



Research Article

Military Courts: Independence and Impartiality in the Light of Article 6 of the European Convention on Human Rights

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Abstract

Military courts constitute special judicial bodies established to try members of the armed forces and, in certain circumstances, civilians for offences related to military service or national security. While deeply rooted in many European legal systems, their operation raises concerns under Article 6 §1 of the European Convention on Human Rights (ECHR), which guarantees the right to a fair trial by an independent and impartial tribunal. This article examines the compatibility of military courts with Article 6 §1 ECHR, focusing on the concepts of independence and impartiality as developed in the case-law of the European Court of Human Rights (ECtHR). The study adopts a doctrinal and comparative approach. It first surveys the constitutional status of military courts across Council of Europe Member States. It then analyses ECtHR jurisprudence, concentrating on three recurring issues: (a) the status and service conditions of military judges, (b) the participation of active-duty military jurors, and (c) the extension of military jurisdiction to civilians. The ECtHR does not reject military courts per se but subjects them to strict scrutiny. Concerns arise where judges remain institutionally linked to the executive or military hierarchy, where active-duty officers participate in adjudication without sufficient safeguards, and especially where civilians are tried by military courts. In the latter context, the Court adopts an increasingly restrictive approach, allowing such jurisdiction only in exceptional circumstances. Finally, military courts are compatible with Article 6 ECHR only when their institutional framework guarantees genuine independence and impartiality comparable to that of ordinary criminal courts, ensuring full integration within the rule of law.

Keywords

Military Courts, Fair Trial, National Security

1. Introduction

Military courts are special courts established by the State to try members of the armed forces and, in certain cases, civilians for offences related to military service or national security. They operate under military law, such as courts-martial, or under ordinary criminal law and adjudicate cases involving breaches of military discipline, wartime conduct, or violations of military regulations. Military courts are generally distinct

from civilian courts and apply procedures adapted to the specific needs of the armed forces, although their decisions are typically subject to review under national law.

The establishment of military courts constitutes a challenge to the rule of law and, in particular, to the right of every person to a fair trial as guaranteed by Article 6 of the ECHR. These courts are entrusted with the expeditious adjudication of crim-

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inal cases concerning military personnel and, in certain circumstances, civilians, with their jurisdiction extending to offences related to military service and national security [1].

Notwithstanding the objectives they are designed to pursue, military courts may raise issues of independence and impartiality, which constitute fundamental guarantees of the right to a fair trial under Article 6 ECHR.

This article examines the compatibility of military courts with Article 6 §1 ECHR, focusing on the concepts of independence and impartiality as developed in the case-law of the ECtHR. It first provides a comparative overview of the constitutional status of military courts in the Member States of the Council of Europe and briefly outlines the principal arguments advanced in favour of and against the institution. It then addresses their compatibility with Article 6 ECHR, with particular emphasis on three factors that have been extensively examined by the ECtHR: (a) the status of members of the military judiciary, (b) the institution of active duty military members of the jury (“military jurors”), and (c) the extension of military jurisdiction to civilians.

2. General Observations

2.1. The Position of Military Justice in the Constitutions of ECHR Member States

A number of European constitutions of ECHR Member States expressly provide for the existence of military courts and tribunals, either in peacetime or in wartime. Moreover, some constitutions also permit the establishment of extraordinary courts or the extension of military jurisdiction to civilians during wartime or states of emergency.

For instance, in wartime, several European constitutions contain specific provisions concerning the establishment of military courts. In Austria (Article 84), Belgium (Article 157), Spain (Article 117), Portugal (Article 213), France (Article 34), Hungary (Article 31), Slovenia (Articles 124 and 126) and the Czech Republic (Article 91), military jurisdiction may be established only in times of war, military operations abroad, or a state of emergency. In Portugal, such courts may exercise jurisdiction “over crimes of a strictly military nature” (Article 213).

