

# \*USAREUR Regulation 27-10

Legal Services

Military Justice

23 January 2001

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**\*This regulation supersedes USAREUR Regulation 27-10, 15 August 1994.**

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For the Commander:

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**Summary.** This regulation--

- Should be used with AR 27-10.
- Assigns responsibility for administering military justice in USAREUR.
- Defines the USAREUR area court-martial jurisdiction system.
- Describes the USAREUR Victim/Witness Assistance Program and provides sample letters in English and German for use in the program.

**Summary of Change.** This revision changes the commanders designated as USAREUR General Court-Martial Convening Authorities, updates references, and updates the bar-to-entry information to make it consistent with UR 27-9.

**Applicability.** This regulation applies to commanders, judge advocates, and U.S. Army personnel under the disciplinary control and military-justice jurisdiction of the CG, USAREUR/7A.

**Supplementation.** Commanders will not supplement this regulation without CG, USAREUR/7A (AEAJA-MC), approval.

**Forms.** This regulation prescribes AE Form 27-10A-R (Quarterly Report on the Administration of Military Justice), AE Form 27-10B-R (Advice to Accused Upon Confinement), and AE Form 27-10C-R (Request To Appear and Testify/*Aussageersuchen*). USAREUR and higher-level forms (printed and electronic) are available through the USAREUR Publications System.

**Suggested Improvements.** The proponent of this regulation is the Office of the Judge Advocate, HQ USAREUR/7A (AEAJA-MC, 370-8775). Users may suggest improvements to this regulation by sending a DA Form 2028 (Recommended Changes to Publications and Blank Forms) to the Commander, USAREUR/7A, ATTN: AEAJA-MC, Unit 29351, APO AE 09014.

**Distribution.** This regulation is available only in electronic format.

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### Glossary

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#### 1. PURPOSE

This regulation prescribes policy and procedures governing the administration of military justice in USAREUR.

#### 2. REFERENCES

Appendix A lists references.

#### 3. EXPLANATION OF ABBREVIATIONS

The glossary defines abbreviations used in this regulation.

#### 4. SUPERVISION OF MILITARY JUSTICE IN USAREUR

a. The Judge Advocate (JA), USAREUR, is responsible for the general supervision of military justice in USAREUR. Questions about military justice should be referred to the Commander, USAREUR/7A, ATTN: AEAJA-MC, Unit 29351, APO AE 09014.

b. Commanders and staff judge advocates (SJAs) will send copies of the following to the address in a above:

(1) Notifications that may be of interest to the JA (for example, cases that may generate significant publicity, capital referrals, Government writs, or appeals).

(2) Requests for exception to policy that need to be forwarded to HQDA or to the Government Appellate Division.

## **5. PERSONNEL OF OTHER MILITARY SERVICES**

Offenses by a member of another military service normally will be referred to that service for appropriate action.

## **6. PERSONS NOT SUBJECT TO COURT-MARTIAL JURISDICTION**

a. Persons not subject to court-martial jurisdiction in peacetime (for example, civilian employees and family members) are subject to--

(1) Disciplinary or administrative actions (UR 27-9).

(2) Criminal jurisdiction of host-nation authorities.

b. Commanders considering cases against these persons should consult the local SJA.

## **7. INTERNATIONAL AGREEMENTS**

**a. Coordination With Local Legal-Liaison Authority.** In cases subject to the concurrent jurisdiction of the host nation, the SJA of the command exercising general court-martial (GCM) jurisdiction over the accused will coordinate activities regarding these cases with the local legal-liaison authority in Germany or the U.S. country representative outside Germany. Questions about particular cases should be directed to the SJA concerned.

**b. Investigation.** Subject to the provisions of international agreements (UR 550-50 and UR 550-56), investigators and commanders will take expeditious action in cases subject to the Uniform Code of Military Justice (UCMJ). Investigation of incidents involving personnel subject to the UCMJ will begin immediately. Commanders will not delay processing a case pending host-nation action on jurisdiction. Specifically in Germany, commanders will not delay processing a case pending expiration of the 21-day notification period (UR 550-56). When charges are appropriate, they will be preferred and investigative procedures, including Article 32 investigations, if necessary, will be completed. If an Article 32 investigation is necessary, it will be completed even if the host country--

(1) Recalls its waiver (Germany only).

(2) Exercises criminal jurisdiction (countries other than Germany).

**c. Referral to Trial.** The convening authority may refer a case to trial, subject to waiver of jurisdiction by host-nation authorities. When a case is referred to trial before waiver of jurisdiction, the convening authority will notify the JA (Commander, USAREUR/7A, ATTN: AEAJA-MC, Unit 29351, APO AE 09014), and the Chief Circuit Judge, 5th Judicial Circuit, Mannheim Law Center, Unit 29901, Box 23, APO AE 09086.

**d. Disposition.** Cases subject to the exercise of host-nation jurisdiction will not be tried until the local legal-liaison authority or U.S. country representative provides confirmation that jurisdiction has been waived. Proceedings under Article 15, UCMJ, or other disposition of these cases will be according to UR 550-50 and UR 550-56.

## **8. ACTION TAKEN BY A SUPERIOR ARTICLE 15, UCMJ, AUTHORITY**

If a superior authority does not have a servicing judge advocate, that authority will refer Article 15, UCMJ, appeals to the SJA of the area general court-martial convening authority (GCMCA) (para 11). When time is critical or when communication with the judge advocate who normally would consider the appeal and advise the superior authority would be unduly time consuming, the appeal may be referred to another U.S. Army judge advocate authorized to review Article 15 appeals.

## 9. PREFERRING CHARGES AND PRETRIAL RESTRAINT

a. Commanders will notify the SJA within 24 hours after charges have been preferred against or pretrial restraint has been imposed on a soldier. Pretrial restraint includes conditions on--

- (1) Liberty.
- (2) Restriction.
- (3) Arrest.
- (4) Confinement (Rule for Courts-Martial (RCM) 304(a)).

b. Failure to comply with this policy does not--

- (1) Affect the validity of pretrial restraint.
- (2) Create any rights for the accused.

## 10. STANDARDS FOR PRETRIAL CONFINEMENT

**a. Authority to Approve Pretrial Confinement.** The GCMCA or an authorized designee must approve pretrial confinement of U.S. Army personnel. The SJA must be notified before confinement if the SJA is not the designee who approved confinement.

**b. Commander's Responsibilities.** At the time of initial pretrial confinement, the commander ordering pretrial confinement will comply with AR 190-47 and UR 190-47, and will give the confinement facility commander, the military magistrate servicing that confinement facility, and the defense counsel the following:

- (1) DA Form 5112-R (Checklist for Pretrial Confinement) completed by the commander (AR 27-10).
- (2) Two copies of DD Form 497 (Confinement Order) completed by the accused's commander. The form must show--
  - (a) The name, grade, and position of the person approving the pretrial confinement.
  - (b) The name and grade of the SJA notified.
- (3) AE Form 27-10B-R (Advice to Accused Upon Confinement)--
  - (a) Completed by the advising counsel.
  - (b) Signed by the counsel and the accused before confinement.
- (4) Statements of witnesses and military police, United States Army Criminal Investigation Command (USACIDC) reports, or other evidence establishing probable cause that the accused committed an offense triable by court-martial and that confinement is required by the circumstances.
- (5) A copy of DD Form 458 (Charge Sheet), if already prepared.
- (6) Proper clothing and equipment for the accused and a completed personal-property inventory signed by the accused and his or her commander as required by AR 190-47 and UR 190-47.

**c. Ordered Prisoner Release.** When a competent authority orders release of an accused, the accused's unit commander will immediately remove the accused from confinement. Abuses of pretrial confinement will be reported to the JA (Commander, USAREUR/7A, ATTN: AEAJA-MC, Unit 29351, APO AE 09014).

#### **d. Pretrial Confinement of U.S. Military Personnel Subject to Criminal Jurisdiction of Foreign Courts.**

(1) AR 27-10, chapter 17, authorizes GCMCAs to confine U.S. soldiers in U.S. installation confinement facilities (ICFs) based on foreign criminal charges, to meet any custodial obligations under the NATO Status of Forces Agreement. Before exercising this authority, the GCMCA must obtain, by telephone, the approval of the JA. The OJA POC is the Military and Civil Law Division, Office of the Judge Advocate (OJA), HQ USAREUR/7A (AEAJC-MC, 370-8775).

(2) If the JA disapproves a request by a GCMCA to confine a U.S. soldier pending foreign charges, the GCMCA may appeal the decision to the CG, USAREUR/7A. The decision of the CG, USAREUR/7A, is final.

(3) When reviewing a case involving the pretrial confinement of a U.S. soldier in a U.S. ICF based on foreign criminal charges, a recommendation by a neutral military magistrate or comparable legal officer that confinement is not necessary must be preceded by consultation with the OJA (AEAJA-MC). The recommendation will be sent through the Judge Advocate, USAREUR, ATTN: AEAJA-MC, Unit 29351, APO AE 09014 for CG, USAREUR/7A, review. The CG, USAREUR/7A, may direct release from confinement or order other appropriate actions.

#### **11. USAREUR GENERAL COURT-MARTIAL CONVENING AUTHORITIES**

USAREUR GCMCAs are as follows:

- a. CG, USAREUR/7A.
- b. Commanding General (CG), V Corps.
- c. CG, 1st Infantry Division.
- d. CG, 1st Armored Division.
- e. CG, 21st Theater Support Command.
- f. CG, United States Army Southern European Task Force.
- g. CG, Task Force Eagle.

#### **12. AREA COURT-MARTIAL JURISDICTION**

a. GCMCA jurisdictional responsibilities are listed in a jurisdictional memorandum approved by the CG, USAREUR/7A, and issued by the JA. The jurisdictional memorandum lists specific geographic areas and responsibilities assigned to each GCMCA under the area jurisdiction concept.

b. The following personnel are attached (c below) for the administration of military justice to the command exercising GCM jurisdiction in the specific geographic area in which the personnel are stationed:

- (1) Personnel assigned to HQ USAREUR/7A.
- (2) Personnel assigned to USAREUR commands (UR 10-5, app A) and their subordinate units.

(3) Individual U.S. Army personnel or personnel assigned to U.S. Army units, including United States Army National Guard (ARNG) and United States Army Reserve (USAR) units, attached to USAREUR. Units include brigades, battalions, companies, commands, platoons, squads, elements, detachments, teams, activities, agencies, field offices, branches, and crews, whether there is a designated commander, chief, officer in charge, or noncommissioned officer in charge. ARNG and USAR units in USAREUR are under the disciplinary control and military-justice jurisdiction of the CG, USAREUR/7A.

(4) Army personnel stationed in a GCMCA-area jurisdiction who are attached for the administration of military justice to units, elements, or commands in (1), (2), or (3) above, or are otherwise present in the USEUCOM area of responsibility, including personnel who are assigned or attached to--

- (a) U.S. Army elements of military assistance advisory groups, missions, and similar units.

- (b) U.S. Army elements of Supreme Headquarters Allied Powers Europe and its subordinate units.
- (c) U.S. Army elements of the USEUCOM and its subordinate units.
- (d) U.S. Army units (including units from the ARNG and the USAR).

c. Attachments include the administration of military justice, unless specifically excluded in an order of attachment or memorandum of understanding between the CG, USAREUR/7A, and the parent-headquarters GCMCA.

d. Because of area jurisdiction, two commanders may have authority for military justice over a particular soldier (for example, the commander of the unit to which the soldier is assigned and the commander exercising area jurisdiction over the soldier). In USAREUR, the GCMCA-area jurisdiction memorandum (a above) provides geographic areas and responsibilities assigned to each GCMCA, except as provided in (1) through (5) below. Failure to comply with this policy, however, does not invalidate an otherwise lawful exercise of jurisdiction.

(1) For units or unit elements of not more than 10 soldiers, GCMCAs may agree to allow exceptions, in whole or in part, to area court-martial jurisdiction. If for example, an infantry squad of not more than 10 soldiers is in GCM-area A and its parent platoon is in GCM-area B, GCMCAs of areas A and B may agree to allow command-line jurisdiction across the GCM area boundary. The approval of both GCMCAs is all that is required.

(2) For units or unit elements of more than 10 soldiers, exceptions to area court-martial jurisdiction require the approval of the CG, USAREUR/7A, except as provided in (3) and (4) below.

(3) For units or unit elements of any size, the GCMCAs may agree to allow Article 15, UCMJ, jurisdiction to follow command lines across GCM-area boundaries.

(4) Area-jurisdiction affiliations continue when USAREUR soldiers deploy outside their GCMCA-area jurisdiction. During out-of-area deployments, military-justice jurisdiction remains with the unit's permanent-duty-station GCMCA, unless otherwise agreed on by the GCMCAs concerned or modified by the CG, USAREUR/7A.

(5) With the consent of the GCMCAs concerned, commanders exercising court-martial jurisdiction may agree to transfer court-martial jurisdiction in a particular case across GCM-area boundaries. When the soldier to be transferred is not already assigned or attached to the gaining command, the gaining command may publish attachment orders.

e. Except as noted in (1) through (3) below, commanders exercising GCM jurisdiction have supervisory authority for the administration of military justice in their prescribed geographic areas. In these GCM areas, jurisdiction over inferior courts-martial and Article 15, UCMJ, proceedings are matters solely within the discretion of the GCMCA. Except as noted below, the GCMCA may permit complete command-line jurisdiction; provide, by attachment, for area-type jurisdiction; or combine the two. GCMCA includes--

- (1) Responsibilities specified in the UCMJ and the Manual for Courts-Martial (MCM), United States, 1998.
- (2) Authority to implement policy and procedures concerning the administration of military justice.
- (3) Authority to use personnel resources as necessary to take actions based on (1) and (2) above.

**NOTE:** As an exception to the area jurisdiction concept (e above), the Commander, 202d Military Police Group (USACIDC), will not be divested of his or her command-line authority under Article 15, UCMJ, over assigned personnel or those attached for UCMJ purposes.

f. The administration of military justice according to area jurisdiction includes--

- (1) Summary courts-martial, special courts-martial, and GCM jurisdiction.
- (2) Article 15, UCMJ, authority over officers and enlisted personnel.
- (3) Discharge under AR 635-200. This includes a specific delegation of authority by the CG, USAREUR/7A, to GCMCAs specified in paragraph 11 of this regulation, to act according to AR 635-200, paragraph 14-9.

(4) Retention beyond expiration of term of service in connection with court-martial charges or arrest according to AR 635-200.

(5) Elimination of officers according to AR 600-8-24.

(6) Resignations and requests for discharge according to AR 600-8-24.

**NOTE:** For (5) and (6) above, a recommendation must be received from the commanding general in the chain of command, when different from the area-jurisdiction GCMCA.

(7) Administrative reductions in rank for enlisted personnel according to AR 600-8-19.

(8) Applications for discharge as a conscientious objector according to AR 600-43.

(9) Line-of-duty determinations according to AR 600-8-1.

(10) Release of military personnel to civil authorities according to AR 190-9 and AR 630-10.

(11) Requests for military personnel to appear as witnesses before a foreign tribunal according to AR 27-40.

(12) Reports of survey according to AR 735-5, unless other specific designation is made.

(13) Remission or cancellation of indebtedness according to AR 600-4.

(14) Claims according to Article 139, UCMJ, and AR 27-20.

(15) Unless GCMCAs otherwise agree, mandatory general-officer memorandums of reprimand for driving while intoxicated (UR 190-1).

(16) Qualitative Management Program appeals and bars to reenlistment according to AR 601-280 requiring GCMCA action.

