juries are necessary. In this court, defendant has right to choose that stand trial by judge advocate or by jury³². Person has the right to request an investigation before the case is filed in General court-martial. Investigation is made by a active officer who is responsible for performing as independent and impartial to submit judge advocate. Suspected has right to want lawyer in the stage of investigation. Judge advocate decides whether the court will be set up about investigation file that presented to judge advocate or not³³.

In American justice system, military courts are identified according to rank/title of suspected and quality of alleged crime that committed, not where the crime was committed. In military courts, Regular, Cadet, Civil servants that is subjected to military service can be judged³⁴.

Legal advisers examine whether it is decided legal from the point of procedure and principle to the Summary court-martial's rules and sentences that has not possibility of appeal, the decision becomes define if it has no objection from the point of procedure and principle. If judges advocate make firm contradiction to law in the decision from the point of procedure and principle. They send the file to solve contradiction president of a court-martial who General court-martial is set up in his organization. If this president of court-martial overrules a claim of judge advocate, the file is send to examine the judge advocate generalship. Special and general courts-martial's prison sentences that are given more than a year and death penalties subject to ex officio appeal. USA military justice system is consisted of in for trial courts, divisional courts and military court of appeals. Decisions that given by trial courts and approved by president of court-martial examine by military division courts certainty and legal description. Decisions that given by military divisional courts is examined by military court of appeals(The United States Court of Appeals for the Armed Forces). After 1984, Against military court of appeal's decision is allowed for application the USA supreme courts(The United States Supreme Court)³⁵. it consist of defence lawyers who work in military justice system, diplomaed lawyer in the corps of judge advocate general and officers. Defence lawyers are subjected to a seperate command system that is entirely independent. Defence lawyers have opportunities as call to witness and submission of evidence. Judge advocate who works in military courts is elected among people who made attorneyship and prosecution by training like civil judges. Within American military justice, according to data of 2014, there are about 160 regular judges advocate and lawyer's assistant³⁶.

³²Gedik, a.g.e, s.85-90

³³Pollack, Estela I. Velez, " Military Courts-Martial: An Overview", CRS Report for Congress, Order Code RS21850, May 26, 2004.s.5

³⁴Pollack, a.g.e, s. 5; Gedik, a.g.e, s.90

³⁵M. Egeland, a.g.m, s.84

³⁶W. Arnold, a.g.m, s.68

In the Pending actions in the military courts, legal costs including attorney fee are not taken from defendant. With the difference of judicial justice, while jury committee decides about person to be acquitted, consensus' condition is not asked for it. Majority is enough for acquittal³⁷.

When it is looked all of the United States justice system, the first feature is that military criminal justice and military discipline justice are arranged as a whole, categorise as military crime and discipline crime to the act which is the subject of an investigation by commanding officer, it is seen that the court which is heard according to quality of crime and degree of person is determined. The second feature is that people who are judged set right more advantage conclusion than given rights in civil justice. United States military criminal justice's third feature is being influenceable justice system by executive organs (president of a court-martial, ministry of defence, president of the United States). So, from time to time, criticism is seen that the United States military justice positions are included in enforcement area not justice.

4.2. Germany

Military justice system of Germany showed changes according to historical process of country. Uniform code of military justice dated 1845 is included Imperial military law in 1871; in the aftermath of the First World War, Weimar constitution (1919) which is prepared with the withdrawal of empire armies military justice is removed and it is re-formed with the publication of Reich the third (1933). However, military criminal justice has not been implemented in practise due to country's army is not completely constituted. After Federal republic of Germany is established in 1949, it constitutes armed forces again. From 1957 until 2011, mandatory military duty is foreseen for men³⁸.

In Germany, laws pertaining to military law; military personnel law, military discipline law, military complaint bylaw and armed forces personnel's duties and authorities law.