In Greece (Article 96 §4), Turkey (Article 145), Bulgaria (Article 126 §3), Ireland (Article 38 §4), the Netherlands (Articles 98 and 99), Poland (Article 175) and Italy (Article 103), the Constitution provides for the existence of military courts in both peacetime and wartime. These courts function as special criminal courts and exercise jurisdiction over military offences or offences committed by military personnel. More specifically, in Germany (Article 96 §§1 and 3), Greece (Article 48 §1) and Poland (Article 175 §2), the Constitution provides, in wartime, for the establishment of “extraordinary courts” and for the extension of the criminal jurisdiction of peacetime military courts to specific offences related to State

security.

The constitutions of other ECHR Member States remain silent on this issue (e.g. Albania, Croatia, Denmark, Estonia, Moldova), leaving the matter to ordinary legislation.

It may therefore be observed that there is no uniform approach regarding the position of military justice within the constitutional frameworks of ECHR Member States. Only some of these constitutional texts expressly provide for the existence of military courts. A common feature of the existing constitutional provisions is their concise formulation within the constitutional text and their reference to specific implementing legislation.

2.2. Justificatory Basis: Objections and Perspectives

The rationale for the establishment and operation of special criminal courts for members of the armed forces lies in the prompt adjudication of criminal proceedings, so that cases affecting military discipline, service order and, ultimately, national security may be resolved without delay [2]. This reflects the need to adapt criminal justice to this category of individuals, in light of both their status and the particular nature of military offences (such as, for instance, insubordination, desertion, refusal to obey orders, and mutiny). Military judges, in the exercise of their duties, possess the institutional experience necessary to take into account the specific requirements of military order, while remaining faithful to the principles of a fair trial.

Another argument advanced in favour of an organised system of military justice concerns its integration into mobile military units, thereby enabling the administration of military justice in operational settings [3]. The establishment of special criminal courts for the prosecution of military personnel is further supported by rules of international humanitarian law, which presuppose their existence [4].

Conversely, an opposing view [5] advocates the partial or complete departure from this model. It is further argued that there is no longer any reason for ordinary criminal offences (that is, offences not strictly military in nature) committed by military personnel to fall within the jurisdiction of military courts, rather than being tried by the ordinary criminal courts [6]. A global trend can be observed towards either limiting the scope of military justice or integrating it into the ordinary unified judicial system. A central element of this line of argument is that, in most countries, the armed forces now have a more static role and that military justice is exercised by permanent military courts established in fixed locations [7].

3. Special Observations: Military Courts in the Light of Article 6 ECHR

According to General Comment No. 32 of the United Na-

tions Human Rights Committee (hereinafter, the UN), [8] military courts must uphold the standards of justice required by the International Covenant on Civil and Political Rights and ensure the independence and impartiality of judges, as well as the protection of the rights of the accused.

As a matter of principle, the ECtHR accepts that the special nature of the relationship between public servants and the State cannot justify deprivation of access to a lawful judge or to a court satisfying the requirements of a fair trial (Article 6 ECHR) [9]. The establishment, organisation, composition, jurisdiction and overall functioning of military courts are subject to the general principle of the lawful judge and to the specific principles ensuring their independence and impartiality.

The right to a fair trial under Article 6 §1 ECHR requires that a case be heard by an “independent and impartial tribunal” established by law. There is a close link between the concepts of independence and impartiality [10]. For this reason, the Court has frequently examined the two requirements together [11]. Article 6 requires independence from the other branches of power, namely the executive and the legislature. Impartiality denotes the absence of prejudice or bias, and its existence or lack thereof may be assessed in different ways [12]. Two situations may give rise to doubts as to judicial impartiality [13]: (i) the first is functional in nature and concerns, for instance, the exercise of different functions within the judicial process by the same person or hierarchical or other links with a participant in the proceedings; (ii) the second is personal in character and derives from the conduct of the judges in a given case. In cases of a functional nature, the Court has examined military courts where hierarchical links with one of the participants in the proceedings placed impartiality in doubt [14].

Article 6 §1 ECHR does not prohibit the establishment and operation of special courts, nor their jurisdiction to examine criminal offences committed by military personnel, provided that they are established by law, which is clear and foreseeable, in accordance with the established criteria of legislative quality consistently applied by the ECtHR [15]. In other words, the prior statutory provision for the existence of military criminal courts exercising jurisdiction over military personnel has been held to be generally compatible with the right of access to the proper administration of justice guaranteed by Article 6 ECHR, “provided that the remaining requirements of a fair trial are also satisfied” [16].