(17) Other actions that Army regulations or other URs require to be taken by persons exercising GCMCA.

g. Administrative actions not specified in f above remain in command channels (for example, Article 138 complaints remain in command-line jurisdiction according to AR 27-10, paragraph 20-4d).

h. GCMCAs will notify the JA (AEAJA-MC, 370-8775) before taking judicial, nonjudicial, or adverse administrative action against commissioned and warrant officers assigned or attached to HQ USAREUR/7A.

### **13. VICTIM/WITNESS ASSISTANCE PROGRAM**

a. AR 27-10 prescribes the Victim/Witness Assistance Program. The following information letters will be used to implement the program in USAREUR:

(1) Information letter for U.S. victims (app B).

(2) Information letter for German victims (app C).

(3) Information letter for U.S. witnesses (app D).

(4) Information letter for German witnesses (app E).

**NOTE:** The letters in (1) through (4) above are for use in Germany. If used in another country, these letters must be modified and translated to meet the specific country's legal requirements.

b. SJAs will prepare an enclosure to attach to each of the letters in paragraphs a(1) through a(4) above. The enclosure will include--

(1) The name of the SJA.

(2) The telephone number of the victim/witness assistance officer.

(3) A list of people and agencies, including telephone numbers and locations, that are sources of assistance in the local area.

c. Civilian witnesses from the United States who testify at courts-martial in USAREUR present unique payment problems. Appendix F prescribes how to pay these witnesses. In addition to the information in appendix D, U.S. civilian witnesses will receive a copy of the Witness Information Sheet for Civilian Witnesses From the United States Who Testify in Courts-Martial in USAREUR (app F, fig F-1).

## 14. ATTENDANCE OF WITNESSES

### a. Military Personnel.

**(1) Attendance Before Civil Court.** Requests for military witnesses to attend a civil-court proceeding must comply with AR 27-40, AR 195-2, UR 550-50, and UR 550-56.

**(2) Request for Court-Martial Witness Confined in U.S. Army Correctional Facilities.** U.S. Army correctional facilities will help commands secure the presence of prisoners as witnesses. Commands requesting witnesses in courts-martial will--

(a) Send the following information to the confinement facility using the quickest means available to ensure the facility gets the information at least 7 days before the prisoner's presence is required:

1. Name of the prisoner.

2. Purpose for which the prisoner is needed.

3. Date the prisoner is required.

4. Date of the prisoner's return to the confinement facility (approximate date if the specific date is not known).

5. Name and rank of the escort (all escorts will be unarmed noncommissioned officers).

6. Name, rank, and telephone number of requesting command SJA POC.

(b) Provide and pay for escorts, including for transportation and lodging. The requesting command will provide transportation tickets for the escort (round-trip) and prisoner (one-way) before leaving the confinement facility. Travel reservations should remain open for the return trip to coordinate prisoner and escort travel. Commands must ensure escorts have sufficient funds to cover their own expenses and those of the prisoner, such as for meals, in case of unexpected delays in travel. Escorts arriving without proper tickets or fund cites may be delayed from leaving the confinement facility. Prisoners will be billeted in local military confinement facilities while at the requesting command.

### b. Witnesses Not Subject to the UCMJ. The following applies to witnesses not subject to the UCMJ:

**(1) Government Employees.** Requests for U.S. and local national (LN) employees of the U.S. Government to appear as witnesses before courts-martial will be made to the employee's supervisor. The supervisor will take action to ensure employees attend. Employees may not be ordered or directed to testify against their will. However, employees are subject to subpoena. Requests for USACIDC laboratory examiners to appear at legal proceedings must be made by priority message at least 10 workdays before the requested appearance date (AR 195-2).

**(2) Family Members.** When appropriate, family members will be asked to appear voluntarily as witnesses before courts-martial. Appropriate arrangements will be made through their sponsors.

**(3) Expert Witnesses.** Expert witnesses will be employed according to MCM, Defense Finance and Accounting Service-Indianapolis (DFAS-IN) Regulation 37-1, RCM 703, and this regulation, appendix G.

**(4) Other Civilian Witnesses.** When appropriate, civilian witnesses other than those in (1) through (3) above will be asked to appear at courts-martial. When voluntary attendance cannot be obtained, local civil authorities (police, public prosecutors, and judicial authorities) may be contacted. Before contacting witnesses or local civil authorities, coordination will be made with local legal-liaison authorities in Germany (UR 550-56) or the U.S. country representative outside Germany (UR 550-50). This authority or representative will send the request to the appropriate public prosecutor with jurisdiction over the area in which the witness resides. As soon as possible before testifying, the witness will be given a copy of the appropriate information letter (apps D or E, as applicable).

**c. Fees and Allowances.** DFAS-IN Regulation 37-1 governs the payment of fees and allowances for witnesses and interpreters attending courts-martial. As a general rule, rates of pay and allowances will be the same as those provided for witnesses and interpreters attending courts in the United States.

(1) In Germany, disbursing officers are authorized to pay the rate prescribed in DFAS-IN Regulation 37-1 or the rate provided by German law, whichever is higher. Appendix G of this regulation is a translation of applicable German laws on compensating witnesses and experts and is a translation of a fee schedule for experts.

(2) Local residents not considered Government employees according to DFAS-IN Regulation 37-1, but entitled to pay and allowances under employment contracts with the U.S. Government while attending courts-martial, will be paid according to their contracts.

(3) Local residents who are not authorized pay and allowances under employment contracts while attending courts-martial will be paid the same fees and allowances as other witnesses and interpreters.

(4) Trial counsel and summary courts-martial officers will ensure necessary vouchers are prepared, and procure the necessary supporting documents to pay witnesses and interpreters according to DFAS-IN Regulation 37-1.

**d. Requests To Appear and Testify.** Requests for personnel not in the U.S. military to appear and testify may be made by using AE Form 27-10C-R (Request To Appear and Testify/*Aussageersuchen*). AE Form 27-10C-R may be used to support a voucher for the payment of witness fees and allowances. This form is designed for use in Germany. If used elsewhere, AE Form 27-10C-R should be translated into the language of the country in which the form is used before being reproduced.

**e. Procedures for Requesting Civilian Witnesses Residing in the United States.** When attendance of a witness residing in the United States is essential, the request for the witness to attend will be prepared according to appendix F. Requests for civilian witnesses from the United States must be received by the United States Army Legal Services Agency (USALSA) at least 14 days before the desired arrival date. If the passport status of the witness is unknown, or the witness does not have a valid passport, additional notice to the USALSA is required.

**f. Reimbursing Witnesses.** The finance office of the requesting command will process paperwork to compensate witnesses before they leave the command. Military-justice personnel will ensure necessary vouchers and supporting documents are prepared and processed quickly and that witnesses are paid according to the following guidelines:

(1) Fees and allowances provided for in DFAS-IN Regulation 37-1 will be used when the computed amounts are higher than or equal to witness entitlements under German law.

(2) When the entitlement of a witness under German law (app G) is more than when computed in (1) above, payment will be based on German law.

(3) Claims for loss of pay will be substantiated by a written statement from the employer of the witness. The statement will include the witness's tour of duty, the number of workhours lost, and the amount of wages or salary lost while serving as a witness. The statement will be part of the voucher.

(4) Claims for reimbursing experts will be substantiated as required by DFAS-IN Regulation 37-1.

## **15. REPORTS OF TRIAL RESULTS**

On final court adjournment, the trial counsel will inform the accused's immediate unit commander about trial results in writing, including any findings reached and the sentence imposed by the court. Copies of trial-result reports will be given to the convening authority or his or her designee. When the accused is placed in confinement, a copy of the report will be sent to the confinement facility. Copies of trial-result reports in the types of cases listed in paragraph 4b(1) (for example, cases that may generate significant publicity, capital cases) will be sent to the Commander, USAREUR/7A, ATTN: AEAJA-MC, Unit 29351, APO AE 09014.

## **16. RELEASE OF TRIAL RESULTS**

After the trial, the SJA may make a summary of the trial results available to the servicing public affairs office. The summary may include a brief statement of the facts and the sentence imposed.

## **17. DISTRIBUTION OF COURT-MARTIAL ORDERS**

One copy of the initial court-martial promulgating orders and all supplementary court-martial orders will be issued to the military judge, trial counsel, and defense counsel.

## **18. REPORTS AND COPIES OF DISCIPLINARY ACTIONS REQUIRED BY HQ USAREUR/7A**

**a. Report of Judicial and Disciplinary Activity in the Army.** The applicable SJA will send a copy of DA Form 3169-R (Report of Judicial Disciplinary Activity in the Army) to the Commander, USAREUR/7A, ATTN: AEAJA-MC, Unit 29351, APO AE 09014, within 5 workdays after the last day of the month or, if GCM jurisdiction is discontinued, as soon as possible after discontinuation.

**b. Quarterly Reports.** The SJA of each GCM jurisdiction will prepare AE Form 27-10A-R (Quarterly Report on the Administration of Military Justice) (RCS AEAJA-27-10A). Courts-martial will be reported on AE Form 27-10A-R for the quarter in which the sentence was adjudged. The SJA will send the report to the Commander, USAREUR/7A, ATTN: AEAJA-MC, Unit 29351, APO AE 09014, within 5 workdays after the end of each quarter.

**c. Sexual-Harassment Data.** Sexual-harassment data will be reported on AE Form 27-10A-R. In identifying acts of sexual harassment, SJAs should apply the definition in the MCM, part IV, paragraph 17; Article 93, UCMJ; and AR 600-20.

**d. Administrative-Elimination Data.** Administrative-elimination data will be reported on AE Form 27-10A-R. The data includes processing times and statistics on administrative eliminations.

## **19. TRANSFER OF USAREUR MILITARY PERSONNEL FOR PROSECUTION OUTSIDE USAREUR**

Transfer of USAREUR military personnel for prosecution in civil court outside USAREUR must be done according to the MCM, AR 190-9, AR 630-10, and RCM 106. Reassigning USAREUR soldiers for trial by courts-martial outside USAREUR must be done according to AR 614-6.

## **20. BARS TO ENTRY**

### **a. Permanent Bars to Entry.**

(1) The following persons are permanently barred entry to installations, housing areas, lands, buildings, or other structures or places under the control or jurisdiction of the CG, USAREUR/7A:

(a) Soldiers who are in an excess-leave status pending execution of an approved dishonorable discharge, bad-conduct discharge, or a dismissal.

(b) Former soldiers who were discharged under other-than-honorable conditions, or who have received a dishonorable discharge, bad-conduct discharge, or a dismissal.

(2) GCMCAs will issue permanent bar memorandums to individuals. Bar memorandums will notify barred individuals that they have been barred permanently and explain the terms of the bar. Bar memorandums will identify barred persons by--

(a) Social security number.

(b) Passport or German identification card (*Ausweis*) number, as appropriate.

(c) The status of the individual (that is, former soldier, U.S. citizen, family member, former member of other service, LN citizen, LN employee, third-country national).

#### **b. Other Bars to Entry.**

**(1) USAREUR Bars.** GCMCAs, area support group (ASG) commanders, and the Chief of Staff, HQ USAREUR/7A, acting for the CG, USAREUR/7A, also may issue orders barring entry to installations, housing areas, lands, buildings, or any other structures or places under the control or jurisdiction of the CG, USAREUR/7A. These bars may be issued for the following categories of individuals who have engaged in serious or repeated acts of misconduct or other activity that threatens good order, discipline, or morale; combat readiness; mission accomplishment; installation security; or the privacy rights of those who work or live on U.S. military installations:

- (a) Civilians (including LN employees, local residents, and third-country nationals).
- (b) U.S. citizens (including Federal employees and family members).
- (c) Members or former members of other services.

**(2) Delegation Prohibition.** GCMCAs, ASG commanders, and the Chief of Staff, HQ USAREUR/7A, may not delegate their authority to issue permanent bars to entry (a above) or other bars to entry ((1) above).

**(3) Local Bars.** ASG and base support battalion (BSB) commanders and commanders who exercise GCM authority may issue local bar memorandums barring people from entering areas under their local control. This authority is inherent and is not limited by the issuance of other bar memorandums by a GCMCA or an ASG commander. The ASG commander may delegate the authority to bar offenders from a particular ASG to the BSB commander. Requests to have an offender barred from all USAREUR areas and facilities should be sent by the civilian misconduct action authority to the ASG commander or the ASG.

**(4) Civilian Employee Bars.** Commanders must coordinate bars against civilian employees (appropriated fund, nonappropriated fund (NAF), Department of Defense Dependents Schools (DODDS), and Army and Air Force Exchange Service (AAFES)) with the servicing civilian personnel advisory center (CPAC). When the person is a DODDS or AAFES employee, the bar must be coordinated with the employing activity.

**(5) Medical Treatment Facilities.** Commanders or their delegees may not bar offenders from access to medical treatment facilities.

**(6) Bar Incidental Effects.** Commanders or their delegees must be aware that bars from entry may have incidental effects, including--

- (a) Denying a person access to AAFES facilities, commissaries, or other places (including attendance at DODDS schools) where privileges have not been abused.
- (b) Making the person ineligible for future DA employment in the geographic area covered by the bar.
- (c) Causing the separation of a NAF employee under AR 215-3. NAF employees may be considered disqualified when they are barred from the area of employment.

**(7) Legal Review and Advice.** Commanders imposing bars to entry on persons listed in (1)(a) through (c) and (3) above will obtain the legal review and the advice of their servicing SJA before acting to impose a bar to entry.

#### **c. List of Barred Personnel.**

(1) The GCMCA or ASG commander issuing a bar memorandum will send a copy to the Commander, 1st Personnel Command, ATTN: AEUPE-PSSD-PSD, Unit 29058, APO AE 09081, within 15 days after the end of each quarter.

(2) The Commander, 1st Personnel Command, will maintain a consolidated list of persons barred from installations and facilities USAREUR-wide. Official access to this list is available by contacting--

(a) The Commander, 1st Personnel Command, ATTN: AEUPE-PSSD-PSD, Unit 29058, APO AE 09081 (379-6516).

(b) Local ASG, BSG, or tactical commanders; or local CPACs. These commands and activities receive reports monthly.

**d. Removing or Modifying Bars to Entry.**

(1) Requests to remove or modify a bar to entry must be sent to the authority who issued the bar memorandum. Requests may not be made until at least 1 year after the effective date of the bar memorandum.

(2) Requests will explain why the bar should be lifted (why the individual no longer poses a threat to good order, discipline, or morale; combat readiness; mission accomplishment; installation security; or the privacy rights of those who work or live on U.S. military installations).

(3) Commanders should not remove or modify bars to entry until at least 1 year after the effective date of the memorandum. Commanders will seek the legal review and advice of their SJA before acting on requests to remove or modify bars to entry.