Although there is a separate military criminal law, there is no separate military criminal justice system. In case of a German military personnel's committing military or civil penal crime, investigation and prosecution of personnel is made by civil tribunals like civil citizens. While civil courts judge about military personnel, it primarily determines whether there is a coordinated crime in military penal code or not, if there is a special regulation, it primarily applies it. However, Germany set up special courts to examine complaints of military personnel and matters related to military discipline. It is said that 'Truppendienstgerichte' this courts, in other words military discipline and complaint court³⁹. Due to these courts' task scope are related to discipline crimes

³⁷Gedik, a.g.m, s.93

³⁸Protschkin, Alexander, "Judicature and Military Judicature in Germany, the Administration of Justice in the Bundeswehr", Askerî Yargıtay'ın 85'inci Kuruluş Yıldönümü Sempozyumu, Ankara 1999. s.164

³⁹Gerhards, Bernd, "Almanya Askerî Yargı Sistemi", Uluslararası Askerî Yargıtay Sempozyumu Askerî Yargıda Güncel Eğilimler, Ankara 2014, s.118

In The Comparative Law Military Criminal Justice and The Turkish Military Justice System

more, it is not said that military criminal court. On the top of these courts, there is Federal Administrative Court. Civil arbitrators are assigned in these courts.

In Germany, there are two military discipline and complaint court is about North (in Munster) and South(in Münih). Each court consists of seven offices. Offices can be in different cities. For instance, in Münster, Hamburg and Potsdam which have responsibility of the North court, there is the North court offices⁴⁰. In each chambers, a civil judge and two officer members (in the capacity of honorary judge) decide. Each of members has equal voting right. Judge's tenure of judges ensured and independent study was paved the way for. Discipline courts decide whether military personnel dismisses from, goes on duty on the same degree, fine or degree of abridgement. Just before this type decision is made, legal advisers carry out the duty of investigation on behalf of armed forces. Severe infraction of the rules can also constitute a crime in the meaning of criminal law. So, about person is made investigation both discipline and criminal, if required, it is made trial in judicial justice. In other word a military personnel is subject to sanction in the meaning of both nonjudicial punishment and criminal law⁴¹.

In the German military organization, commandants of discipline are allowed for. Commandants of discipline look simple indisciplines and turn the scales. Against decisions that commandant of discipline made can object to Upper commandant of discipline. Against the decision of upper commandant of discipline also can object to armed forces disciplinary and complaint courts. Thus, sentences that given by commandants of discipline is controlled by upper authority. Approval of disciplinary court requires to be executed a liberty binding punishment that given by commandants of discipline. Incumbent judge in the disciplinary court makes these confirmations. Judge's confirmation is definitive judgment. Thus, it will be provided that liberty binding punishment is controlled by judge⁴².

As a result when German military justice system is examined as a whole, it is seen that there is no separate military criminal justice system, military personnel stands trial together with civilians because of every type of crimes including crime of charge, stands trial in Disciplinary courts because of only infraction of the rules. There is no problem with the reason of that not being mandatory military service and consisting of professional soldiers.

4.3. France

When it is looked that France military justice phases, it is accepted that first laws are Army and Navy Military Justice Laws dated 1857 and 1858. Person who has authority to punish are high-ranking officers. Right of defence is expanded with the changes that made within the process. After the First World War, it is restricted the assigned position of military courts, soldier people, military offences and hear cases that belong to in military local that committed offences with the

⁴⁰Gerhards, a.g.m, s.118

⁴¹Protschkin, a.g.m, s.166-168

⁴²Gedik, a.g.m, s.48

arrangements that made in 1928 and 1938 result of the started works in 1921. Judge advocate started to work in courts with alterations that made in 1939, soldiers' every type of offence that committed during the military service accepted among the duties of military courts and perpetual military courts are formed instead of provisional courts. Military court of appeals is founded in 1955; military prosecution organization is also founded in 1960. Military courts are responsible with healing cases which military offences during peacetime, every type of offences that committed during the military mission and every type of crime that committed in abroad in wartime. With the alteration that made in 1982, military courts have been partly removed in peacetime, it is decided that judging will be made in civil justice. Trial authorities which will heal cases related crimes in abroad cramped with Army Military Courts and disciplinary courts. Paris military court also continued its charge. Military courts (except Paris military court) completely removed in peacetime with the alterations that made in Military Justice Law in 10 November 1919. So France combined judicial justice and military justice⁴³.

Only Paris Military Court does not removed in peacetime in France. Paris Military Court is charged with looking the offences that committed by military personnel in abroad. A separate military prosecution organization of Paris Military court is also arranged. These decisions of court are examined appellate by Paris Court of Appeal, examined appellate by appellate court. Court depends administratively ministry of defence. Court consists of two chambers, there are coroner judge with member and prosecution organization. When France military courts are removed as a result of the duty which imposed ordinary court of hearing cases, 37 pieces courts with special authority which commissioned to hear military cases in civil tribunals are formed. These specialized courts are authorised to look crimes that committed in military penal code and crimes which committed during duty of military personnel. Investigations are made by civil prosecution authority⁴⁴. The appeal and appellate review are subject to judicial justice system. Military courts can reconstruct in cases of war, public emergency and martial law in need of military justice law.