The ECtHR accepts that the practice in question is deeply rooted in the legal systems of many States [17], while at the same time recognising that it entails risks of influence of the executive over the judiciary [18]. The question in each case is whether the requirements of the Convention, and in particular those of Article 6 §1 ECHR, are met [19]. The Court reiterates that, in order to determine whether a tribunal can be considered “independent”, regard must be had, *inter alia*, to the manner of appointment of its members and their term of office, the existence of guarantees against external pressures, and whether the body presents an appearance of independence.

The following section addresses three issues that have engaged the case-law of the ECtHR: (a) the status of members of the military judiciary, (b) the institution of military jurors, and (c) the extension of military jurisdiction to civilians.

3.1. The Status of Members of the Military Judiciary

The personal and functional independence of members of the military judiciary constitutes a factor taken into account by the ECtHR when examining compatibility with Article 6 of the Convention. The Court considers whether they enjoy the constitutionally required personal and functional independence comparable to that of judges of the ordinary judiciary, so as to enable them to perform their duties [20].

In this context, sub-factors such as the manner of appointment, promotion, evaluation and transfer of members of the military judiciary, as well as the overall system governing their service status and related changes, are considered together. For example, the Court has regard to: the manner of appointment, the functions performed, the system of transfers, promotions and the applicable disciplinary regime. The relevant legal framework must strengthen their independence from the executive, and in particular from the national Ministry of Defence. Aspects of their service status that weigh against a finding of independence include those differentiating them from judges of the ordinary judiciary, such as direct subordination to the national Ministry of Defence, differences in remuneration and pension arrangements (e.g. a lower retirement age), the conferral of military rank corresponding to that of other armed forces officers, and their subjection to the disciplinary regime applicable to officers, among others.

At the same time, the Court also considers whether sufficient safeguards exist to protect the judge from external pressure [21] and whether the system as a whole presents an appearance of independence [22]. In this regard, consideration is given to the confidence which the courts must inspire in the public at large and, in particular, in the parties to the proceedings. The decisive question is whether the doubts of a party as to the impartiality and independence of the court concerned can be regarded as “objectively justified” [23].

For example, in *Findlay v. the United Kingdom*, the Court examined the role of the “convening officer”, an officer of the British Army, who had been convicted by court-martial of fraud and misconduct. The Court observed that, under the rules applicable at the time, the convening officer played a significant role prior to the hearing of Mr Findlay’s case. He decided which charges should be brought and which type of court-martial was appropriate; he convened the court-martial and appointed its members, as well as the prosecuting and defending officers [24]. For these reasons, the Court considered that the convening officer was central to Mr Findlay’s prosecution and closely linked to the prosecuting authorities. The Court further examined the relationship between the members of the court-martial and the convening officer. The Court

found that, since all the members of the court-martial that tried Mr Findlay were subordinate in rank to the convening officer and fell within his chain of command, the applicant's doubts as to the tribunal's independence and impartiality could be regarded as objectively justified [25]. The Court accordingly found a violation of Article 6 §1 of the Convention.

3.2. The Institution of Active Duty Military Members of the Jury ("Military Jurors")

Another issue that has engaged the case-law of the ECtHR concerns the composition of military courts, which may include not only professional judges but also active duty military members of the armed forces serving as members of the jury ("military jurors"). In such cases, military jurors perform a role comparable to that of lay jurors in ordinary criminal courts.

The functional and personal independence of military jurors has been questioned, since they are not members of the regular military judiciary, remain subject to military discipline and, at a substantive level, may lack the legal expertise, professional training and judicial experience required for the exercise of adjudicatory functions [25].

The participation of military jurors in the composition of special military courts constitutes one of the factors examined by the ECtHR alongside others in assessing compliance with the requirements of a "fair trial" [26].