## **APPENDIX A REFERENCES**

Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces (NATO SOFA), 19 June 1951 (available at <http://www.nato.int/docu/basicxt/b510619a.htm>)

Agreement of 3 August 1959, as Amended by the Agreements of 21 October 1971, 18 May 1981, and 18 March 1993, to Supplement the Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of their Forces With Respect to Foreign Forces Stationed in the Federal Republic of Germany (Revised Supplementary Agreement) (effective 29 March 1998), and the Protocol of Signature to the Supplementary Agreement (available at <http://www.aeaim.hqusareur.army.mil/library/mis/f-pub-mis.htm>)

Manual for Courts-Martial, United States, 1998

Uniform Code of Military Justice

The Joint Federal Travel Regulation: volume I; Uniformed Service Members

Joint Travel Regulations: volume II; DOD Civilian Personnel

AR 27-1, Judge Advocate Legal Services

AR 27-10, Military Justice

AR 27-20, Claims

AR 27-40, Litigation

AR 55-60/ Navy Staff Office Publication P-2471/Air Force Regulation 177-135, Official Table of Distances (Continental United States, Alaska, Hawaii, Canada, Canal Zone, Central America, Mexico, and Puerto Rico)

AR 190-9, Absentee Deserter Apprehension Program and Surrender of Military Personnel to Civilian Law Enforcement Agencies

AR 190-47, The Army Corrections System

AR 195-2, Criminal Investigation Activities

AR 600-4, Remission or Cancellation of Indebtedness for Enlisted Members

AR 600-8-1, Army Casualty Operations/Assistance/Insurance

AR 600-8-24, Officer Transfers and Discharges

AR 600-43, Conscientious Objection

AR 601-280, Army Retention Program

AR 614-6, Permanent Change of Station Policy

AR 630-10, Absence Without Leave, Desertion, and Administration of Personnel Involved in Civilian Court Proceedings

AR 635-200, Enlisted Personnel

AR 735-5, Policies and Procedures for Property Accountability

DA Pamphlet 27-10, Military Justice Handbook for the Trial Counsel and Defense Counsel

DA Pamphlet 55-1/Navy Staff Office Publication P-2472/Air Force Manual 177-136, Official Table of Distances, Foreign Travel

Defense Finance and Accounting Service-Indianapolis Regulation 37-1, Finance and Accounting Policy Implementation

Soldier Training Publication 12-71D15-SM-TG, Soldier's Manual and Trainer's Guide, MOS 71D, Legal Specialist Skill Levels 1/2/3/4/5

UR 10-5, HQ USAREUR/7A Organization and Responsibilities

UR 27-1, USAREUR Judge Advocate Legal Service

UR 27-9, Misconduct by Civilians

UR 190-1/USNAVEUR Instruction 11240.6I/USAFE Regulation 125-13, Registering and Operating Privately Owned Motor Vehicles in Germany

UR 190-47, The United States Army Confinement System in USAREUR

UR 550-50, Exercise of Foreign Criminal Jurisdiction Over United States Personnel

UR 550-56/USNAVEUR Instruction 5820.13C/USAFE Instruction 51-705, Exercise of Jurisdiction by German Courts and Authorities Over U.S. Personnel

**APPENDIX B  
SAMPLE INFORMATION LETTER FOR U.S. VICTIMS**

Figure B-1 is a sample letter to be sent to a U.S. victim. Figure B-2 is a sample of enclosure 2 to the letter that explains the U.S. military justice system. This regulation, paragraph 13b, prescribes how to prepare enclosure 1.

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(Date)

(Office Title)

Name  
Street Address  
City, State, Zip Code

Dear \_\_\_\_\_:

This letter is being sent to you as part of the U.S. Army's Victim/Witness Assistance Program. If you have questions that this letter does not answer, you should contact your victim/witness liaison officer.

Enclosure 1 is a list that includes your victim/witness liaison officer's telephone number and individuals and agencies that may serve as sources of victim assistance. Enclosure 2 is an explanation of the U.S. military justice system and how it works.

As a victim and potential witness in a criminal matter that may be resolved in the U.S. Army military justice system, you are entitled to understand--

- a. How the justice system works.
- b. What you may expect from this system as a victim.
- c. What this system asks of you.

Sincerely,

Name  
Title

Enclosures

---

**\*Figure B-1. Sample Information Letter for U.S. Victims**

**\*This format will be used only as a guide and will not be printed, reproduced, or stocked.**

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## THE U.S. MILITARY JUSTICE SYSTEM

### HOW THE SYSTEM WORKS

#### 1. GENERAL

When a possible crime is brought to the attention of U.S. Army authorities, a couple of things happen:

a. First, military or German officials conduct an initial investigation.

b. Second, an evaluation is made to determine whether the Army has legal authority (jurisdiction) to investigate and prosecute the case or whether the case will be prosecuted by German civilian authorities. This determination is based on a number of factors as outlined in the NATO Status of Forces Agreement (SOFA) and the Supplementary Agreement.

#### 2. WHAT HAPPENS IF THE U.S. ARMY DOES NOT HAVE JURISDICTION

If the Army does not have jurisdiction--

a. Appropriate German authorities will be notified. These authorities will determine whether or not prosecution is appropriate in German court.

b. You probably will receive no further notification from military authorities. At your request, the victim/witness liaison officer will advise you of the German civilian authorities who may be handling the matter.

#### 3. WHAT HAPPENS IF THE U.S. ARMY HAS JURISDICTION

If the Army has jurisdiction, a decision will be made by the commanders having authority over the accused whether or not prosecution is appropriate. Potential punishment for criminal convictions can range from very minor sanctions, such as a reprimand, to more serious punishments, such as life imprisonment or, in certain cases such as premeditated murder, death. Offenses may be handled in one of the following ways:

a. The immediate commander of the accused may dismiss the charges. If the offenses are determined to be minor, the immediate commander may initiate nonjudicial punishment (Article 15, Uniform Code of Military Justice (UCMJ)) proceedings. Under these proceedings, that commander determines guilt or innocence and has authority to impose small forfeitures of pay, reductions in pay grade, and restrictions, but may not send the accused to jail.

b. A commander who by law has the authority to convene administrative-elimination boards or courts-martial (trials) may handle more serious offenses, if appropriate.

c. In cases alleging serious offenses, normally a formal, preliminary hearing (known as an Article 32 investigation) is held to evaluate the quality and quantity of the evidence and to recommend what level of court-martial, if any, is appropriate. The different levels of courts-martial are as follows:

**(1) Summary Court-Martial.** The lowest level of courts-martial is the summary court-martial. At a summary court-martial, a military officer sits as judge and may sentence the accused. The maximum punishment that normally may be adjudged is forfeiture of two-thirds of 1 month's pay, reduction in rank, and up to 30 days in jail.

**(2) Special Court-Martial.** A special court-martial is the intermediate level of court-martial and involves a legally qualified military judge and (at the option of the accused) a jury (called court members) of military personnel. It also has a prosecuting attorney (trial counsel) and entitles the accused to a defense attorney. If the accused requests, he or she may be tried by military judge alone. This court may impose a maximum sentence of fines or forfeiture of two-thirds pay for 6 months, reduction to the lowest enlisted grade, confinement in jail for up to 6 months, and in certain cases, a bad-conduct (punitive) discharge from the Army.

**(3) General Court-Martial.** A general court-martial is the highest level of court-martial and is usually reserved for serious military or civilian offenses (felonies). A general court-martial normally is ordered by an officer in the rank of general and involves a military judge and (at the option of the accused) a jury (called court members) of military personnel. It may impose up to the maximum permissible punishments authorized by law

including, depending on the offenses involved, a fine, total forfeiture of pay, reduction to the lowest enlisted grade, a dishonorable (punitive) discharge, a period in jail up to life imprisonment or, for a few very serious offenses, death.

**NOTE:** Your victim/witness liaison officer can advise you regarding the maximum punishment for the offenses under investigation.

#### **4. PRETRIAL AGREEMENT**

If a case is sent to a special or general court-martial, a pretrial agreement (plea bargain) may be reached between the commander who authorized the court-martial and the accused. These agreements may be entered into for a number of reasons, including sparing a victim the trauma of testifying in court, eliminating the delay and cost of a lengthy trial, and reducing the risk of having a case reversed by an appellate court. Pretrial agreements usually provide that the accused plead guilty in exchange for a limit on the sentence or dismissal of certain charges.

#### **WHAT YOU MAY EXPECT FROM THE U.S. MILITARY JUSTICE SYSTEM**

As a victim of an offense that is handled by the U.S. military justice system, you are entitled to courteous and compassionate consideration by military law enforcement and legal personnel and by other military personnel responsible for providing victim assistance services to you. Furthermore, you may expect the efforts of those charged with administering the system to dispose of charges in a fair and timely manner. You may be entitled to some of the following services:

**a. Medical and Social Services.** Medical and social services are available for soldiers and their family members. Generally, civilians who are not family members of military personnel are not legally entitled to these services.

(1) A military medical treatment facility (MTF) may provide emergency care if the MTF can furnish the service most expeditiously after an offense. In some cases, the MTF commander may waive charges for this treatment.

(2) DOD civilian employees and their family members also may receive medical services; they will be charged at the prescribed rates.

(3) Medical treatment is available at the medical facility listed in enclosure 1. Civilians who are not eligible for nonemergency military medical treatment may get treatment at no cost to the U.S. Government at the local civilian facilities included in enclosure 1. Help with financial, legal, or other social matters related to the offense also may be obtained as shown in enclosure 1.

**b. Notice of Critical Events.** If you wish to be notified of critical events, provide your victim/witness liaison officer with your address and telephone number. He or she will notify you, in advance when circumstances allow, of the following events:

(1) Apprehension (arrest) of the accused.

(2) Pretrial release of the accused.

(3) Trial date or a guilty plea and sentencing proceedings.

**NOTE:** Questions pertaining to this notification should be directed to your victim/witness liaison officer.

**c. Protection.** If you believe that you are being subjected to bribery, threats, intimidation, or harassment as a victim (or potential witness), call the local or military police. Steps will be taken by appropriate authorities to investigate the matter and provide you with necessary protection.

**d. Consultations with Prosecuting Officials.** While the running of the military justice system, including handling the case in which you may be involved, is a decision left by U.S. Federal statute to certain military commanders, the U.S. Army recognizes the importance your views on certain issues may have in helping

commanders make their decisions. For this reason, you may be requested to consult with commanders or their lawyers and prosecuting attorneys concerning any of the following matters:

- (1) Entry (preferral) of charges against the accused.
- (2) Dismissal of charges against the accused.
- (3) Pretrial restraint (including confinement) of the accused.
- (4) Plea negotiations (plea bargaining) between the accused and the Government.

**NOTE:** Questions concerning these matters should be directed to your victim/witness liaison officer.

#### **e. Property Return and Restitution.**

**(1) Property Return.** The U.S. Army will safeguard and return property as soon as possible to the lawful owner. However, if the property is required for evidence in a court-martial, it may be temporarily held. Your victim/witness liaison officer will advise you of the agency holding your property and procedures for having it returned.

**(2) Restitution (Recovery for Victim's Loss).** The military justice system was established primarily to help maintain good order and military discipline rather than securing restitution for victims. There are various means of restitution, however, that might be available to you:

(a) The accused may be personally liable for personal injury done to you or for damage done to your property. If the accused is on active duty, you may be able to recover the value of certain property losses directly from his or her military pay, provided the claim is made within 90 days after the loss or good cause is shown for a claim filed later.

(b) Sometimes a claim may be made against the U.S. Army. You should discuss such claims against the accused or the Army promptly with the local Army claims office.

(c) A demand or lawsuit against the accused or other financially responsible parties for restitution for damages and injuries may be obtained under certain circumstances. You may get legal advice from your local legal assistance office or from your attorney.

(d) If you are a victim of a violent crime, you may be eligible for compensation from the *Versorgungsamts* (competent pension office) under the German Law Concerning Compensation for Victims of Violent Crimes.

**f. Notification of Employers or Creditors.** If, as a result of the incident, you are forced to be absent from work or you are subjected to serious financial strain, you are entitled to have those circumstances that contributed to your absence or financial hardship explained to your employer or creditors respectively. For assistance in obtaining an explanation, contact your victim/witness liaison officer.

**g. Case Status and Notification of Hearings.** If you have any questions concerning the status of the case or desire to provide input, contact your victim/witness liaison officer. You may have the opportunity to attend hearings in the case. However, if you are also a witness, the presiding officer or judge has the authority to exclude you when other evidence is being presented. If you wish to attend and if you provide the victim/witness liaison officer your current telephone number or address, you will be notified in advance of such hearings. Always call to confirm hearing dates immediately before attending to ensure that they have not been rescheduled.

### **WHAT THE U.S. MILITARY JUSTICE SYSTEM ASKS OF YOU**

1. The military justice system is designed to--
  - a. Promote good order and discipline in the Armed Forces.
  - b. Provide a system for the just disposition of criminal offenders.

c. Provide a fair trial for the accused.

d. Prevent the commission of further crime.

e. Appropriately punish and rehabilitate those persons whose guilt has been proven beyond a reasonable doubt.

2. To accomplish the goals of the military justice system, your cooperation with law enforcement and other military authorities is extremely important.

3. Victims often want to withdraw from the criminal justice process, perhaps because of fear, frustration, or simply the desire to get as far away from the incident as possible. Should you have any of these or similar feelings, it is certainly understandable. We ask, however, that while you may not be able to set them aside completely, you nevertheless do not let them prevent your essential cooperation.

4. The U.S. Army's Victim/Witness Assistance Program, with its services for victims described in this letter (see "What You May Expect From the U.S. Military Justice System"), has been established to reduce the hardships of your experience and to make your cooperation easier. Take advantage of the program; by doing so, you will help the U.S. military justice system work and may, in the process, prevent others from becoming victims like yourself.

Enclosure 2

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**\*Figure B-2. Sample Enclosure 2 to Information Letter for U.S. Victims**

**\*This format will be used only as a guide and will not be printed, reproduced, or stocked.**

**APPENDIX C**  
**SAMPLE INFORMATION LETTER FOR GERMAN VICTIMS (*INFORMATIONEN FÜR DEUTSCHE***  
***GESCHÄDIGTE*) (ENGLISH AND GERMAN VERSIONS)**

Figure C-1 is a sample letter in English to be sent to a German victim. Figure C-2 is a sample of enclosure 2 in English. Figures C-3 and C-4 are German translations of figures C-1 and C-2 respectively. This regulation, paragraph 13b, prescribes how to prepare enclosure 1.

---

(Date)

(Office Title)

Name  
Street Address  
City, State, Zip Code

Dear \_\_\_\_\_:

This letter is being sent to you as part of the U.S. Army's Victim/Witness Assistance Program. If you have questions that this letter does not answer, you should contact your victim/witness liaison officer. (In some cases the victim/witness liaison officer may use a German-speaking interpreter as your point of contact.)

Enclosure 1 is a list that includes your victim/witness liaison officer's telephone number and individuals and agencies that may serve as sources of victim assistance. Enclosure 2 is an explanation of the U.S. military justice system and how it works.

As a victim and potential witness in a criminal matter that may be resolved in the U.S. Army military justice system, you are entitled to understand--

- a. How the justice system works.
- b. What you may expect from this system as a victim.
- c. What this system asks of you.

Sincerely,

Name  
Title

Enclosures

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**\*Figure C-1. Sample Information Letter for German Victims**

**\*This format will be used only as a guide and will not be printed, reproduced, or stocked.**

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## THE U.S. MILITARY JUSTICE SYSTEM

### HOW THE SYSTEM WORKS

#### 1. GENERAL

When a possible crime is brought to the attention of U.S. Army authorities, a couple of things happen:

a. First, military or German officials conduct an initial investigation.

b. Second, an evaluation is made to determine whether the Army has legal authority (jurisdiction) to investigate and prosecute the case or whether the case will be prosecuted by German civilian authorities. This determination is based on a number of factors as outlined in the NATO Status of Forces Agreement (SOFA) and the Supplementary Agreement.

#### 2. WHAT HAPPENS IF THE U.S. ARMY DOES NOT HAVE JURISDICTION

If the Army does not have jurisdiction--

a. Appropriate German authorities will be notified. These authorities will determine whether or not prosecution is appropriate in German court.

b. You probably will receive no further notification from military authorities. At your request, the victim/witness liaison officer will advise you of the German civilian authorities who may be handling the matter.