When it is looked France's military justice phases, scope of military justice is gradually constricted, ultimately it is seen that military courts except Paris Military Court are removed in peacetime. It is evaluated as the reason is that corrupt practices which are made in the past times.

4.4 Holland

History of Holland military justice is based on many years. Arrangements are made related to military penal code, soldier criminal procedure law and appellate law on France invaded Holland in 1814 in the country. Various alterations are made until 1991. However, it is made into a private part by being made extensive alteration, going military justice which is a separate justice in 1991. Military investigation and disciplinary investigations are carried out together. Commanders who carried out the investigation can punish by themselves as the file can be sent to military courts by

⁴³Gerkrath, Jörg, "Military Law in France", European Military Law Systems (Editor: Georg NOLTE), De Gruyter Recht, Berlin 2003. s.320-326

⁴⁴Ertürk, a.g.m, s.57

In The Comparative Law Military Criminal Justice and The Turkish Military Justice System

taking judge advocate's opinion. Cases that conducted military courts are heard in military courts in Lahey, Willemstad and Arnhem or mobile courts in this country for troops in Germany. Two members who consist of a president who being civil legal expert (judge) and officers work in these courts. While royal authority appoints the president, commander appoints officer members (not legal expert). Law officer who appointed by royal authority was a civil legal expert. Military appellate court is regulated as appellate in Lahey against the decisions given by military courts. The President of military appellate court is a civil legal expert; four members are also commanding officers who rank general and admiral. The decisions of Appellate courts could not take it to judicial council for appellate review until 1979. In other words, the decisions of Appellate courts are appealed the judicial council⁴⁵. In 1991, military courts are closed with alterations which made in military justice. Military law administration devolved Arnhem civil criminal courts. Thus, Military justice system which has specialized parts are formed in civil justice. It is envisioned that hearing military cases by forming a special chamber in Arnhem Divisional Court. It is consisted of three members are about the president of military court one of the civil member is judge by profession; other is also military legal expert (received legal education, judge status). Members appointed for a period of four years by the royal authority and can reappoint in case of expiration. These courts hear only general criminal cases which are involved military personnel⁴⁶.

According to rearrangement, when there is an action which objects to crime, military policeman sent the file Arnhem prosecution. If Prosecution decides to hear the case as a result of investigation and alleged crime which is required prison sentence in less than six months, prosecution sent the file judge advocate of Arnhem Divisional Court. Trial is made by a judge. In other circumstances, he sent the case's file Arnhem prosecution's military chamber. In here, trial is done by delegation⁴⁷.

As Holland military justice system allowed for within the judges advocate, it is mentioned with specialized military chambers. In this manner, both military personnel's trial is done and settlements are disputed with judge advocates that have military regulation knowledge.

4.5. Spain

The beginning of Spain's military law is based on until the domination of Phoenicia, Carthage, Greek and Rome. Presence of military justice started to seen with the establishment of regular armies by being perceptibly created the 'General' rank. Initially, Generals have been imposed penalty and judged military personnel by the power vested in the king. In time, 'inspector' class is showed up, afterward military justice class formed. With the decree dated 09.04.1874, military

⁴⁵ Seventer, M. Van, "The Legal Status of Military Judge and Legal Advisors in Netherlands", Askerî Yargıtay'ın 90'ıncı Kuruluş Yıldönümü Sempozyumu (6-7 Nisan 2004), Genelkurmay Basım Evi, Ankara 2004, s.230-234

⁴⁶ Şeker, Yusuf (translator), "Hollanda Askerî Yargı Sistemi", Askerî Adalet Dergisi, Sayı 115, 2002, s.55

⁴⁷ Seventer, a.g.m, s.230-234

justice class is accepted as auxiliary class in armed forces and rank, marking and uniform are given personnel of this class and it is turned a military institution⁴⁸.

Spain military justice system took its final form present day with Spain Constitution dated 1978. A separate military criminal law, disciplinary law and military criminal law are introduced from this date on.

The duty of Spain military courts have been changing according to peacetime and wartime. The authority of courts enlarged in war and mobilization time. In peacetime, it is charged with looking crimes which take place in military criminal law. In peacetime, it is possible that also civil people's committing offences which being provided by law together with military personnel and being judged in military courts.