First, the Court has held that the absence of formal legal qualifications on the part of a military officer sitting on the bench of a military criminal court does not in itself undermine his independence or impartiality [27]. The Court's case-law is not entirely consistent, however, as regards the extent to which such participation affects judicial independence and impartiality.

In *Incal v. Turkey* and *Gürkan v. Turkey* [28], the Court held that the presence, in the composition of a military court, of a serving military officer who remains subject to military discipline, is appointed by his or her hierarchical superior and does not enjoy the same constitutional safeguards as ordinary judges may give rise to legitimate doubts as to the independence and impartiality of the tribunal. In such circumstances, the applicant's fears as to the court's lack of independence and impartiality may be regarded as objectively justified within the meaning of Article 6 §1 of the Convention.

Conversely, in other cases, the ECtHR has held that the presence of two military jurors in a five-member military court was compatible with Article 6 §1 of the Convention [29]. Nevertheless, even in that instance, the Court acknowledged that such a composition may reduce the distance which must exist between the bench and the parties to the criminal proceedings, namely the military authorities [30]. Finally, in its more recent judgment in *Mustafa v. Bulgaria* [31], the ECtHR held that the Bulgarian system of military jurors gives rise to doubts as to whether such military courts offer guarantees equivalent to those of ordinary courts. In that case, the Court

found a violation of the right to a fair trial under Article 6 §1 of the Convention.

3.3. Extension of Military Jurisdiction to Civilians

The provision concerning the extension of military jurisdiction to civilians must also be examined in the light of Article 6 §1 of the Convention. The establishment and operation of military courts, which may otherwise be compatible with the Convention, becomes more problematic or controversial where national legislation extends such jurisdiction to persons who are not members of the armed forces [32].

The Venice Commission has stated that "The jurisdiction of military courts should be limited to military offences committed by military personnel. Civilians should not be tried by military courts" [33].

In its jurisprudence, the European Court of Human Rights has generally considered that when a military court is empowered to try a civilian for offences directed against the armed forces, this may raise legitimate concerns regarding the court's objective impartiality. A judicial arrangement in which a military tribunal exercises jurisdiction over individuals who do not belong to the armed forces can readily create the perception that the necessary institutional distance between the court and the parties to the criminal proceedings is diminished. Such a perception may arise even where legal safeguards exist that are intended to secure the court's independence [34].

This approach is grounded, first, in the special position occupied by the armed forces within the constitutional structure of democratic States, whose functions are confined to matters of national security; and second, in the existence of specific rules governing their internal organisation and hierarchical structure [35].

In this context, a reversal of the presumption may be observed. The Court has adopted a stricter approach, holding that "While it cannot be contended that the Convention absolutely excludes the jurisdiction of military courts to try cases in which civilians are implicated, the existence of such jurisdiction must be subjected to particularly careful scrutiny, since only in very exceptional circumstances could the determination of criminal charges against civilians in such courts be compatible with Article 6 §1 of the Convention" [36]. The burden lies on the State to demonstrate that such exceptional circumstances exist [37]. Such circumstances might arise, for example, where the ordinary courts are unable to function due to armed conflict or a breakdown of constitutional order within a State. Conversely, where ordinary courts are functioning normally, even under expedited procedures, the establishment of special courts or the transfer of jurisdiction over civilians to military courts will be difficult to justify.

In this context, the ECtHR places more emphasis on the requirements of foreseeability and on the quality of the legal

framework. An abstract statutory provision conferring jurisdiction on military courts in respect of offences directed against State security and connected with the activities of the armed forces is not sufficient [38]. The same applies where such jurisdiction is extended automatically to all cases involving joint offences committed by military personnel and civilians, or to offences committed in wartime or under a state of siege.

4. Conclusion

The functioning of military courts has historically been situated within a delicate balance between, on the one hand, the need to preserve discipline and operational effectiveness within the armed forces and, on the other, the State's obligation to ensure full respect for fundamental human rights. In this context, Article 6 §1 of the Convention operates both as a normative limit and as an interpretative benchmark, requiring Member States to secure strict guarantees of independence and impartiality for any judicial body, irrespective of its special character.