#### 3. WHAT HAPPENS IF THE U.S. ARMY HAS JURISDICTION

If the Army has jurisdiction, a decision will be made by the commanders having authority over the accused whether or not prosecution is appropriate. Potential punishment for criminal convictions can range from very minor sanctions, such as a reprimand, to more serious punishments, such as life imprisonment or, in certain cases such as premeditated murder, death. Offenses may be handled in one of the following ways:

a. The immediate commander of the accused may dismiss the charges. If the offenses are determined to be minor, the immediate commander may initiate nonjudicial punishment (Article 15, Uniform Code of Military Justice (UCMJ)) proceedings. Under these proceedings, that commander determines guilt or innocence and has authority to impose small forfeitures of pay, reductions in pay grade, and restrictions, but may not send the accused to jail.

b. A commander who by law has the authority to convene administrative-elimination boards or courts-martial (trials) may handle more serious offenses if appropriate.

c. In cases alleging serious offenses, normally a formal, preliminary hearing (known as an Article 32 investigation) is held to evaluate the quality and quantity of the evidence and to recommend what level of court-martial, if any, is appropriate. The different levels of courts-martial are as follows:

**(1) Summary Court-Martial.** The lowest level of courts-martial is the summary court-martial. At a summary court-martial, a military officer sits as judge and may sentence the accused. The maximum punishment that normally may be adjudged is forfeiture of two-thirds of 1 month's pay, reduction in rank, and up to 30 days in jail.

**(2) Special Court-Martial.** A special court-martial is the intermediate level of court-martial and involves of a legally qualified military judge and (at the option of the accused) a jury (called court members) of military personnel. It also has a prosecuting attorney (trial counsel) and entitles the accused to a defense attorney. If the accused requests, he or she may be tried by military judge alone. This court may impose a maximum sentence of fines or forfeiture of two-thirds pay for 6 months, reduction to the lowest enlisted grade, confinement in jail for up to 6 months, and in certain cases, a bad-conduct (punitive) discharge from the Army.

**(3) General Court-Martial.** A general court-martial is the highest level of court-martial and is usually reserved for serious military or civilian offenses (felonies). A general court-martial normally is ordered by an officer in the rank of general and involves a military judge and (at the option of the accused) a jury (called court members) of military personnel. It may impose up to the maximum permissible punishments authorized by law

including, depending on the offenses involved, a fine, total forfeiture of pay, reduction to the lowest enlisted grade, a dishonorable (punitive) discharge, a period in jail up to life imprisonment or, for a few very serious offenses, death.

**NOTE:** Your victim/witness liaison officer can advise you regarding the maximum punishment for the offenses under investigation.

#### **4. PRETRIAL AGREEMENT**

If a case is sent to a special or general court-martial, a pretrial agreement (plea bargain) may be reached between the commander who authorized the court-martial and the accused. These agreements may be entered into for a number of reasons, including sparing a victim the trauma of testifying in court, eliminating the delay and cost of a lengthy trial, and reducing the risk of having a case reversed by an appellate court. Pretrial agreements usually provide that the accused plead guilty in exchange for a limit on the sentence or dismissal of certain charges.

#### **WHAT YOU MAY EXPECT FROM THE U.S. MILITARY JUSTICE SYSTEM**

As a victim of an offense that is handled by the U.S. military justice system, you are entitled to courteous and compassionate consideration by military law enforcement and legal personnel and by other military personnel responsible for providing victim assistance services to you. Furthermore, you may expect the efforts of those charged with administering the system to dispose of charges in a fair and timely manner. You may be entitled to some of the following services:

**a. Medical and Social Services.** You may be eligible for medical and social services provided under German law. Your participation in the U.S. military justice system does not make you ineligible for medical or social benefits granted by German institutions. You should contact your health insurance agency or the nearest *Sozialamt* (social assistance office) for help in obtaining medical and social services.

**b. Notice of Critical Events.** If you wish to be notified of critical events, provide your victim/witness liaison officer your address and telephone number. He or she will notify you, in advance when circumstances allow, of the following events:

- (1) Apprehension (arrest) of the accused.
- (2) Pretrial release of the accused.
- (3) Trial date or a guilty plea and sentencing proceedings.

**NOTE:** Questions pertaining to this notification should be directed to your victim/witness liaison officer.

**c. Protection.** If you believe that you are being subjected to bribery, threats, intimidation, or harassment as a victim (or potential witness), call the local German police. Steps will be taken by appropriate authorities to investigate the matter and provide you with necessary protection.

**d. Consultations With Prosecuting Officials.** While the running of the military justice system, including handling the case in which you may be involved, is a decision left by U.S. Federal statute to certain military commanders, the U.S. Army recognizes the importance your views on certain issues may have in helping commanders make their decisions. For this reason, you may be requested to consult with commanders or their lawyers and prosecuting attorneys concerning any of the following matters:

- (1) Entry (preferral) of charges against the accused.
- (2) Dismissal of charges against the accused.
- (3) Pretrial restraint (including confinement) of the accused.
- (4) Plea negotiations (plea bargaining) between the accused and the government.

Questions concerning these matters should be directed to your victim/witness liaison officer.

#### **e. Property Return and Restitution.**

**(1) Property Return.** The U.S. Army will safeguard and return property as soon as possible to the lawful owner. However, if the property is required for evidence in a court-martial, it may be temporarily held. Your victim/witness liaison officer will advise you of the agency holding your property and procedures for having it returned.

**(2) Restitution (Recovery for Victim's Loss).** The military justice system was established primarily to help maintain good order and military discipline rather than securing restitution for victims. There are various means of restitution, however, that might be available to you:

(a) The accused may be personally liable for personal injury done to you or for damage done to your property. If the accused is on active duty, you may be able to recover the value of certain property losses directly from his or her military pay, provided the claim is made within 90 days after the loss or good cause is shown for a claim filed later.

(b) A request for an ex gratia award also may be made against the U.S. Government under certain circumstances through consultation with the Administration of Defense Cost.

(c) A demand or lawsuit against the accused or other financially responsible third parties for restitution for damages and injuries also may be obtained under certain circumstances. To obtain legal advice in this regard, soldiers, retirees, DOD civilian employees, and family members may contact the local legal assistance office. (If you are not eligible for the Army legal assistance, you may see an attorney of your own selection, at no expense to the U.S. Government.)

(d) If you are a victim of a violent crime, you also may be eligible for compensation from the competent pension office (*Versorgungsamt*) under the German Law Concerning Compensation for Victims of Violent Crimes.

**f. Notification of Employers or Creditors.** If, as a result of the incident, you are forced to be absent from work or you are subjected to serious financial strain, you are entitled to have those circumstances that contributed to your absence or financial hardship explained to your employer or creditors respectively. For assistance in obtaining an explanation, contact your victim/witness liaison officer.

**g. Case Status and Notification of Hearings.** If you have any questions concerning the status of the case or desire to provide input, contact your victim/witness liaison officer. You may have the opportunity to attend hearings in the case. However, if you are also a witness, the presiding officer or judge has the authority to exclude you when other evidence is being presented. If you wish to attend and if you provide the victim/witness liaison officer your current telephone number or address, you will be notified in advance of such hearings. Always call to confirm hearing dates immediately before attending to ensure that they have not been rescheduled.

### **INFORMATION FOR POTENTIAL WITNESSES**

#### **1. CONDUCT OF THE TRIAL**

Trials are conducted before a U.S. Army court-martial.

a. The court will consist of either one judge or a judge with a panel of three or more Army soldiers who decide the guilt or innocence of the accused based on testimony you and other witnesses relate to them. (See "How the System Works.")

b. Your testimony as a witness before a U.S. military court will be taken according to U.S. law and procedures. Consideration will be given to you for the privileges and immunities you would have in a German court.

c. In U.S. courts, witnesses are not permitted to watch or hear the proceedings until called to testify.

(1) You will be asked to wait in another room until it is your turn to appear before the court-martial. You will be notified when you are needed.

(2) When called at the proceeding to testify, witnesses are administered an oath before giving testimony. The fact that you are asked to affirm the truth of your testimony or swear, in the name of God, that the testimony is the truth, is not a reflection on your truthfulness.

## **2. TRANSLATION OF PROCEEDINGS**

The proceedings are in English. Your testimony, however, normally will be given in German through an interpreter.

a. Although you may understand English, please do not answer until the interpreter has translated the question into German for you.

b. Your answer should be in German and will be translated into English by the interpreter. By speaking slowly and clearly and phrasing your answers in short sentences, you will help to ensure an accurate translation.

c. You will note there is only one interpreter. This person is a sworn official of the court. At both the Article 32 investigation and at the trial, the interpreter translates questions for both the prosecution and the defense.

## **3. QUESTIONING**

You will be questioned by counsel for the prosecution and for the defense in turn.

a. Because the members of the court do not have access to the statements you made at the Article 32 investigation, it may be necessary for you to repeat all you know about the incident at the trial.

b. The counsel, through questioning, will help ensure no essential testimony is overlooked.

c. During the testimony, you also may be asked questions by--

(1) An investigating officer of an Article 32 investigation. (See "How the System Works.")

(2) A military judge.

(3) Members of the court who may ask questions through the military judge.

d. The testimony that you give, including your responses to questions asked, is essential to the successful functioning of the military justice system.

## **WHAT THE U.S. MILITARY JUSTICE SYSTEM ASKS OF YOU**

1. The military justice system is designed to--

a. Promote good order and discipline in the Armed Forces.

b. Provide a system for the just disposition of criminal offenders.

c. Provide a fair trial for the accused.

d. Prevent the commission of further crime.

e. Appropriately punish and rehabilitate those persons whose guilt has been proven beyond a reasonable doubt.

2. In order to accomplish the goals of the military justice system, your cooperation with law enforcement and other military authorities is extremely important.

3. Victims often want to withdraw from the criminal justice process, perhaps because of fear, frustration, or simply the desire to get as far away from the incident as possible. Should you have any of these or similar feelings, it is certainly understandable. We ask, however, that while you may not be able to set them aside completely, you nevertheless do not let them prevent your essential cooperation.

4. The U.S. Army's Victim/Witness Assistance Program, with its services for victims described in this letter (see "What You May Expect From the U.S. Military Justice System."), has been established to reduce the hardships of your experience and to make your cooperation easier. Take advantage of the program; by doing so you will be helping the U.S. military justice system work and may, in the process, prevent others from becoming victims like yourself.

Enclosure 2

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**\*Figure C-2. Sample Enclosure 2 to Information Letter for German Victims**

**\*This format will be used only as a guide and will not be printed, reproduced, or stocked.**

---

(Datum)

(Abteilung)

Name

Strasse

Postleitzahl, Ort

Sehr geehrte(r) \_\_\_\_\_,

dieses Schreiben ist Bestandteil des Hilfsprogramms der US-Armee für Geschädigte und Zeugen. Sollten Sie Fragen haben, die in diesem Brief nicht beantwortet werden, wenden Sie sich bitte an den zuständigen Verbindungsoffizier für Geschädigte und Zeugen. (In manchen Fällen kann auch ein, für die Verbindungsstelle für Geschädigte und Zeugen tätiger, deutschsprachiger Dolmetscher als Kontaktperson angegeben sein.)

Als Anlage 1 ist eine Liste beigefügt, die die Telefonnummer des für Sie zuständigen Verbindungsoffiziers für Geschädigte und Zeugen enthält sowie die Personen und Dienststellen aufführt, an die Sie sich im Rahmen des Hilfsprogramms für Geschädigte wenden können. In Anlage 2 wird das US-Militärstrafrechtssystem beschrieben und erklärt, wie es funktioniert.

Als Geschädigter und potentieller Zeuge in einer Strafsache, mit der das Militärstrafrechtssystem der US-Armee befasst ist, haben Sie ein Recht darauf zu wissen,

- a. wie dieses Rechtssystem funktioniert,
- b. was Sie von diesem System als Geschädigter erwarten dürfen,
- c. was dieses System von Ihnen erwartet.

Mit freundlichen Grüßen

Name

Titel

Anlagen

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**\*Figure C-3. Sample Information Letter for German Victims (German)**

**\*This format will be used only as a guide and will not be printed, reproduced, or stocked.**

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## DAS AMERIKANISCHE MILITÄRSTRAFRECHTSSYSTEM

### FUNKTIONSWEISE

#### 1. ALLGEMEINES

Wenn die Behörden der US-Armee über eine vermeintliche Straftat informiert werden, wird eine Reihe von Massnahmen eingeleitet.

a. Zunächst werden erste Ermittlungen von Angehörigen der Streitkräfte oder deutschen Beamten durchgeführt.

b. Anschliessend wird geprüft, ob die Zuständigkeit der Armee (Gerichtsbarkeit) gegeben ist, in dem betreffenden Fall Ermittlungen anzustellen und ihn strafrechtlich zu verfolgen, oder ob die strafrechtliche Verfolgung in die Zuständigkeit deutscher Zivilbehörden fällt. Diese Entscheidung hängt von einer Anzahl von Faktoren ab, die im NATO-Truppenstatut und dem Zusatzabkommen aufgeführt werden.

#### 2. WAS GESCHIEHT, WENN DIE US-ARMEE NICHT ZUSTÄNDIG IST

Wenn die Armee nicht zuständig ist, werden

a. die zuständigen deutschen Behörden verständigt. Diese Behörden entscheiden darüber, ob eine strafrechtliche Verfolgung vor einem deutschen Gericht angezeigt ist.

b. Sie von den Militärbehörden wahrscheinlich keine weitere Nachricht erhalten. Auf Ihr Ersuchen nennt Ihnen der Verbindungsoffizier für Geschädigte und Zeugen die deutschen Zivilbehörden, die den Fall möglicherweise bearbeiten.

#### 3. WAS GESCHIEHT, WENN DIE US-ARMEE ZUSTÄNDIG IST

Wenn der Fall in die Zuständigkeit der Armee fällt, entscheiden die Disziplinarvorgesetzten des Beschuldigten, ob eine strafrechtliche Verfolgung angezeigt ist. Die möglichen Bestrafungen im Falle einer Verurteilung können von sehr geringfügigen Sanktionen, wie beispielsweise einem Verweis, bis zu härteren Strafen reichen, wie z.B. lebenslängliche Freiheitsstrafe. In bestimmten Fällen, z.B. bei vorsätzlichem Mord, kann auch die Todesstrafe verhängt werden. Bei Straftaten sind folgende Vorgehensweisen möglich:

a. Der direkte Disziplinarvorgesetzte des Beschuldigten kann die Klage abweisen. Wenn festgestellt wurde, dass es sich um eine geringe Straftat handelt, kann der direkte Vorgesetzte ein Verfahren für eine außergerichtliche Bestrafung (Artikel 15, UCMJ [*Uniform Code of Military Justice* – Einheitliches Militärstrafgesetzbuch]) einleiten. In diesem Verfahren entscheidet der Disziplinarvorgesetzte über Schuld oder Nichtschuld und ist befugt, die Einbehaltung eines geringen Teils des Solds anzuordnen, den Sold zu kürzen und gewisse Beschränkungen aufzuerlegen; er kann den Beschuldigten jedoch nicht zu einer Gefängnisstrafe verurteilen.

b. Ein Vorgesetzter, der kraft Gesetzes befugt ist, die Verwaltungsausschüsse oder Militärgerichte (Gerichtsverfahren) einzuberufen, kann bei Bedarf über schwerere Straftaten entscheiden.

c. In Fällen, in denen es um schwere Straftaten geht, wird normalerweise eine offizielle Voruntersuchung (auch als "Untersuchung gemäß Artikel 32" bezeichnet) durchgeführt, um die Qualität und den Umfang des Beweismaterials zu prüfen und zu empfehlen, auf welcher Militärgerichtsstufe der Fall verhandelt werden sollte. Militärgerichte gibt es auf folgenden Ebenen:

**(1) Kleines Militärgericht.** Auf der untersten Ebene gibt es das Kleine Militärgericht. Beim Kleinen Militärgericht führt ein Offizier als Richter den Vorsitz und kann den Angeklagten verurteilen. Die Höchststrafe, die hier normalerweise verhängt werden kann ist die Einziehung von zwei Dritteln des Solds für einen Monat, Degradierung und bis zu 30 Tage Gefängnis.