In Spanish military justice, there are three separate judicial authorities are about Divisional Military Courts, Central Military court and the Spanish Judicial Council's Military Office. Divisional Military Courts and Central Military court consist of offices that is active as 'military court'. These courts consist of the president who is military judge and four members who taken legal education and military members. The authority of Central Military Court is to judge major, higher ranking officers and people who is subject to special laws. The authority of Divisional Military Courts is also to hear cases which people from the rank of private to the rank of captain and is not under the authority of other two courts and turn the scales objections to disciplinary punishments⁴⁹.

Spain secured uniformity with regard of superior courts, without foreseeing a separate court of appeals with regard to military justice, in by arranging a special section in judicial court of appeal. Special office within the superior court consists of eight members by being chosen four judge advocate four also military judges. Its authority is to provide for appellate review and military offences of Full General, Lieutenant General, Admiral and some military justice organs' members are to judge as trial court. Investigations in military cases are made by military office of the chief prosecutor that is organized within the Spain office of the chief prosecutor. General military court's office of the chief prosecutor that is connected military office of chief prosecutor and Distinctional Military Court's office of the chief prosecutor arranged and each made investigations in its own area of jurisdiction. Military office of the chief prosecutor only made military investigation; it has not been made disciplinary investigation⁵⁰.

There is a separate military disciplinary law; however, there is not a separate disciplinary court. Releated commandships from platoon commander are authorized to inflict a disciplinary punishment.

In the Spain Constitution, judge advocate's judicature and independence are guaranteed. It has become a pertinent arrangement from this aspect with regard to fair hearing.

⁴⁸Ramirez Bazan, Francisco, "İspanya'da Askeri Yargı", Askeri Yargıtay'ın 85'nci Kuruluş Yıldönümü Sempozyumu, Ankara 1999, s.150

⁴⁹Ramirez, a.g.m, s.153-158

⁵⁰Gedik, a.g.m, s.62-65

In The Comparative Law Military Criminal Justice and The Turkish Military Justice System

When It is looked alterations that made in the progress in Spain military justice, it is seen that coming under a special justice and securing uniformity of justice in this manner. By limiting specialized courts with trial court and divisional courts, it does not organise in the court of appeals. An arrangement in this manner is evaluated that making for efforts that made to take the edge of the trouble which caused country's military strength⁵¹.

4.6. Denmark

There is not a separate military court organization in Denmark. Military personnel are judged in the case of committing a crime which arranged both military penal code and in other penal codes in civil courts⁵². Denmark has only arranged separate Military office of the chief prosecutor. Military office of the chief prosecutor makes its investigation and if it needs, it opens a case to civil tribunals. Denmark provided speciality and profits indigenous to armed forces by means of establishing separate and autonomous office of chief prosecutor organization in this system⁵³. It is evaluated that being scarce of country's number of military personnel caused to Denmark's adopting this system.

4.7. Belgium

Belgium is a state that has an army which consists of professional soldiers. Today, Belgium does not set up a separate justice system related to being judged military personnel. It settles disputes about military personnel in civil justice. Country came this phase with the alteration that have made in 1899. With the alteration that have made in 1899, military courts have been removed by giving justifications that being scarce of country's number of military personnel, forming professional army, thus being scarce of cases⁵⁴.

II. MILITARY JUSTICE IN TURKEY

1. HISTORICAL DEVELOPMENT OF MILITARY JUSTICE

Ottoman Empire has passed regular army by means of establishing organization of janissary. In the previous period, judges of the army have been analysed cases related soldiers⁵⁵. After organization of janissary is set up, commandant of janissary is authorised punishment⁵⁶. After Guild of janissaries is removed, judicial organ of Asakir-i Mansure-i Muhammediyye which is set up instead of it, arranged with 1253 code's of military criminal (1253 Kanunname-i Ceza-i Askeriye)

⁵¹ Aslan, M. Yasin, "Sekizinci Uluslararası Askeri Ceza Hukuku Konferansı", Askeri Adalet Dergisi, Sayı 126, 2007, s.13.

⁵² Aslan, M. Yasin, "Sekizinci Uluslararası Askeri Ceza Hukuku Konferansı", Askeri Adalet Dergisi, Sayı 126, 2007, s.13.