The Court's case-law demonstrates that the Convention does not adopt an a priori negative position towards military justice. On the contrary, the Court approaches the matter through a concrete, fact-based and functional assessment, examining in each case whether the institutional and organisational framework of military courts satisfies the requirements of an "independent and impartial tribunal established by law". At the same time, the case-law in question also makes clear that systems of military justice entail inherent risks of influence by the executive and, more specifically, by the military hierarchy.

In particular, issues such as the service status of members of the military judiciary, the participation of military jurors in the composition of military courts and, above all, the extension of military jurisdiction to civilians have been identified by the ECtHR as critical factors capable of undermining the objective appearance of independence and impartiality. It appears that the Court tends to adopt an increasingly strict approach with regard to the exercise of military jurisdiction over persons outside the armed forces.

In light of the foregoing, it becomes clear that the maintenance of a system of military justice may be regarded as compatible with the Convention only on condition that it is fully institutionally detached from the executive and military authorities and aligned with the standards governing ordinary criminal justice.

Ultimately, the evolution of the Court's case-law indicates a clear direction: military justice can no longer operate as a closed and autonomous system of adjudication but must be fully integrated into the broader framework of the rule of law and the protection of human rights. To the extent that these conditions are fulfilled, the existence of military courts may be regarded as acceptable under the Convention.

Abbreviations

ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights

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Efstratios Efstratiou: Writing – original draft

Conflicts of Interest

The author declares no conflicts of interest.

References

- [1] Efstratiou, E. (2026). *National Security as an Exception Clause in the Greek Constitution and the Treaties of the European Union*. Centre for European Constitutional Law – Themistocles and Dimitris Tsatsos Foundation (p.346). <https://e-politeia.gr>
- [2] D. Andru, *Military Justice* (The Hague: Kluwer Law International, 2005); United States, *Uniform Code of Military Justice*, art. 801(16); K. Gogos, "Overview of International Trends in Military Justice: Comparative Observations and Evaluation," *Penal Justice* 7 (2004): 843 ff., at 852.
- [3] Liivoja, R. (2016). Trying Civilian Contractors in Military Courts: A Necessary Evil?. In A. Duxbury and M. Groves (eds.), *Military Justice in the Modern Age* (pp. 81-102). Cambridge University Press.
- [4] Geneva Convention (III) Relative to the Treatment of Prisoners of War (1949), arts. 82–108; Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War (1949), arts. 64–75.
- [5] F. Andreu-Guzmán, *Military Jurisdiction and International Law: Military Courts and Gross Human Rights Violations* (Geneva: International Commission of Jurists, 2016), 110 ff.
- [6] P. Kremmydiotis, *The Influence of Human Rights Law on the Reform of Military Justice* (Cambridge: Cambridge University Press, 2016), 311 ff.; I. Leigh and H. Born, *Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel* (Warsaw: OSCE, 2008), 219 ff.
- [7] Doublekas, G. & Koutsaggelis G. (2023). *Military Criminal Law: Article-by-Article Commentary* (p.245). Nomiki Bibliothiki.
- [8] United Nations Human Rights Committee, General Comment No. 32: Article 14 – Right to Equality before Courts and Tribunals and to a Fair Trial, CCPR/C/GC/32 (2007).
- [9] ECtHR, *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, 19 April 2007, §62.
- [10] Council of Europe, Guide on Article 6 of the European Convention on Human Rights, 2021, 25, available at <https://www.echr.coe.int/>