**(2) Spezielles Militärgericht.** Ein Spezielles Militärgericht ist das Mittlere Militärgericht, das sich aus einem juristisch ausgebildeten Militärrichter und, wenn der Angeklagte dies wünscht, aus einem Geschworenengremium (als Mitglieder des Gerichts bezeichnet), bestehend aus Angehörigen der Streitkräfte,

zusammensetzt. Es verfügt außerdem über einen Anklagevertreter und gibt dem Angeklagten das Recht auf einen Verteidiger. Wenn es der (die) Angeklagte wünscht, kann er (sie) auch vom Militärrichter allein gehört werden. Dieses Gericht kann als Höchststrafe Geldstrafen oder die Einziehung von zwei Dritteln des Solds für sechs Monate verhängen, die Degradierung auf den niedrigsten Mannschaftsdienstgrad, Gefängnisstrafen bis zu sechs Monaten und, in bestimmten Fällen, die Entlassung aus der Armee wegen schlechter Führung veranlassen.

**(3) Grosses Militärgericht.** Ein Grosses Militärgericht ist das höchste Militärgericht und in der Regel schweren militärischen oder zivilen Straftaten (Verbrechen) vorbehalten. Ein Grosses Militärgericht wird normalerweise von einem General einberufen und setzt sich aus einem Militärrichter und (nach Wahl des Angeklagten) einem Geschworenengremium (als Mitglieder des Gerichts bezeichnet), das aus Militärangehörigen besteht, zusammen. Es kann auf die höchsten vom Gesetz zugelassenen Strafen erkennen; dazu gehören - abhängig von der Straftat - Geldstrafen, die Einziehung des gesamten Solds, Degradierung auf den untersten Mannschaftsdienstgrad, unehrenhafte Entlassung, Freiheitsstrafen bis zu lebenslänglicher Haft oder, bei wenigen sehr schweren Verbrechen, auch die Todesstrafe.

Der zuständige Verbindungsoffizier für Geschädigte und Zeugen kann Ihnen über die Höchststrafe für die zur Ermittlung anstehenden Straftaten Auskunft geben.

#### **4. AUßERGERICHTLICHE ABSPRACHE**

Wird ein Fall an das Mittlere oder Grosse Militärgericht verwiesen, kann zwischen dem Kommandeur, der das Militärgericht einberuft, und dem Angeklagten eine außergerichtliche Absprache (Abkommen zwischen Anklagevertretung und Verteidigung) getroffen werden. Diese Absprachen können aus mehreren Gründen getroffen werden, z.B. um dem Geschädigten das Trauma zu ersparen, vor Gericht aussagen zu müssen, um Verzögerungen und Kosten einer langwierigen Verhandlung zu vermeiden, und um nach Möglichkeit das Risiko auszuschalten, dass das Urteil von einem Berufungsgericht aufgehoben wird. Außergerichtliche Absprachen sehen in der Regel vor, dass sich der Angeklagte für schuldig erklärt, wenn das Strafmaß beschränkt wird oder bestimmte Anklagepunkte fallengelassen werden.

### **WAS SIE VOM US-MILITÄRSTRAFRECHTSSYSTEM ERWARTEN DÜRFEN**

Als Geschädigter bei einer Straftat, die unter das US-Militärstrafrechtssystem fällt, haben Sie Anspruch auf eine höfliche und verständnisvolle Behandlung seitens des an diesem Verfahren dienstlich beteiligten militärischen und zivilien Personals, dessen Aufgabe es ist, Ihnen als Geschädigtem Beistand zu leisten. Ausserdem können Sie erwarten, dass das zuständige Verwaltungspersonal die Anklage fair und zügig bearbeitet. Sie haben möglicherweise Anspruch auf einige der folgenden Leistungen:

**a. Medizinische und soziale Leistungen.** Falls Sie die Voraussetzungen erfüllen, können Sie medizinische und soziale Leistungen nach deutschem Recht in Anspruch nehmen. Durch Ihre Beteiligung an einer amerikanischen Militärgerichtsverhandlung geht Ihr Anspruch auf medizinische oder soziale Leistungen, die von deutschen Einrichtungen gewährt werden, nicht verloren. Setzen Sie sich mit dem Träger Ihrer Krankenversicherung oder mit dem nächstgelegenen Sozialamt hinsichtlich der Inanspruchnahme von medizinischen und sozialen Leistungen in Verbindung.

**b. Unterrichtung über wichtige Ereignisse.** Wenn Sie über wichtige Ereignisse unterrichtet werden möchten, geben Sie dem zuständigen Verbindungsoffizier für Geschädigte und Zeugen Ihre Anschrift und Telefonnummer. Er oder sie wird Sie, wenn möglich im voraus, über die folgenden Ereignisse unterrichten:

- (1) Festnahme (Verhaftung) des Beschuldigten.
- (2) Entlassung des Beschuldigten aus der Untersuchungshaft.
- (3) Verhandlungstermin oder Ablegung eines Geständnisses und Einleitung des Verurteilungsverfahrens.

Fragen im Zusammenhang mit dieser Benachrichtigung sind an den zuständigen Verbindungsoffizier für Geschädigte und Zeugen zu richten.

**c. Schutzmaßnahmen.** Wenn Sie glauben, dass Sie als Geschädigter (oder potentieller Zeuge) Bestechungen, Drohungen, Einschüchterungen oder Belästigungen ausgesetzt sind, wenden Sie sich bitte an die örtliche deutsche Polizeidienststelle. Die zuständigen Behörden werden Maßnahmen zur Überprüfung der Angelegenheit ergreifen und Ihnen den notwendigen Schutz gewähren.

**d. Beratungen mit Strafverfolgungsbeamten.** Obwohl die Entscheidungen nach dem Militärstrafrecht, einschließlich der Bearbeitung des Sie betreffenden Falles, gemäß US-Bundesgesetz bestimmten militärischen Kommandeuren überlassen sind, ist sich die US-Armee dennoch der Bedeutung bewusst, die Ihre Meinung zu bestimmten Punkten für die Kommandeure bei ihren Entscheidungen haben kann. Aus diesem Grunde können Sie ersucht werden, sich mit den Kommandeuren oder deren Anwälten und Anklagevertretern in bezug auf einen der folgenden Vorgänge zu beraten:

- (1) Anklageerhebung gegen den Beschuldigten.
- (2) Abweisung der Klage gegen den Beschuldigten.
- (3) Freiheitsentzug vor der Verhandlung (einschließlich Inhaftierung) des Beschuldigten.
- (4) Außergerichtliche Absprachen zwischen dem Beschuldigten und der Regierung.

Sollten Sie hierzu noch Fragen haben, wenden Sie sich bitte an den zuständigen Verbindungsoffizier für Geschädigte und Zeugen.

**e. Rückgabe von Eigentum und Rückerstattung.**

**(1) Rückgabe von Eigentum.** Die US-Armee stellt das Eigentum sicher und gibt es so schnell wie möglich an den rechtmäßigen Eigentümer zurück. Wenn das Eigentum jedoch für die Beweisführung in einem Militärgerichtsverfahren benötigt wird, kann es vorübergehend einbehalten werden. Der für Sie zuständige Verbindungsoffizier für Geschädigte und Zeugen nennt Ihnen die Stelle, die Ihr Eigentum verwahrt, sowie das für die Rückgabe anzuwendende Verfahren.

**(2) Rückerstattung (Entschädigung des Opfers für Verluste).** Das Militärstrafrechtssystem wurde in erster Linie zur Unterstützung bei der Aufrechterhaltung von Ordnung und militärischer Disziplin geschaffen und nicht, um Ersatzleistungen für Geschädigte sicherzustellen. Dennoch haben Sie verschiedene Möglichkeiten, um Ihre Entschädigungsansprüche geltend zu machen:

(a) Der Angeklagte kann persönlich für die Ihnen zugefügten Verletzungen oder Beschädigungen Ihres Eigentums haftbar sein. Wenn der Angeklagte im Militärdienst steht, können Sie möglicherweise Schadenersatz für bestimmte Sachschäden direkt aus seinem oder ihrem Sold erhalten, vorausgesetzt, dass die Forderung innerhalb von 90 Tagen nach Eintritt des Schadens erhoben wird oder es einen triftigen Grund für die spätere Geltendmachung der Forderung gibt.

(b) Unter bestimmten Umständen kann auch in Absprache mit der örtlichen deutschen Verteidigungslastenverwaltung ein Antrag an die US-Regierung auf Zahlung einer freiwilligen (ex gratia) Entschädigung gestellt werden.

(c) Je nach Lage der Dinge kann Wiedergutmachung für Sach- und Personenschäden auch durch eine Forderung oder eine Klage gegen den Beschuldigten oder andere finanziell verantwortliche Dritte erlangt werden; Sie können sich hierbei von einem deutschen Rechtsanwalt Ihrer Wahl beraten lassen (die US-Regierung kann die Rechtsanwaltsgebühren jedoch nicht erstatten).

(d) Sind Sie Opfer einer Gewalttat geworden, haben Sie unter Umständen auch Anspruch auf Entschädigung vom zuständigen Versorgungsamt nach dem deutschen Opferentschädigungsgesetz.

**f. Benachrichtigung von Arbeitgebern oder Gläubigern.** Sind Sie als Folge des Vorfalls arbeitsunfähig oder in einen schwerwiegenden finanziellen Engpass geraten, sind Sie berechtigt, diese Umstände, die zu Ihrer Arbeitsunfähigkeit oder finanziellen Notlage beigetragen haben, Ihrem Arbeitgeber bzw. Ihren Gläubigern mitteilen zu lassen. Wenden Sie sich an den zuständigen Verbindungsoffizier für Geschädigte und Zeugen, der Ihnen bei der Abgabe der Erklärung behilflich ist.

**g. Stand des Verfahrens und Benachrichtigung über Verhandlungstermine.** Sollten Sie irgendwelche Fragen zum Stand des Verfahrens haben oder diesbezügliche Informationen mitteilen wollen, wenden Sie sich bitte an den zuständigen Verbindungsoffizier für Geschädigte und Zeugen. Sie haben möglicherweise Gelegenheit, bei Verhandlungen in der Sache anwesend zu sein. Sind Sie jedoch gleichzeitig Zeuge, dann ist der den Vorsitz führende Offizier oder der Richter berechtigt, Sie von der Verhandlung auszuschließen, wenn andere Zeugenaussagen gemacht werden. Falls Sie anwesend sein möchten und Sie dem Verbindungsoffizier für Geschädigte und Zeugen Ihre derzeitige Telefonnummer und Adresse mitteilen, werden Sie im voraus über solche Verhandlungen unterrichtet. Rufen Sie auf jeden Fall an, bevor Sie zu einer Verhandlung gehen, um sich zu vergewissern, dass die Termine nicht kurzfristig geändert wurden.

## **INFORMATIONEN FÜR POTENTIELLE ZEUGEN**

### **1. ABLAUF DER VERHANDLUNG**

Die Verhandlungen finden vor einem Militärgericht der US-Armee statt.

a. Das Gericht setzt sich entweder aus einem Richter oder einem Richter mit einem Gremium von drei oder mehr Soldaten zusammen, die aufgrund der von Ihnen und anderen Zeugen gemachten Aussagen über Schuld oder Nichtschuld des Angeklagten zu befinden haben (siehe "Das amerikanische Militärstrafrechtssystem – Funktionsweise").

b. Ihre Zeugenaussage vor einem US-Militärgericht erfolgt gemäß den gesetzlichen Bestimmungen und der Verfahrensordnung der Vereinigten Staaten. Die Rechte und Vorrechte, die Sie vor einem deutschen Gericht haben würden, werden berücksichtigt.

c. Vor amerikanischen Gerichten dürfen Zeugen der Verhandlung weder beiwohnen noch zuhören, bis sie selbst in den Zeugenstand gerufen werden.

(1) Dementsprechend wird man Sie bitten, in einem anderen Raum so lange zu warten, bis Sie in den Zeugenstand gerufen werden. Sie erhalten rechtzeitig Kenntnis von Ihrem Aufruf.

(2) Vor Beginn ihrer Aussage bei der Verhandlung werden die Zeugen vereidigt. Die Tatsache, dass Sie ersucht werden, eidesstattlich zu versichern, dass Ihre Aussage der Wahrheit entspricht, oder bei Gott zu schwören, dass Ihre Aussage die Wahrheit, die reine Wahrheit und nichts als die Wahrheit ist, bedeutet nicht, dass Ihre Glaubwürdigkeit in Zweifel gezogen wird.

### **2. ÜBERSETZUNG DER VERHANDLUNG**

Die Verhandlung wird in englischer Sprache geführt. Normalerweise machen Sie Ihre Aussage jedoch auf Deutsch und bedienen sich eines Dolmetschers.

a. Auch wenn Sie Englisch verstehen, antworten Sie bitte erst dann, wenn der Dolmetscher die Frage an Sie ins Deutsche übersetzt hat.

b. Ihre Antwort sollte in deutscher Sprache erfolgen, um dann vom Dolmetscher ins Englische übertragen zu werden. Wenn Sie langsam und deutlich sprechen und Ihre Antworten in kurzen Sätzen formulieren, tragen Sie dazu bei, eine präzise Übersetzung zu gewährleisten.

c. Sie werden feststellen, dass nur ein Dolmetscher anwesend ist. Er/sie ist eine vereidigte Gerichtsperson. Sowohl in der Voruntersuchung als auch in der Hauptverhandlung übersetzt der Dolmetscher Fragen der Anklagevertretung wie auch der Verteidigung.

### **3. VERNEHMUNG**

Sie werden nacheinander vom Anklagevertreter und vom Verteidiger befragt.

a. Da die Geschworenen keinen Zugang zu den Aussagen haben, die Sie bei der Voruntersuchung gemacht haben, ist es möglicherweise notwendig, alles, was Sie über den Vorfall wissen, in der Hauptverhandlung zu wiederholen.

b. Anklagevertreter und Verteidiger sorgen durch geeignete Fragestellung dafür, dass kein wichtiger Punkt Ihrer Aussage unberücksichtigt bleibt.

c. Im Verlauf der Zeugenaussage können Ihnen auch Fragen von den folgenden Personen gestellt werden:

(1) einem Offizier, der die Untersuchung nach Artikel 32 durchgeführt hat (siehe "Das amerikanische Militärstrafrechtssystem – Funktionsweise").

(2) einem Militärrichter.

(3) den Geschworenen, die durch den Militärrichter Fragen stellen lassen können.

d. Ihre Aussage, die auch Ihre Antworten auf Ihnen gestellte Fragen umfaßt, trägt wesentlich dazu bei, dass das Militärstrafrechtssystem erfolgreich angewendet werden kann.

### **WAS DAS US-MILITÄRSTRAFRECHTSSYSTEM VON IHNEN ERWARTET**

1. Das Militärstrafrechtssystem dient dazu,

a. Ordnung und Disziplin innerhalb der Streitkräfte zu fördern;

b. ein System für die gerechte Behandlung von Straftätern zu schaffen;

c. einem Angeklagten eine faire Verhandlung zu gewährleisten;

d. weitere Straftaten zu verhindern;

e. jene Personen, deren Schuld einwandfrei erwiesen ist, angemessen zu bestrafen und wiedereinzugliedern.

2. Zur Realisierung der Ziele des Militärstrafrechtssystems ist Ihre Zusammenarbeit mit den Vollstreckungs- und anderen Militärbehörden äußerst wichtig.

3. Geschädigte neigen oft dazu, sich dem Strafverfahrensprozess zu entziehen, vielleicht aus Angst oder Gehemmtheit oder einfach, um soviel Abstand wie möglich von dem Vorfall zu gewinnen. Sollten Sie solche oder ähnliche Gefühle hegen, ist das sicher verständlich. Auch wenn Sie sich diesen Empfindungen nicht völlig entziehen können, möchten wir Sie dennoch bitten, sich dadurch an Ihrer wichtigen Mitarbeit nicht hindern zu lassen.

