**INFORMATION**

**provided by the Bulgarian authorities in response to Note Verbale G/SO 314 (3-3-16)**

**and the attached questionnaire on military justice**

1. There are military courts in Bulgaria. They are established in accordance with Art. 119 Para. 1 of the Constitution which reads as follows: “Justice shall be administered by the Supreme Court of Cassation, the Supreme Administrative Court, courts of appeal, regional courts, courts-martial and district courts”. Detailed regulations on the types of courts are stipulated in the Judiciary Act: Art. 46 sets out the existence of military courts and that they operate at the same level as regional ones, and Art. 101 states that the Military Court of Appeal shall hear appeals and protests against acts of military courts across the country.
2. Military courts, as evident from the above provisions of the Constitution and the laws, are a unitary and indivisible part of the judiciary. They are not autonomous in the justice system and are not part of the executive power.
3. Military courts are composed of judges who are approved and released from military service after the decision of the Supreme Judicial Council on their appointment to and dismissal from the position of judge. The Supreme Judicial Council is composed entirely of civilians and has equal jurisdiction on all judges in the country, both civilian and military. In pursuance of the decision, the administrative head of the court or prosecutor's office issues an official Order on the acceptance and discharge from military service in coordination with the Minister of Defence. Military judges in accordance with Art. 50 of the Defence and Armed Forces Act are not members of the armed forces of the Republic of Bulgaria. In hearing cases at the first-instance courts as defined in the Criminal Procedure Code, along with the military judges also involved are court assessors (jurors) who are members of the armed forces. The requirements for the appointment of military judges are the same as for those of civilian courts. Mandatory requirements include a Master's degree in law, qualification in the general procedure and the appropriate minimum work experience in a jurist's position, depending on the level of the court. Requirements to military prosecutors are the same. All lawyers registered in the country entitled to appear in all cases in all courts have the right to plead in military courts, too. There are no military lawyers in the Bulgarian legal system.
4. Military courts have jurisdiction only over persons who are in military service and civilians who have committed crimes in complicity with such persons. In addition to the above persons, military courts also have jurisdiction over civilians serving in the Ministry of Defence, the Bulgarian Army and the units subordinated to the Minister of Defence, the National Security Service, and the National Intelligence Service only in the course of or related to discharging their official duties.
5. Military courts can hold trials against civilians only in the cases specified in item 4 - for crimes committed in complicity with military personnel and civilian employees of the above-mentioned agencies only in the course of or related to the discharging of their official duties. There is no difference in determining jurisdiction in peacetime and wartime.
6. Jurisdiction over military personnel and their accomplices covers all types of crimes. It is determined by the status of the servicemen. For persons serving in the Ministry of Defence, the Bulgarian Army and the units subordinated to the Minister of Defence, the National Security Service, the National Intelligence Service, jurisdiction only exists in the course of or related to such persons' discharging of their duties.
7. Military courts hear cases within their jurisdiction regardless of the status of the victim (whether he/she is civilian or military).
8. Military judges are independent in the degree of independence of all other civilian judges. Requirements for the position are the same as for civilian ones. They are nominated, appointed and dismissed by the Supreme Judicial Council as part of the general procedure for all other judges. Their working conditions are the same as for all other courts and they often hold proceedings in buildings used by all courts in the respective area. Their performance is appraised under the general procedure; the judges of the appellate military court receive appraisal by judges in the Supreme Court of Cassation, who are civilians. Promotions are carried out in the same general procedure by the Supreme Judicial Council. Promotions in military rank are done by the administrative head of the court and are not dependent on the executive branch of power. Disciplinary action is carried out under the general procedure by the administrative heads and the Supreme Judicial Council, as for all other civilian judges. The salaries of military judges are determined by the Supreme Judicial Council and are the same for both civilian and military courts.
9. Military prosecutors have the same status as military judges. They are not part of the armed forces and their activities are in no way dependent on persons from the armed forces, the Ministry of Defence or any other ministry. They can bring charges only at their sole discretion, by applying the law independently in accordance with the interests of justice.
10. The procedure for hearing cases in military and civilian courts is the same. There are no military lawyers. All lawyers appearing in both the civilian and military courts under a general procedure determined by a single piece of legislation - the Criminal Procedure Code. Immediately after his/her arrest, the accused person has the right to legal counsel. According to Art. 94 Para. 6 of the Criminal Procedure Code, legal counsel is mandatory in cases of detention of the accused or upon request to detain him/her, if at that time he/she has not yet been detained. According to Art. 138 Para. 3 of the Criminal Procedure Code, the accused may make a statement at the hearing only if he/she wishes to do so. The law does not provide for any penalty if the person refuses to give explanations or maintains silence. Counsel for the accused may attend all interrogations. If the accused was arrested, his/her counsel must be present at the interrogation; if the accused person does not have the means or opportunity to engage counsel, a defence counsel is appointed for him/her, as nominated and designated by the relevant Bar Association.
11. The initiation of an investigation and the investigation of reports is carried out by the military prosecutors who are not part of the armed forces and their actions are in no way controlled by the official quality of the person who filed the signal. The status of military prosecutors is the same as that of civilians in this regard.
12. As already indicated, there is no independent and separate system of military justice in Bulgaria. The Code of Criminal Procedure makes no distinction in the treatment of citizens as military or civilian. They have all the rights provided for in Art. 9 of the International Covenant on Civil and Political Rights and exercise them in the same way before both civilian and the military courts in the carrying out of a fair trial.
13. The victim may bring an action before a military court for the damage when the case is tried before a military court. Failing this, the victim may bring a separate action for damages only before a civilian court.
14. Defendants convicted of first instance by military courts have the right to appeal the verdict to the Military Court of Appeal. It is also a military court. Acts of the Military Court of Appeal may be appealed to the Supreme Court. The Supreme Court is entirely composed of civilian judges. They may confirm, amend or repeal the acts of the Military Court of Appeal, and the military courts.

*Sofia, June 2013*