- [11] ECtHR, *Findlay v. the United Kingdom*, no. 22107/93, 25 February 1997, § 73; Council of Europe, *Guide on Article 6 of the European Convention on Human Rights*, 2021, 18
- [12] ECtHR, *Kyprianou v. Cyprus* [GC], no. 73797/01, 15 December 2005, § 118; ECtHR, *Micallef v. Malta* [GC], no. 17056/06, 15 October 2009, § 93.
- [13] ECtHR, *Kyprianou v. Cyprus* [GC], § 121.
- [14] ECtHR, *Gürkan v. Turkey*, no. 10987/10, 3 July 2012, §§ 13–20.
- [15] L.-A. Sissilianos, “Article 6 ECHR,” in *European Convention on Human Rights: Article-by-Article Commentary – Rights, Admissibility, Just Satisfaction – Execution*, ed. L.-A. Sissilianos et al. (Athens: Nomiki Bibliothiki, 2017), 271–72; ECtHR, *X and Y v. Ireland*, no. 8299/78, 10 October 1980.
- [16] ECtHR, *Mustafa v. Bulgaria*, no. 1230/17, 28 November 2019, § 30.
- [17] ECtHR, *Mikhno v. Ukraine*, no. 32514/12, 30 January 2017, §§ 160–67.
- [18] ECtHR, *Öcalan v. Turkey* [GC], no. 46221/99, 12 May 2005, § 112.
- [19] ECtHR, *Henryk Urban and Ryszard Urban v. Poland*, no. 23614/08, 28 February 2011, § 46.
- [20] William A. Schabas, *The European Convention on Human Rights: A Commentary* (Oxford: Oxford University Press, 2015), 204; Sissilianos, “Article 6 ECHR,” 271–72.
- [21] ECtHR, *Maktouf and Damjanović v. Bosnia and Herzegovina* [GC], nos. 2312/08 and 34179/08, 18 July 2013, § 49.
- [22] ECtHR, *Findlay v. the United Kingdom*, no. 22107/93, 25 February 1997, § 73.
- [23] ECtHR, *Findlay v. the United Kingdom*, no. 22107/93, 25 February 1997, § 74.
- [24] ECtHR, *Findlay v. the United Kingdom*, § 58.
- [25] ECtHR, *Findlay v. the United Kingdom*, §§ 75–76.
- [26] M. Lawrence, *Military Justice: A Guide to the Issues* (Santa Barbara, CA: Praeger, 2010), 29; Kyle and Reiter, *Military Courts, Civil-Military Relations, and the Legal Battle for Democracy*, 185.
- [27] Council of Europe, *Guide on Article 6 of the European Convention on Human Rights*, 2021, 16
- [28] ECtHR, *Incal v. Turkey*, no. 41/1997/825/1031, 9 June 1998, §§ 67–73.
- [29] ECtHR, *Gürkan v. Turkey*, §§ 13–22.
- [30] ECtHR, *Papapetrou and Others v. Greece*, no. 17380/09, 12 July 2011; ECtHR, *Kerman v. Turkey*, no. 35132/05; ECtHR, *Kasat v. Turkey*, no. 61541/09, 22 November 2016; ECtHR, *Mehmet Hidayet Altun and Others v. Turkey*, no. 48756/11, 14 November 2017; ECtHR, *B. I. v. Turkey*, no. 18308/10, 11 December 2019.
- [31] ECtHR, *Ergin v. Turkey* (No. 6), no. 47533/99, 4 May 2006, §§ 49–51.
- [32] ECtHR, *Mustafa v. Bulgaria*, no. 1230/17, 28 November 2019, § 38 ff.
- [33] Kyle and Reiter, *Military Courts, Civil-Military Relations, and the Legal Battle for Democracy*, 185; Christos Sevastidis, *Code of Criminal Procedure II* (Law 4620/2019) (Athens: Sakkoulas, 2025), 28.
- [34] European Commission for Democracy through Law (Venice Commission), *Report on the Jurisdiction of Military Courts*, CDL-AD(2010)036, 15 March 2011.
- [35] Council of Europe, *Guide on Article 6 of the European Convention on Human Rights (Criminal Limb)* (2021), 30; ECtHR, *Ergin v. Turkey* (No. 6), § 41; ECtHR, *Incal v. Turkey*, § 178; ECtHR, *Mustafa v. Bulgaria*, § 31.
- [36] ECtHR, *Ergin v. Turkey* (No. 6), §§ 44–47.
- [37] ECtHR, *Martin v. the United Kingdom*, no. 40426/98, 24 October 2006, §§ 44–47; ECtHR, *Maszni v. Romania*, no. 59892/00, 21 September 2006, § 43.
- [38] ECtHR, *Mustafa v. Bulgaria*, §§ 28–31.