4. Das Hilfsprogramm der US-Armee für Geschädigte und Zeugen mit seinen in dieser Anlage beschriebenen Leistungen für Geschädigte (vgl. "Was Sie vom US-Militärstrafrechtssystem erwarten können") wurde erstellt, um Härten zu mildern, die Sie möglicherweise in der Vergangenheit erfahren haben, und Ihre Mitarbeit zu erleichtern. Nutzen Sie dieses Programm, denn damit tragen Sie dazu bei, dass das US-Militärstrafrechtssystem funktioniert, und verhindern dabei möglicherweise, dass andere, wie Sie selbst auch, zu Geschädigten werden.

Anlage 2

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**\*Figure C-4. Sample Enclosure 2 to Information Letter for German Victims (German)**

**\*This format will be used only as a guide and will not be printed, reproduced, or stocked.**

**APPENDIX D**  
**SAMPLE INFORMATION LETTER FOR U.S. WITNESSES**

Figure D-1 is a sample letter to be sent to a U.S. witness. Figure D-2 is a sample of enclosure 2 to the letter that explains the U.S. military justice system. This regulation, paragraph 13b, prescribes how to prepare enclosure 1.

---

(Date)

(Office Title)

Name  
Street Address  
City, State, Zip Code

Dear \_\_\_\_\_:

This letter is being sent to you as part of the U.S. Army's Victim/Witness Assistance Program. If you have questions that this letter does not answer, you should contact your victim/witness liaison officer.

Enclosure 1 is a list that includes your victim/witness liaison officer's telephone number and individuals and agencies that may help you. Enclosure 2 is an explanation of the U.S. military justice system and how it works.

As a potential witness in a criminal matter that may be resolved in the U.S. Army military justice system, you are entitled to understand--

- a. How the justice system works.
- b. What you may expect from this system as a witness.
- c. What this system asks of you.

Sincerely,

Name  
Title

Enclosures

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**\*Figure D-1. Sample U.S. Witness Information Letter**

**\*This format will be used only as a guide and will not be printed, reproduced, or stocked.**

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## THE U.S. MILITARY JUSTICE SYSTEM

### HOW THE SYSTEM WORKS

#### GENERAL

When you receive this letter, some things will normally have already been decided about the case in which you are a potential witness:

a. Army officials will have decided that the military has authority to investigate and prosecute the accused (defendant) and that you have important information about the case.

b. The Army also may have decided how the accused will be tried. The case may be--

(1) Tried at a lower- or intermediate-level military criminal trial (known as a summary or special court-martial).

(2) Sent to a preliminary hearing (known as an Article 32 investigation) to evaluate whether or not the accused should be tried before the highest military criminal court, the general court-martial.

c. For all these proceedings, the way you testify is virtually the same. You may be--

(1) Requested (or ordered if you are a soldier) to appear at an Article 32 hearing.

(2) Subpoenaed (or ordered if you are a soldier) to appear before a court-martial.

d. At the proceeding, you will be administered an oath.

e. During your testimony, you may be asked questions by--

(1) An investigating officer of an Article 32 investigation.

(2) A military judge.

(3) Court members (military jurors) at a court-martial.

(4) Government (trial) and defense counsel.

f. Your testimony, including responses to questions asked, is essential to the successful functioning of the military justice system.

### WHAT YOU MAY EXPECT FROM THE U.S. MILITARY JUSTICE SYSTEM

As a witness you normally are authorized the following services:

**a. Notice of Critical Events.** If you wish to be notified of critical events, give your victim/witness liaison officer your address or telephone number. You will be notified, in advance when circumstances allow, of the following events:

(1) Apprehension (arrest) of the accused.

(2) Pretrial release of the accused.

(3) Trial or entry of a guilty plea and sentencing proceedings.

**NOTE:** You should direct any questions about this notification to your victim/witness liaison officer.

**b. Expenses.** When you appear as a witness in a court-martial, deposition, or Article 32 investigation, you may be entitled to certain allowances. For information about specific allowances, please contact your victim/witness liaison officer.

(1) As a general rule, you can be reimbursed for reasonable and necessary travel and transportation expenses (for example, meals and lodging) that occur because of required appearances.

(2) Civilian witnesses (including U.S. military retirees) who are not employed by the U.S. Government and are required to appear before courts-martial or at depositions are entitled to a fee for each day of mandatory attendance. This fee is not authorized for attendance at Article 32 investigations.

(3) Sometimes parts of these allowances can be advanced to you at your request before attendance.

**c. Notification of Employers and Creditors.** The U.S. Army normally will not reimburse you for lost income. At your request, the victim/witness liaison officer will contact your employer to explain the circumstances of the case and why you must appear. He or she will request that you lose no benefits because of your involvement as a witness in a Federal judicial proceeding. Also, if you request, the victim/witness liaison officer will explain to your creditors any serious, personal financial hardship resulting from your involvement as a witness.

**d. Appearance Time and Notice of Changes.** You will be given a time and place to report for the hearing. If your appearance will cause extreme hardship, contact your victim/witness liaison officer immediately. If a hearing is rescheduled or canceled, the victim/witness liaison officer or other military justice personnel will try to contact you in advance. However, you should always call your victim/witness liaison officer before leaving to report as a witness to ensure that there has been no last minute rescheduling. To help us notify you of changes in scheduling, please make sure your victim/witness liaison officer has your correct address and telephone number at all times.

**e. Separate Waiting Area.** When possible, defense and prosecution witnesses are provided separate waiting areas for their comfort and privacy. However, this convenience may not always be available. Contact your victim/witness liaison officer or trial counsel immediately if problems arise concerning waiting-room conditions. You should refrain from discussing the case in a waiting room or the surrounding area.

**f. Local Services.** If you need local transportation, parking, or child-care services, contact your victim/witness liaison officer for information and help. If you must stay overnight, certain installation services may be available; contact your victim/witness liaison officer.

**g. Special Witness Consideration.** If you are a family member of a soldier who is pending reassignment, your sponsor's reassignment may need to be delayed. If such an unusual situation exists, please notify your victim/witness liaison officer immediately.

**h. Protection.** If you are being subjected to coercion, harassment, intimidation, or threats of any kind, notify your victim/witness liaison officer. If you are in immediate danger, call the local or military police at once. Appropriate authorities will investigate the matter and provide you any necessary protection.

## WHAT THE U.S. MILITARY JUSTICE SYSTEM ASKS OF YOU

1. The military justice system is designed to--

- a. Promote good order and discipline in the Armed Forces.
- b. Provide a system for the just disposition of criminal offenders.
- c. Provide a fair trial for the accused.
- d. Prevent the commission of further crime.
- e. Appropriately punish and rehabilitate those persons whose guilt has been proven beyond a reasonable doubt.

2. To accomplish the goals of the military justice system, your testimony is extremely important. The Army expects that unless you have a specific legal privilege, if you are called to testify that you will do so and that you will do so truthfully.

3. The U.S. military justice system has the authority to compel military witnesses (by order) and U.S. civilian witnesses (by subpoena) to attend and provide testimony at courts-martial. Most witnesses in military criminal proceedings, in spite of inconveniences, fulfill their responsibility by testifying voluntarily.

4. The U.S. Army's Victim/Witness Assistance Program has been established to reduce the hardships of your experience and to make your cooperation easier. Take advantage of the program; by doing so you will help the U.S. military justice system work.

5. If you have questions about your legal rights or obligations as a witness, contact your victim/witness liaison officer.

Enclosure 2

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**\*Figure D-2. Sample Enclosure 2 to Information Letter for U.S. Witnesses**

**\*This format will be used only as a guide and will not be printed, reproduced, or stocked.**

**APPENDIX E**  
**SAMPLE INFORMATION LETTER FOR GERMAN WITNESSES (*INFORMATIONEN FÜR DEUTSCHE ZEUGEN*) (ENGLISH AND GERMAN VERSIONS)**

Figure E-1 is a sample letter in English to be sent to a German witness. Figure E-2 is a sample of enclosure 2 in English. Figures E-3 and E-4 are the German translations of figures E-1 and E-2 respectively. This regulation, paragraph 13b, prescribes how to prepare enclosure.

---

(Date)

(Office Title)

Name  
Street Address  
City, State, Zip Code

Dear \_\_\_\_\_:

This letter is being sent to you as part of the U.S. Army's Victim/Witness Assistance Program. If you have questions that this letter does not answer, you should contact your victim/witness liaison officer.

Enclosure 1 is a list that includes your victim/witness liaison officer's telephone number and individuals and agencies that may help you. Enclosure 2 is an explanation of the U.S. military justice system and how it works.

As a potential witness in a criminal matter that may be resolved in the U.S. Army military justice system, you are entitled to understand--

- a. How the justice system works.
- b. What you may expect from this system as a witness.
- c. What this system asks of you.

Sincerely,

Name  
Title

Enclosures

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**\*Figure E-1. Sample Information Letter for German Witnesses**

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## THE U.S. MILITARY JUSTICE SYSTEM

### HOW THE SYSTEM WORKS

#### GENERAL

When you receive this letter, some things will normally have already been decided about the case in which you are a potential witness.

a. Army officials will have decided that the military has authority to investigate and prosecute the accused (defendant) and that you have important information about the case.

b. The Army also may have decided how the accused will be tried. The case may be--

(1) Tried at a lower- or intermediate-level military criminal trial (known as a summary or special court-martial).

(2) Sent to a preliminary hearing (known as an Article 32 investigation) to evaluate whether or not the accused should be tried before the highest military criminal court, the general court-martial.

c. For all these proceedings, the way you testify is virtually the same. You may be--

(1) Requested to appear at an Article 32 hearing.

(2) Subpoenaed to appear before a court-martial.

d. At the proceeding, you will be administered an oath.

e. During your testimony, you may be asked questions by--

(1) An investigating officer of an Article 32 investigation.

(2) A military judge.

(3) Court members (military jurors) at a court-martial.

(4) Government (trial) and defense counsel.

f. Your testimony, including responses to questions asked, is essential to the successful functioning of the military justice system.

### WHAT YOU MAY EXPECT FROM THE U.S. MILITARY JUSTICE SYSTEM

As a witness you normally are authorized the following services:

**a. Notice of Critical Events.** If you wish to be notified of critical events, give your victim/witness liaison officer your address or telephone number. You will be notified, in advance when circumstances allow, of the following events:

(1) Apprehension (arrest) of the accused.

(2) Pretrial release of the accused.

(3) Trial or entry of a guilty plea and sentencing proceedings.

**NOTE:** You should direct any questions about this notification to your victim/witness liaison officer.

**b. Expenses.** When you appear as a witness in a court-martial, deposition, or Article 32 investigation, you may be entitled to certain allowances. For information about specific allowances, please contact your victim/witness liaison officer.

(1) As a general rule, you can be reimbursed for reasonable and necessary travel and transportation expenses (for example, meals and lodging) that occur because of required appearances.

(2) Civilian witnesses (including U.S. military retirees) who are not employed by the U.S. Government and are required to appear before courts-martial or at depositions are entitled to a fee for each day of mandatory attendance. This fee is not authorized for attendance at Article 32 investigations.

(3) Sometimes portions of these allowances can be advanced to you at your request before attendance.

**c. Notification of Employers and Creditors.** The U.S. Army normally will not reimburse you for lost income. At your request, the victim/witness liaison officer will contact your employer to explain the circumstances of the case and why you must appear. He or she will request that you lose no benefits because of your involvement as a witness in a Federal judicial proceeding. Also, if you request, the victim/witness liaison officer will explain to your creditors any serious, personal financial hardship resulting from your involvement as a witness.

**d. Appearance Time and Notice of Changes.** You will be given a time and place to report for the hearing. If your appearance will cause extreme hardship, contact your victim/witness liaison officer immediately. If a hearing is rescheduled or canceled, the victim/witness liaison officer or other military justice personnel will try to contact you in advance. However, you should always call your victim/witness liaison officer before leaving to report as a witness to ensure that there has been no last minute rescheduling. To help us notify you of changes in scheduling, please make sure your victim/witness liaison officer has your correct address and telephone number at all times.

**e. Separate Waiting Area.** When possible, defense and prosecution witnesses are provided separate waiting areas for their comfort and privacy. However, this convenience may not always be available. Contact your victim/witness liaison officer or trial counsel immediately if problems arise concerning waiting-room conditions. You should refrain from discussing the case in a waiting room or the surrounding area.

**f. Local Services.** If you need local transportation, parking, or child-care services, contact your victim/witness liaison officer for information and help. If you must stay overnight, certain installation services may be available; contact your victim/witness liaison officer.

**g. Special Witness Consideration.** If you are a family member of a soldier who is pending reassignment, your sponsor's reassignment may need to be delayed. If such an unusual situation exists, please notify your victim/witness liaison officer immediately.

**h. Protection.** If you are being subjected to coercion, harassment, intimidation, or threats of any kind, notify your victim/witness liaison officer. If you are in immediate danger, call the local or military police at once. Appropriate authorities will investigate the matter and provide you any necessary protection.

## INFORMATION FOR POTENTIAL WITNESSES

### 1. CONDUCT OF THE TRIAL

Trials are conducted before a U.S. Army court-martial.

a. The court will consist of either one judge or a judge with a panel of three or more Army soldiers who decide the guilt or innocence of the accused based on testimony you and other witnesses relate to them. (See "How the System Works.")

b. Your testimony as a witness before a U.S. military court will be taken according to U.S. law and procedures. Consideration will be given to you for the privileges and immunities you would have in a German court.

c. In U.S. courts, witnesses are not permitted to watch or hear the proceedings until called to testify.

(1) You will be asked to wait in another room until it is your turn to appear before the court-martial. You will be notified when you are needed.

(2) When called at the proceeding to testify, witnesses are administered an oath before giving testimony. The fact that you are asked to affirm the truth of your testimony or swear, in the name of God, that the testimony is the truth, is not a reflection on your truthfulness.

## **2. TRANSLATION OF PROCEEDINGS**

The proceedings are in English. Your testimony, however, normally will be given in German through an interpreter.

a. Although you may understand English, please do not answer until the interpreter has translated the question into German for you.

b. Your answer should be in German and will be translated into English by the interpreter. By speaking slowly and clearly and phrasing your answers in short sentences, you will help to ensure an accurate translation.

c. You will note there is only one interpreter. This person is a sworn official of the court. At both the Article 32 investigation and at the trial, the interpreter translates questions for both the prosecution and the defense.

## **3. QUESTIONING**

You will be questioned by counsel for the prosecution and for the defense in turn.

a. Because the members of the court do not have access to the statements you made at the Article 32 investigation, it may be necessary for you to repeat all you know about the incident at the trial.

b. The counsel, through questioning, will help ensure no essential testimony is overlooked.

c. During the testimony, you also may be asked questions by--

(1) An investigating officer of an Article 32 investigation. (See "How the System Operates.")

(2) A military judge.

(3) Members of the court who may ask questions through the military judge.

d. The testimony that you give, including your responses to questions asked, is essential to the successful functioning of the military justice system.

## **WHAT THE U.S. MILITARY JUSTICE SYSTEM ASKS OF YOU**

1. The military justice system is designed to--

a. Promote good order and discipline in the Armed Forces.

b. Provide a system for the just disposition of criminal offenders.

c. Provide a fair trial for the accused.

d. Prevent the commission of further crime.

e. Appropriately punish and rehabilitate those persons whose guilt has been proven beyond a reasonable doubt.

2. In order to accomplish the goals of the military justice system, your testimony is extremely important. The Army expects that unless you have a specific legal privilege, if you are called to testify that you will do so and that you will do so truthfully.