⁵³ Svanidze, a.g.m, s.67

⁵⁴ Yayla, a.g.m, s.57

⁵⁵ Degirmenci, Olgun, Askeri Ceza ve Disiplin Hukuku, 3. Basım, Seçkin Yayınevi, Ankara 2016, s.34

⁵⁶ Kardaş, Ümit, Askeri Mahkemelerin Kuruluşu ve Yetkileri, İstanbul, Kazancı Yayınları, 1992, s.40

in 1837. This law is second penal code⁵⁷. Authorities which are exercised by officers themselves are given court-martial which is consisted of seven people. In 1914, military court of appeal (Divan-ı Temyiz-i Askeriye) is set up and for the first time, lawyers are appointed. In the Republic period, the law no.1631 military code of procedure and the law no.1632 military penal code which are first arrangements related military justice are prepared. According the law no.1631, Regimental Military Courts which consist of a president who is not lawyer and two members, Corps Military Courts, Army corps and Army Military Courts, Presidency of General Staff (by name of Supreme Military Command in war), two-office Military Court of Appeal which consist of two lawyers member and three officer member in each office, are set up. Courts that stayed out of Regimental Military Courts consisted of higher ranking two officer members than defendant and judicial judge advocate and under the authority of heavy penal courts. It has been done the duty which belongs to prosecutor in civil justice by being arranged ‘‘appointing authority’’ which is dependent the ministry of defence. While it does its duty, military judicial judge or judicial officer helps⁵⁸.

Military justice turned into a constitutional institution by forming in the constitution with 1961 constitution. The law no.353 the establishment of military courts and proceeding’s law are brought by repealing the law no.1631. it constitutes with 9,138,140,145,156,157 and 158th articles of the 1982 constitution to the law no.353 the establishment of military courts and proceeding’s law, the law no.1632 Military Penal Code, the law no.1600 Military Court Of Appeals, the law no.1602 Military High Administrative Court, the law no.477 Disciplinary Courts Organization, Proceeding and Disciplinary Action and Punishment’s law (valid in wartime), the law no.6413 Turkish Armed Forces Disciplinary Law (valid in peacetime) and the law no.357 Judge Advocate Law⁵⁹.

2. MILITARY JUSTICE ORGANISATION

In Turkish Justice System, Military justice is accepted as a separate justice system. It adopted monograde justice system by being exactly independent from civil justice. Divisional courts are not been foreseen. The decisions of trivial court can be appeal. The Appeal authority is the Military Court of Appeals.

According to Military Court of Appeals’The law no.1600, Military Court Of Appeals consists of presidency, office of the chief prosecutor and four offices. Offices concert with president and four members. In Military Court of Appeals, There are council of offices, general board and the council of presidents apart from offices. The council of offices looks local courts’resistance and office of the chief prosecutor’s objections. The council of offices concert 13 members between military court of appeals. General board gathers to build consensus and drop the previos idea.

⁵⁷Look for detailed information about first penal code is that being "Kanunnamei Asakiri Mansurei Muhammediye": Seviğ, Vasfi Rasit, Askeri Adalet, 1. Basım, Ankara 1955, s.60

⁵⁸İpeksümeroglu, Niyazi, “Askeri Kaza Sistemine Bir Bakış”, Ankara Üniversitesi Hukuk Fakültesi Dergisi, Cilt: 8, Sayı: 1, 1951, s.470-479 <http://dergiler.ankara.edu.tr/dergiler.pdf> (22.06.2016)

⁵⁹Yurtseven Cemal, "Türkiye’de Askeri Ceza Yargısının Tarihi Gelişimi", Askeri Adalet Dergisi, Sayı:141, Ankara 2015, s.11,12

In The Comparative Law Military Criminal Justice and The Turkish Military Justice System

Decision that made by General Board are obligatory. The council of presidents gather for the decisions related to military court of appeals' administrative transactions⁶⁰.

Three candidates are selected for a membership between judges advocate who are the at least in the rank of lieutenant colonel military court of appeals' members and president of the republic chooses one of these candidates. All of the members of military court of appeal consist of judge advocates.

Until 2006, in the military courts, delegation consists of an officer member and two judge advocates. In 2006, working of officer members has been removed with the alteration which made in the law no.353's procedure act. Thus, working of judge advocates is provided in the military courts. Military courts judge and decide with a delegation which consists of three judge advocates in the trial of sergeant with trial of crimes that lower limit starts five years. Judge advocate attends the hearings. There is not lacking arrangement from civil justice within the right of defence. Trial expenses (including defender cost) which is made in military courts is covered by the ministry of defence. Some of the military court decision's subject to objection, some also object to appeal. Decisions which are object to appeal examine in military court of appeal. Decisions which are subject to objection are made the other trial court which is authorised to look the objection of the court which decided.