3. The U.S. military justice system has the authority to compel military witnesses (by order) and U.S. civilian witnesses (by subpoena) to attend and provide testimony at courts-martial. Most witnesses in military criminal proceedings, in spite of inconveniences, fulfill their responsibility by testifying voluntarily.
4. The U.S. Army's Victim/Witness Assistance Program has been established to reduce the hardships of your experience and to make your cooperation easier. Take advantage of the program; by doing so, you will be helping the U.S. military justice system work.
5. If you have questions about your legal rights or obligations as a witness, contact your victim/witness liaison officer.

Enclosure 2

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**\*Figure E-2. Sample Enclosure 2 to Information Letter for German Witnesses**

**\*This format will be used only as a guide and will not be printed, reproduced, or stocked.**

---

(Datum)

(Abteilung)

Name

Strasse

Postleitzahl, Ort

Sehr geehrte(r) \_\_\_\_\_,

dieses Schreiben ist Bestandteil des Hilfsprogramms der US-Armee für Geschädigte und Zeugen. Sollten Sie Fragen haben, die in diesem Brief nicht beantwortet werden, wenden Sie sich bitte an den zuständigen Verbindungsoffizier für Geschädigte und Zeugen.

Als Anlage 1 ist eine Liste beigefügt, die die Telefonnummer des für Sie zuständigen Verbindungsoffiziers für Geschädigte und Zeugen enthält sowie die Personen und Dienststellen, die Ihnen helfen können. In Anlage 2 wird das US-Militärstrafrechtssystem beschrieben und seine Funktionsweise erklärt.

Als potentieller Zeuge in einer Strafsache, mit der das Militärstrafrechtssystem der US-Armee befasst ist, sollten Sie wissen:

- a. wie dieses Rechtssystem funktioniert,
- b. was Sie von diesem System als Zeuge erwarten dürfen,
- c. was dieses System von Ihnen erwartet.

Mit freundlichen Grüßen

Name

Titel

Anlagen

---

**\*Figure E-3. Sample Information Letter for German Witnesses (German)**

**\*This format will be used only as a guide and will not be printed, reproduced, or stocked.**

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## DAS AMERIKANISCHE MILITÄRSTRAFRECHTSSYSTEM

### FUNKTIONSWEISE

#### ALLGEMEINES

Wenn Sie diesen Brief erhalten, sind normalerweise bereits einige Entscheidungen in dem Fall, in dem Sie als potentieller Zeuge auftreten, getroffen worden.

a. Die zuständigen Vertreter der US-Armee haben bereits festgestellt, dass die Streitkräfte berechtigt sind, in dem betreffenden Fall Ermittlungen anzustellen und den Beschuldigten strafrechtlich zu verfolgen, und dass Sie über wichtige Informationen verfügen, die diesen Fall betreffen.

b. Die US-Armee hat möglicherweise auch entschieden, vor welches Gericht der Beschuldigte gestellt werden soll. Der Fall kann

(1) vor einem Gericht auf der unteren oder der mittleren Ebene verhandelt werden (Kleines oder Spezielles Militärgericht).

(2) einer offiziellen Voruntersuchung unterzogen werden (auch als "Untersuchung nach Artikel 32" bezeichnet), um zu beurteilen, ob der Beschuldigte vor das höchste Militärgericht, das Große Militärgericht, gestellt werden soll.

c. Ihre Zeugenaussage wird von diesen verschiedenen Verfahren praktisch nicht berührt. Sie können

(1) aufgefordert werden, bei einer Untersuchung nach Artikel 32 zu erscheinen;

(2) vor ein Militärgericht vorgeladen werden.

d. Vor Ihrer Aussage werden Sie vereidigt.

e. Im Verlauf Ihrer Zeugenaussage können Ihnen Fragen von den folgenden Personen gestellt werden:

(1) einem Offizier, der die Untersuchung nach Artikel 32 durchführt.

(2) einem Militärrichter.

(3) den Geschworenen oder Mitgliedern des Militärgerichts.

(4) dem Anklagevertreter und Verteidiger.

f. Ihre Zeugenaussage, die auch die Antworten auf Ihnen gestellte Fragen umfasst, trägt wesentlich dazu bei, dass das Militärstrafrechtssystem erfolgreich angewendet werden kann.

#### WAS SIE VOM US-MILITÄRSTRAFRECHTSSYSTEM ERWARTEN DÜRFEN

Als Zeuge haben Sie normalerweise Anspruch auf folgende Leistungen:

**a. Unterrichtung über wichtige Ereignisse.** Wenn Sie über wichtige Ereignisse unterrichtet werden möchten, geben Sie dem zuständigen Verbindungsoffizier für Geschädigte und Zeugen Ihre Anschrift oder Telefonnummer. Sie werden, wenn möglich im voraus, über die folgenden Ereignisse unterrichtet:

(1) Festnahme (Verhaftung) des Beschuldigten.

(2) Entlassung des Beschuldigten aus der Untersuchungshaft.

(3) Verhandlung oder Ablegung eines Schuldgeständnisses und Einleitung des Verurteilungsverfahrens.

Fragen im Zusammenhang mit dieser Benachrichtigung sind an den zuständigen Verbindungsoffizier für Geschädigte und Zeugen zu richten.

**b. Ausgaben.** Wenn Sie als Zeuge vor einem Militärgericht, zu einem Beweisaufnahmeprotokoll oder einer Untersuchung nach Artikel 32 erscheinen, haben Sie eventuell Anspruch auf bestimmte Aufwandsentschädigungen. Informationen über solche Zahlungen erhalten Sie von dem für Sie zuständigen Verbindungsoffizier für Geschädigte und Zeugen.

(1) Generell gilt, dass Ihnen angemessene und notwendige Reise- und Beförderungskosten erstattet werden (z.B. Unterkunft und Verpflegung), die durch das erforderliche Erscheinen vor Gericht entstehen.

(2) Als Zeugen auftretende Zivilisten (pensionierte US-Militärangehörige eingeschlossen), die keine Beschäftigten der US-Regierung sind und vor Militärgerichten oder zum Beweisaufnahmeprotokoll erscheinen müssen, haben Anspruch auf eine Vergütung für jeden Tag, an dem ihre Anwesenheit erforderlich ist. Diese Vergütung wird für die Anwesenheit bei Anhörungen nach Artikel 32 nicht gewährt.

(3) In bestimmten Fällen kann ein Teil der Aufwandsentschädigung auf Antrag im voraus gezahlt werden, bevor die Zeugenaussage gemacht wird.

**c. Benachrichtigung von Arbeitgebern oder Gläubigern.** Die US-Armee entschädigt Sie normalerweise nicht für einen Verdienstaussfall. Auf Ihren Wunsch wird sich der Verbindungsoffizier für Geschädigte und Zeugen an Ihren Arbeitgeber wenden, um ihm die Umstände des Falls und die Gründe für Ihr Erscheinen zu erklären. Er oder sie wird ihn ersuchen, dafür zu sorgen, dass Ihnen aus Ihrer Teilnahme an einem Gerichtsverfahren der US-Regierung als Zeuge keine finanziellen Nachteile entstehen. Bei einem entsprechenden Ersuchen an Ihren Verbindungsoffizier für Geschädigte und Zeugen wird er oder sie auch Ihren Gläubigern die finanzielle Härte erläutern, die eine Teilnahme als Zeuge für Sie bedeuten kann.

**d. Termin des Erscheinens vor Gericht und Unterrichtung über Änderungen.** Sie werden über die Zeit und den Ort der Gerichtsverhandlung informiert. Sollte Ihr Gerichtstermin mit außerordentlichen Problemen für Sie verbunden sein, wenden Sie sich bitte sofort an den zuständigen Verbindungsoffizier für Geschädigte und Zeugen. Wenn ein Gerichtstermin verlegt oder gestrichen wird, werden der Verbindungsoffizier für Geschädigte und Zeugen oder Angestellte des Militärgerichts versuchen, Sie rechtzeitig vorher zu informieren. Sie sollten dennoch den zuständigen Verbindungsoffizier für Geschädigte und Zeugen immer anrufen, bevor Sie sich als Zeuge zum Ort der Verhandlung begeben, um sicherzustellen, dass nicht in letzter Minute der Termin geändert wurde. Um uns Ihre Unterrichtung über Terminänderungen zu erleichtern, sorgen Sie bitte dafür, dass der zuständige Verbindungsoffizier für Geschädigte und Zeugen immer Ihre richtige Adresse und Telefonnummer hat.

**e. Getrennte Warteräume.** Um Ihnen Unannehmlichkeiten zu ersparen, und aus Gründen der Privatsphäre wird möglichst versucht, getrennte Warteräume für die Zeugen der Verteidigung und der Anklage bereitzustellen. Allerdings ist dies nicht immer möglich. Wenden Sie sich bei Problemen im Zusammenhang mit den Warteraumbedingungen bitte sofort an den zuständigen Verbindungsoffizier für Geschädigte und Zeugen oder den Anklagevertreter. Sie sollten im Warteraum oder in den benachbarten Räumlichkeiten nicht über den Fall sprechen.

**f. Hilfestellung vor Ort.** Wenn Sie am Ort der Gerichtsverhandlung Verkehrsmittel benötigen, Parkmöglichkeiten oder Personal für Kinderbetreuung suchen, wird Sie der zuständige Verbindungsoffizier für Geschädigte und Zeugen darüber informieren und Ihnen behilflich sein. Bei Übernachtungen können eventuell Standortunterkünfte bereitgestellt werden. Wenden Sie sich bitte an Ihren Verbindungsoffizier für Geschädigte und Zeugen.

**g. Berücksichtigung besonderer Umstände des Zeugen.** Wenn Sie ein Familienangehöriger eines Soldaten sind, dessen Versetzung bevorsteht, kann diese möglicherweise verschoben werden müssen. Falls eine solch ungewöhnliche Situation besteht, verständigen Sie bitte sofort den zuständigen Verbindungsoffizier für Geschädigte und Zeugen.

**h. Schutz.** Falls Sie Nötigungen, Belästigungen, Einschüchterungen oder Drohungen irgendwelcher Art ausgesetzt sind, unterrichten Sie bitte Ihren Verbindungsoffizier für Geschädigte und Zeugen. Wenn Sie sich in unmittelbarer Gefahr befinden, rufen Sie sofort die örtliche Polizeidienststelle oder die Militärpolizei an. Die zuständigen Behörden werden die Angelegenheit untersuchen und die notwendigen Maßnahmen zu Ihrem Schutz treffen.

## **INFORMATIONEN FÜR POTENTIELLE ZEUGEN**

### **1. ABLAUF DER VERHANDLUNG**

Die Verhandlungen finden vor einem Militärgericht der US-Armee statt.

a. Das Gericht setzt sich entweder aus einem Richter oder einem Richter und einem Gremium aus drei oder mehr Mitgliedern der US-Armee zusammen, die aufgrund der von Ihnen und anderen Zeugen gemachten Aussagen über Schuld oder Nichtschuld des Angeklagten zu befinden haben (siehe "Das amerikanische Militärstrafrechtssystem – Funktionsweise).

b. Ihre Zeugenaussage vor einem US-Militärgericht erfolgt gemäß den gesetzlichen Bestimmungen und der Verfahrensordnung der Vereinigten Staaten. Die Rechte und Vorrechte, die Sie vor einem deutschen Gericht haben würden, werden berücksichtigt.

c. Vor amerikanischen Gerichten dürfen Zeugen der Verhandlung weder beiwohnen noch zuhören, bis sie selbst in den Zeugenstand gerufen werden.

(1) Dementsprechend wird man Sie bitten, in einem anderen Raum so lange zu warten, bis Sie in den Zeugenstand gerufen werden. Sie erhalten rechtzeitig Kenntnis von Ihrem Aufruf.

(2) Vor Beginn ihrer Aussage bei der Verhandlung werden die Zeugen vereidigt. Die Tatsache, dass Sie ersucht werden, eidesstattlich zu versichern, dass Ihre Aussage der Wahrheit entspricht, oder bei Gott zu schwören, dass Ihre Aussage die Wahrheit, die reine Wahrheit und nichts als die Wahrheit ist, bedeutet nicht, dass Ihre Glaubwürdigkeit in Zweifel gezogen wird.

### **2. ÜBERSETZUNG DER VERHANDLUNG**

Die Verhandlung wird in englischer Sprache geführt. Normalerweise machen Sie Ihre Aussage jedoch auf Deutsch und bedienen sich eines Dolmetschers.

a. Auch wenn Sie Englisch verstehen, antworten Sie bitte erst dann, wenn der Dolmetscher die Frage an Sie ins Deutsche übersetzt hat.

b. Ihre Antwort sollte in deutscher Sprache erfolgen, um dann vom Dolmetscher ins Englische übertragen zu werden. Wenn Sie langsam und deutlich sprechen und Ihre Antworten in kurzen Sätzen formulieren, tragen Sie dazu bei, eine präzise Übersetzung zu gewährleisten.

c. Sie werden feststellen, dass nur ein Dolmetscher anwesend ist. Er oder sie ist eine vereidigte Gerichtsperson. Sowohl in der Artikel-32 Untersuchung als auch in der Hauptverhandlung übersetzt der Dolmetscher Fragen der Anklagevertretung wie auch der Verteidigung.

### **3. VERNEHMUNG**

Sie werden nacheinander vom Anklagevertreter und vom Verteidiger befragt.

a. Da die Geschworenen keinen Zugang zu den Aussagen haben, die Sie bei der Artikel-32 Untersuchung gemacht haben, ist es möglicherweise notwendig, alles, was Sie über den Vorfall wissen, in der Hauptverhandlung zu wiederholen.

b. Anklagevertreter und Verteidiger sorgen durch geeignete Fragestellung dafür, dass kein wichtiger Punkt Ihrer Aussage unberücksichtigt bleibt.

c. Im Verlauf der Zeugenaussage können Ihnen auch Fragen von den folgenden Personen gestellt werden:

(1) einem Offizier , der eine Untersuchung nach Artikel 32 durchgeführt hat (siehe "Das amerikanische Militärstrafrechtssystem – Funktionsweise"),

(2) einem Militärrichter,

(3) den Geschworenen, die durch den Militärrichter Fragen stellen lassen können.

d. Ihre Aussage, die auch Ihre Antworten auf Ihnen gestellte Fragen umfasst, trägt wesentlich dazu bei, dass das Militärstrafrechtssystem erfolgreich angewendet werden kann.

### **WAS DAS US-MILITÄRSTRAFRECHTSSYSTEM VON IHNEN ERWARTET**

1. Das Militärstrafrechtssystem dient dazu:

a. Ordnung und Disziplin innerhalb der Streitkräfte zu fördern;

b. ein System für die gerechte Behandlung von Straftätern zu schaffen;

c. einem Angeklagten eine faire Verhandlung zu gewährleisten;

d. weitere Straftaten zu verhindern;

e. jene Personen, deren Schuld einwandfrei erwiesen ist, angemessen zu bestrafen und zu rehabilitieren.

2. Zur Realisierung der Ziele des Militärstrafrechtssystems ist Ihre Zeugenaussage äußerst wichtig. Sofern Sie nicht ein besonderes Aussageverweigerungsrecht haben, erwartet die Armee von Ihnen, dass sie sich als Zeuge zur Verfügung stellen und Ihre Aussage machen, und diese auch der Wahrheit entspricht.

3. Mit Hilfe des Militärstrafrechtssystems ist es möglich, Zeugen, die Militärangehörige sind (durch Befehl) und amerikanische Zivilisten (durch Ladung) zum Erscheinen und Aussagen vor einem Militärgericht zu zwingen. Die meisten Zeugen in Militärstrafverfahren sind jedoch trotz der damit verbundenen Unannehmlichkeiten bereit, freiwillig auszusagen.