In military justice, a separate military prosecution organization is arranged. There is military prosecution organization in the place where the court is located. Military prosecution starts to investigation at the behest of commander as a rule, if it is exceptional case and red-handed, violent crimes start to ex officio investigation. If commander needs after investigations, commander opens case about person by arranging accusation.

In our country, military criminal justice and disciplinary justice are arranged in separate law and judicial office is arranged separate. Two separate laws are arranged related disciplinary court including the law no.44 Disciplinary Court Organization, Proceeding and Disciplinary Crime and Punishment Law and the law no.6413 Turkish Armed Forces Disciplinary Court. Disciplinary courts are set up with the law no.477 Disciplinary Court Organization, Proceeding and Disciplinary Crime and Punishment Law. Disciplinary courts are valid in wartime. The law no.6413 Turkish Armed Forces Disciplinary law is also valid in peacetime. Competent authority is arranged to inflict a disciplinary punishment, indiscipline acts are stated with the law no.6413 and disciplinary sanctions are arranged. Disciplinary laws are formed according to this law. With the reason of crime which is constituted, about person, by being made both criminal action and disciplinary proceeding, it is possible to punish separately for both.

3. EVALUATION OF MILITARY JUSTICE

When it is looked military justice's phases in Turkey, military justice is arranged as separate from the civil justice from trivial court to appeal court. In military justice, many alterations which

⁶⁰Ertürk, a.g.m, s.62

fair hearing in the historical process human rights, within the principles of tenure of judges and judicial independence are made. Concept of officer members who work in military courts is removed with the alteration which is made the law no.353 procedure law in 2006. Thus, only judge advocates work in military courts. Commander's authority of giving registry to judge advocates who work in courts is removed. Judge advocates that work in court is given registry by military court of appeals. It is provided that judge advocates work independent and impartial by arranging in 1982 constitution Judge advocates' tenure of judges. Judge advocates can not be ostracized from profession without their permissions by the reason of being temporarily employed. Today, there is no possibility that civils are judged in military courts with the alterations which are made constitutional and legal amendments. Thus, it is only possible to being judged that crimes which are committed only military personnel against to military personnel or in case of committing military offences or crimes related to their duty. Before these alterations are made, military justice was in charge and authorised the crimes which are committed in military local. Assigned position of military justice has ben narrowed with these arrangements. Assignments of judge advocates are done with triple decree which is signed by The Ministry of Defence, Prime Minister and the President of the Republic.

In Turkey, as a result of alterations which are made within the European Convention on Military Rights and the principles of universal law, all kind of arrangement are made to act independent and objective to judge advocates and tenures of judges are provided in military justice system. Military judge's ability to move fast and active is increased and the oppurtunity of ratiocination is provided within the scope of the principles of fair hearing. Thus, ECHR have not recently issued a critical decision related military justice⁶¹.

When it is dealt with Turkish justice system in terms of comparative law, it has been resorted specialisation by arranging separate from civil justice with regards to military justice regime in turkey both in trivial court and in appeal court. It has become a pertinent arrangement within fair hearing and human rights that being lawyer all of the judge advocates and prosecutor who work in military courts and consisting of judge advocates.

CONCLUSION

Change of Armed forces acted depending upon progress of art and military formation with political, military, geographical, cultural and legal features. Military justice changed and progressed by complying with this alteration of armed forces. So, it is hard to sort out as completely clear boundaries about military justice in the world. While countries determine military justice systems, they are influenced their own civil justice system. Military justice system formed according to cuntry's own political, military and legal features. Shortly,it can be said that military courts in the world shaped according to judicial system which adopted by states, features of political, sociological and strategical, armed forces'duties and responsibilities, choice and needs.

⁶¹Look for similar opinion: Demirağ, Fahrettin, " AIHS Işığında Türk Askeri Yargı Sisteminin Sorun Alanları", Uluslararası Askeri Yargıtay Sempozyumu Askeri Yargıda Güncel Eğilimler, Ankara 2014, s.129

In The Comparative Law Military Criminal Justice and The Turkish Military Justice System

It is seen that special regularity and authorities are preferred in the military cases in the countries which have strong armies like USA, Russian federation, England and Spain. One of the most important reasons that being preferred special regularity and authorities is provided specialisation, thus, an active and fast judgement is made. It is preferred specialisation by being classified judicial and administrative justice authorities in our country as Criminal Magistracy of Peace, Penal Court of First Instance, Juvenile Court, Juvenile High Criminal Court etc. A part of country's legal order is also military law. Armies which have not military law, in the past, there were times that damaged their state. When it is looked the countries which have perfectly disciplined armies, when there is descriptive action in military personnel's discipline, it was observed that attempting to found discipline by applying penal or administrative sanctions within the framework of the principles of fair trial. Some states organized differently their penalisation authorities in case of armed forces personnel's committing crime. Thus, in the specialized courts, they preferred to come to conclusion by applying military legislation via lawyers who know needs of military service, acquaint the operation of military service. In the trials which are done with the justice organization which created in this way, they have given their all to observe the principles of universal law and human rights. Beside, some countries have seen no harm to trial personnel in civil justice in case of military personnel's getting involved in crime. However, only states which have small army accepted this practice in the world.

When It is looked the military justice's historical adventure, the destiny of military justice has changed in direct proportion to country's destiny accordingly army's destiny. As a result of criticisms for systems which are applied in the countries, there have been positive changes in the military justice. Initially, while soldier who had not legal education were working, soldiers who had legal education start to work in time. Today, in the many countries of the world, judge advocates provide majority of member in military courts. Ultimately, there are judges who had legal education in the military courts. Steps have been taken to extent the right of defence. Arrangements are made directed judge advocates' independence and objectivity. It is seen that many countries tried to enforce together disciplinary justice and military criminal justice, therewithal, it caused a set of problems. The operation of disciplinary justice and military criminal justice is different from each other. Disciplinary judge is fundamentally involved in administrative rule even though it is tried to tell that disciplinary law arranged in criminal law, being sentenced in disciplinary justice with the principles of criminal law by dealing by criminal lawyers. The establishment of military discipline has not only been provided with military criminal justice. There is a directly proportional interaction between the quality of education which provided by commanding officer and disciplinary of troop. So, it will not be a correct behaviour to be in expectation from military criminal justice for the establishment of military disciplinary.

When military personnel (regular personnel, civil servant and employee) committed a crime in the field of military justice and disciplinary justice, in some countries, trial is done military court which arranged as a separate justice, in some countries, in the courts which has a special part in civil justice (only military case) or courts which is judged only civils. While a separate disciplinary

justice is formed for crimes of military personnel in some countries, in some countries, such an arrangement is not made. When all these arrangements are examined, much as they formed their justice system for country's a set of specific features and accepted as the best justice system with regards to country; it will be more suitable that forming a separate military justice regime on condition that obey the principles of the universal law to readjust military disciplinary which corrupted by the reason of military personnel's committing crime and being high the disciplinary of country's state. Thus, when it is looked the justice system of countries which has strong armies, it is seen that they allow for a separate military justice regime. Besides, indisciplines which being on a small scale can be punished in a short time by being detected by arranging separately disciplinary law and military criminal justice.

It is a known fact that this situation can cause an irreparable damage, there will not be an office which will judge armed forces members who got involved in crime, in situations which civil courts'becoming inoperative in countries which has not a separate military justice.

That being disciplined an army depends to be continued religiously chain of command, obeying the order of superior, obeying of law of inferior. Action which corrupts the disciplinary is detected in the shortest time and actively, if required, it will need the relevant person to be punished to maintain the discipline in the army. Military disciplinary should establish again in a jiff due to the unique situation of the armed forces. It will be a privilege for armed forces that being a military justice system which consists of legit judge advocates who acquaint armed forces' operation and regulations and only charged with the prosecution of armed forces personnel separate from civil justice.

In The Comparative Law Military Criminal Justice and The Turkish Military Justice System

REFERENCES

- Aslan, M. Yasin (2007). "Sekizinci Uluslararası Askeri Ceza Hukuku Konferansı". Askeri Adalet Dergisi, Sayı 126:, s.13.
- Değirmenci, Olgun (2016). Askeri Ceza ve Disiplin Hukuku. Ankara: Seçkin.
- Demirağ, Fahrettin (2014). " AİHS Işığında Türk Askeri Yargı Sisteminin Sorun Alanları". Uluslararası Askeri Yargıtay Sempozyumu Askeri Yargıda Güncel Eğilimler, Ankara, s.129.
- Erman, Sahir (1974). Askeri Ceza Hukuk. 6. Basım.
- Ertürk, Recai (2004). "Mukayeseli Hukukta Askeri Yargı Teşkilatı, Askeri Mahkemelerin Kuruluşu ve Askeri Hakimlerin Statüsü". Askeri Adalet Dergisi, cilt 120: 47,57.
- Gedik, Hüseyin (2010). Âdil Yargılanma Hakkı Bakımından Türkiye’de Askerî Mahkemelerin Durumu ve Geleceği:Karşılaştırmalı Hukuk Açısından Bir İnceleme. Yüksek Lisans Tezi, Ankara Üniversitesi, Sosyal Bilimler Enstitüsü, Ankara.
- Glisen, John, Nail, Sucu (1982). "Askeri Hukukun Genel Evrimi Üzerine Genel Bildiri (II)". Yargıtay Dergisi, Cilt 8, Sayı 3: s.316.
- Gerhards, Bernd (2014). "Almanya Askeri Yargı Sistemi". Uluslararası Askeri Yargıtay Sempozyumu Askeri Yargıda Güncel Eğilimler, Ankara, s.118.
- Gerkrath, Jörg (2003). "Military Law in France". European Military Law Systems (Editor: Georg NOLTE), De Gruyter Recht, Berlin, s.320-326.
- Işıklar, Celal (2015). TSK Disiplin Kanunu ve Yorumu. Ankara: Adalet.
- İpeksümeroglu, Niyazi (1951). "Askerî Kaza Sistemine Bir Bakış", Ankara Üniversitesi Hukuk Fakültesi Dergisi, Cilt: 8, Sayı 1: s.470-479 <http://dergiler.ankara.edu.tr/dergiler.pdf> (22.06.2016)
- Kardaş, Ümit (1992). "Askeri Mahkemelerin Kuruluşu ve Yetkileri. İstanbul: Kazancı.
- Köprü, Orhan (1995). "Mukayeseli Hukukta Askeri Yargı". Askeri Adalet Dergisi, sayı 93: 6.
- M. Egeland, Andrew (1999). "Amerikan Askeri Yargı Sistemi". Askeri Yargıtay'ın 85'nci Kuruluş Yıldönümü Sempozyumu, Ankara, s.83.
- Pollack, Estela I. Velez (2004).“ Military Courts-Martial: An Overview”. CRS Report for Congress, Order Code RS21850, s.5.
- Protschkin, Alexander (1999). “Judicature and Military Judicature in Germany, the Administration of Justice in the Bundeswehr”. Askerî Yargıtay’ın 85’inci Kuruluş Yıldönümü Sempozyumu (6-7Nisan 1999), Genelkurmay Basımevi, Ankara, s.164
- Ramirez Bazan, Francisco (1999). "İspanya'da Askeri Yargı".Askeri Yargıtay'ın 85'nci Kuruluş Yıldönümü Sempozyumu, Ankara, s.150.

- Svanidze, Eric (2012). "Avrupa'da Askeri Yargı ve İnsan Hakları".Askeri Hakim ve Savcılarının İnsan Hakları Konularında Eğitimleri Ortak Projesi, Ankara, s.65.
- Sevter, M. Van (2004).“The Legal Status of Military Judge and Legal Advisors in Netherlands”, Askerî Yargıtay’ın 90’ıncı Kuruluş Yıldönümü Sempozyumu (6-7 Nisan 2004), Genelkurmay Basım Evi, Ankara, s.230-234.
- Seviğ, Vasfi Raşit (1955). Askeri Adalet, 1. Basım, Ankara, s.60
- Şeker, Yusuf (2002). "Hollanda Askeri Yargı Sistemi". Askeri Adalet Dergisi, Sayı 115:55.
- Yayla, Mehmet (2014). "İnsan Hakları Perspektifinden Avrupa'da Askeri Yargı Sistemlerinin Gelişimi". Uluslararası Askeri Yargıtay Sempozyumu Askeri Yargıda Güncel Eğilimler, Ankara, s.54.
- Yurtseven, Cemal (2015). "Türkiye'de Askeri Ceza Yargısının Tarihi Gelişimi". Askeri Adalet Dergisi, Sayı.141, Ankara, s.11,12
- W. Arnold, Scott (2014). "ABD Askeri Yargı Sistemi". Uluslararası Askeri Yargıtay Sempozyumu Askeri Yargıda Güncel Eğilimler, Ankara, s.67.