4. Das Hilfsprogramm der US-Armee für Geschädigte und Zeugen (mit seinen in dieser Anlage beschriebenen Leistungen für Zeugen) wurde erstellt, um Härten zu mildern, die Sie möglicherweise in der Vergangenheit erfahren haben, und Ihre Mitarbeit zu erleichtern; durch Ihre Mitarbeit tragen Sie dazu bei, dass das Militärstrafrechtssystem funktioniert.

5. Sollten Sie Fragen bezüglich Ihrer Rechte und Pflichten als Zeuge haben, wenden Sie bitte an den zuständigen Verbindungsoffizier für Geschädigte und Zeugen.

Anlage 2

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**\*Figure E-4. Sample Enclosure 2 to Information Letter for German Witnesses (German)**

**\*This format will be used only as a guide and will not be printed, reproduced, or stocked.**

**APPENDIX F  
CIVILIAN WITNESSES FROM THE UNITED STATES**

**F-1. USAREUR UNIFORM SYSTEM FOR PAYMENT OF CIVILIAN WITNESSES FROM THE UNITED STATES WHO TESTIFY IN COURTS-MARTIAL IN USAREUR**

Although the responsibility for the proper treatment of witnesses rests with the victim/witness liaison officer or the trial counsel, several jurisdictions also have used their noncommissioned officer in charge or legal administrative technician as a POC for processing witnesses. The POC can be made a certifying officer and, under certain circumstances, a class-A agent officer. A class-A agent officer may draw funds from the finance and accounting office for paying witnesses. The POC may be made a class-A agent officer if he or she is--

- a. An officer, warrant officer, or noncommissioned officer in the rank of sergeant first class through sergeant major.
- b. Stationed in an isolated area.

**F-2. PROCEDURES**

When a civilian witness residing in the United States and not employed by the Government will be called to testify, the appropriate staff judge advocate (SJA) will--

a. Take appropriate action to provide for the attendance of witnesses for both the prosecution and the defense according to Rule for Courts-Martial 703.

b. Get a fund cite from the comptroller or other appropriate office.

c. Send requests for the witness to appear through the appropriate office of the staff judge advocate (OSJA) in writing to the Office of the Clerk of Court, U.S. Army Judiciary, ATTN: JALS-CC, 5611 Columbia Pike, Falls Church, VA 22041-5013, or by electronic message to CUSAJUDICIARY FALLS CHURCH VA//JALS-CCS//. Requests will be made according to AR 27-10, paragraph 18.22. Electronic messages to CUSAJUDICIARY or CDRUSALSA pertaining to witnesses for courts-martial, whether for action or information, must be addressed to JALS-CCS. This office symbol must be used in the address because other elements of the United States Army Legal Services Agency (USALSA), such as the Litigation Division, also are engaged in arranging witnesses for court proceedings.

(1) The request will include the information listed in AR 27-10, paragraph 18-22b. The time constraints and information requirements of that paragraph must be met. If time constraints cannot be met, explanation for the failure must be provided to identify systemic problems.

(2) The Clerk of Court, U.S. Army Judiciary, does not arrange for travel of active duty military personnel or DOD civilians as witnesses in courts-martial. The trial counsel must communicate directly with the commanding officer of the prospective witness. The general court-martial jurisdiction SJA can assist. An information copy of the communication should be sent to U.S. Army Judiciary, ATTN: JAS-CCS, if the Clerk of Court, U.S. Army Judiciary, is arranging civilian witnesses for the same case, especially if the civilian witness is related to a military witness.

(3) The Clerk of Court, U.S. Army Judiciary, must be provided the reason for and probable disposition of the case, when the requirement for a requested witness is canceled. Providing this information is a requirement of the Victim and Witness Protection Act of 1982, as implemented by AR 27-10, chapter 18.

d. Provide a copy of the Information Letter for U.S. Witnesses (this regulation, app D) and a copy of the Witness Information Sheet for Civilian Witnesses From the United States Who Testify in Courts-Martial in USAREUR to the witness (fig F-1).

e. Communicate with the witness by telephone to keep the witness informed and to reduce potential problems.

f. Make arrangements for local transportation and lodging of the witness after the USALSA issues invitational travel orders and notifies the SJA of the estimated arrival time.

g. Review witness information (fig F-1) with the witness. This review will ensure the witness is familiar with payable fees and allowances and with payment procedures.

h. Prepare an SF 1156 (Public Voucher for Fees and Mileage of Witnesses) and an SF 1157 (Claim for Witness Attendance Fees, Travel, and Miscellaneous Expenses) according to Defense Finance and Accounting Service-Indianapolis (DFAS-IN) Regulation 37-1 and Soldier Training Publication 12-71D15-SM-TG. Confirmation of advance payments will be made and noted on the forms.

(1) Fees and allowances provided for in DFAS-IN Regulation 37-1 will be used when the computed amounts are higher than or equal to the witness' entitlements under German law.

(2) When the entitlement of a witness under German law is more than when computed under DFAS-IN Regulation 37-1, payment will be based on German law. A translation of applicable German law is in this regulation, appendix G.

(3) Vouchers covering expenses authorized by DFAS-IN Regulation 37-1 will be submitted to the finance and accounting officer who normally services the installation where the court is convened. This submission will be made even if expenses are paid or allowances are owed after the witness leaves the area of jurisdiction (DFAS-IN Reg 37-1).

(4) Witnesses may receive advance payment of total travel allowances and attendance fees equal to a 1-day entitlement (DFAS-IN Reg 37-1). Other fees and allowances can be paid only as accrued.

(5) Witnesses should be paid expenses incurred and other authorized fees and allowances before leaving the overseas area of jurisdiction.

(a) The class-A agent officer may draw funds for paying the witness, or the witness may be escorted to the finance and accounting office for direct payment before leaving the area of jurisdiction.

(b) Arrangements for the witness to process through the finance and accounting office after testifying and before being excused by the military judge will be coordinated with the military judge.

(c) The finance and accounting office should process payment immediately on presentation of the completed vouchers.

(d) If immediate cash payment cannot be obtained or is not desired, vouchers should still be processed before the witness leaves the jurisdiction so that payment by check can be made.

(6) Final settlement for unanticipated expenses incurred on the witness' return to the United States can be made after the witness returns to the United States. The trial counsel should supply vouchers, instructions for completion, and an addressed envelope to return the claim to his or her office. Claims must be made to the finance and accounting office serving the installation where the court is located ((3) above).

(7) If settlement has not been made or processed for payment by check before the witness leaves, the OSJA should follow up with necessary inquiries to the witness.

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## WITNESS INFORMATION SHEET

1. This information sheet is provided to help you understand your travel entitlements in connection with your appearance as a witness. It does not cover every possibility, but is meant to be a guide. If you have any questions, feel free to ask the victim/witness liaison officer or the trial counsel.

### **a. Transportation Entitlements.**

(1) The U.S. Government will pay for travel from your home to the airport from which you fly to Europe and, on return, for travel from the reentry airport in the United States to your home. In all cases, the Government--

(a) Provides its own transportation or obtains it from a commercial source.

(b) Pays for common-carrier expenses at the least expensive rate (for example, coach fare rather than first class).

(c) Pays 31 cents per mile.

(d) Pays a combination of the above.

**Example:** If you traveled by car from your home (H) to town (T), then took a bus to the city (C), then took a domestic airline to the airport (A) from which you flew to Europe, you will be reimbursed as follows:

Mileage from H to T at 31 cents per mile, plus the cost of the bus ticket from T to C, plus the cost of the coach fare airline ticket from C to A.

(2) For your flight from the airport in the United States to your overseas destination and back, you will receive either transportation provided by the Government or payment for a commercial ticket you buy up to the amount the Government would have paid if it had bought the ticket. (You must fly on an American-flag carrier.) Payment is calculated on the actual cost, not to exceed the most economical rate available. You are free to sightsee in connection with your trip to Europe as a witness, but the Government cannot pay for sightseeing costs.

(3) Your entitlements for travel to and from the airport in Europe to the place of trial are the same as for travel described in (1) above.

**b. Reimbursable Expenses.** You will be paid for toll charges for roads, bridges, tunnels, and ferries; for taxi fares between places of lodging and common-carrier terminals; and for parking fees. Remember to obtain and keep receipts to turn in when you file your claim.

**c. Daily Expenses.** You will be paid for daily expenses, such as meals, lodging, and laundry, according to Government tables, called "per diem rates," which are based on the local cost of living. These rates vary from place to place. When you arrive, the legal clerk or trial counsel will explain the per diem rates that apply to your trip. You should keep receipts for all expenses for which you think you might be paid.

(1) If you take a few extra days for sightseeing, the U.S. Government will pay per diem only for the time that you would have needed to travel as a witness if you had come and gone directly to the place of trial.

(2) For full days at the place of trial, you will be paid per diem at the daily rate.

(a) Fifty-four percent of this rate applies to lodging, so the amount payable per day will be reduced if you stay in Government accommodations. You will be paid 39 percent per diem for meals, \$3.50 for miscellaneous expenses, plus the actual cost of the room. (Here is a note of warning that you, as a taxpayer, will understand and appreciate: If Government quarters are available and suitable, your per diem rate will be reduced even if you choose not to stay in the Government quarters. It is in your interest to check with the trial counsel before making hotel arrangements.)

(b) If you eat in a Government dining facility, the per diem rate will be reduced by 13 percent for each meal consumed. You are not required to eat in a Government dining facility and your per diem rate will not be affected if you do not, even if a Government dining facility is available.

**d. Witness Fee.** You will be paid a witness fee of \$30 per day for each day of attendance. (Compensation also may be based on German law, if such payment is more advantageous to you. In order to allow such a comparison, you should be prepared to submit evidence of wages you will lose due to your appearance.)

2. Before leaving the United States, you can be paid a travel allowance and witness fee for 1 day. You can get help in receiving this payment from the United States Army Legal Services Agency in Falls Church, Virginia. A representative of that agency will contact you. You can receive other payments only as you pay expenses or are owed fees and allowances. Because of this, you should carry enough funds with you to cover your expenses until you are paid.

3. Before you leave this command, we will prepare the necessary paperwork for filing your claim for expenses. You will be paid for all expenses you are due up to the point of your departure. In addition, if you have not already received advance payment for travel, we will buy the plane ticket for your return flight and pay you 31 cents per mile between the port of entry into the United States and the place where you began your travel. Claims for the additional costs of commercial transportation can be made after you complete your travel. You may, of course, decide to return at your own expense and file your claim later, but the payment limits outlined above will apply.

4. Under Army regulations, your claim for expenses must be submitted to the finance and accounting officer who services the installation where the case is tried. In this case, the servicing finance and accounting office is \_\_\_\_\_. Any claim for extra expenses during your return trip home for which you have not been paid must be sent to that office for payment. If you need to do this, please send the victim/witness liaison officer or trial counsel the paperwork. Your claim for payment by check will be processed as soon as possible. For future reference, the address of your victim/witnesses liaison officer or trial counsel is \_\_\_\_\_.

5. Your attendance at this trial is sincerely appreciated. If you have any questions concerning your payment, or if you have any problems, please see the victim/witness liaison officer or the trial counsel so that your questions can be answered and your problems can be solved before you leave Europe.

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**\*Figure F-1. Sample Witness Information Sheet for Civilian Witnesses From the United States Who Testify in Courts-Martial in USAREUR**

**\*This format will be used only as a guide and will not be printed, reproduced, or stocked.**

## **APPENDIX G**

### **COMPENSATING WITNESSES AND EXPERTS AND THE FEE SCHEDULE FOR EXPERTS (TRANSLATION OF APPLICABLE GERMAN LAWS)**

**NOTE:** For the purpose of this translation, “he” and “his” are used as neutral pronouns that refer to both men and women.

#### **PART I**

### **LAW CONCERNING THE COMPENSATION OF WITNESSES AND EXPERTS IN THE VERSION OF 1 OCTOBER 1969 (FEDERAL LAW GAZETTE, 1969, PART I, P.1756 ET SEQ.) WITH SUBSEQUENT AMENDMENTS THROUGH 17 DECEMBER 1997**

#### **SECTION 1. SCOPE OF APPLICATION**

(1) Witnesses and experts summoned by the court or the prosecutor for the taking of evidence will be reimbursed according to this law.

(2) This law is also applicable if public authorities or other public offices are ordered by the court or prosecutor to render expert services.

(3) This law does not apply to personnel of public authorities or of any other public agency, unless they are honorary officials or are acting in an honorary capacity, if they render, represent, or explain an opinion in the fulfillment of their official duties.

#### **SECTION 2. COMPENSATION OF WITNESSES**

(1) Witnesses will be compensated for their loss of wages. This also applies if a question concerning the evidence is answered in writing (German Code of Civil Procedure, section 377, paragraph 3).

(2) This compensation will range from 4 deutsche mark (DM) to DM 25 for every hour of lost work time. The last hour, once commenced, will be counted as a full hour. Compensation will be made in consonance with regular gross earnings.

(3) If there is no loss of wages, witnesses will receive a compensation that is computed on the basis of the lowest rate. Persons who are not gainfully employed but manage the household for several persons will receive compensation of DM 20 per hour. Sentence 2 applies accordingly for part-time employees who are summoned to appear before the court outside their agreed regular workhours. Compensation pursuant to sentences 2 and 3 is not granted if the witness receives compensation for the costs of a necessary substitute. The witness will not receive compensation if it is obvious that he has suffered no prejudice by his court attendance.

(4) Prisoners who cannot claim a loss of wages based on employment by a private firm will be compensated for the loss of the gratuity paid by prison authorities.

(5) Compensation will be granted for a maximum of 10 hours per day. However, compensation pursuant to paragraph 3, sentence 1, is only paid for a maximum of 8 hours per day; part-time employees will receive compensation pursuant to paragraph 3, sentence 2, for a period which, when added to the agreed regular workhours, does not exceed a maximum of 8 hours per day.

#### **SECTION 3. REMUNERATION OF EXPERTS**

(1) Experts will be remunerated for their services.

(2) This remuneration will range from DM 50 to DM 100 for every hour of the requisite time. Assessment of the hourly rate will depend on the professional expertise required, the difficulty of the task, expenditures for the necessary use of technical appliances that cannot be otherwise compensated, and the special circumstances under which the expert opinion had to be prepared. This hourly rate will be uniformly assessed for the entire time required. The last hour, once commenced, will be counted as a full hour; this, however, will not apply if the expert is to be remunerated for that same period in some other matter.

(3) The remuneration to be made under paragraph (2) may be exceeded by up to 50 percent--

1. When, in rendering the expert opinion, the expert had to present a comprehensive discussion of scientific doctrine as applicable to the specific case, or,

2. As a matter of reasonable discretion if the expert, because of the duration or frequency of his appearance, were to suffer an unreasonable loss of income, or 70 percent of his income is earned from professional activities as a court-appointed or other professional expert.

The increases under (a) and (b) above cannot be accorded simultaneously.

#### **SECTION 4. TIME PERIOD TO BE TAKEN INTO ACCOUNT**

Time lost by witnesses and time spent by experts will be computed to include the period during which they are prevented from engaging in their usual occupation by reason of their compliance with the summons.

#### **SECTION 5. SPECIFIC SERVICES**

(1) To the extent that an expert or expert witness renders services that are listed in the Fee Schedule for Experts, compensation will be made according to the fee schedule.

(2) For services of the type designated in section 0 of the Fee Schedule for Physicians Services (Annex to the Fee Schedule for Physicians), the expert will, in compliance with this fee schedule, receive 1.1 times the fee-rate for compensation. Section 4, paragraphs (2), (3), and (4), first sentence, and section 10 of the Fee Schedule for Physicians Services apply accordingly; sections 8 and 11 of this law remain unaffected.

(3) For the additional time required, compensation will be made at the minimum rate pursuant to section 3, paragraph (2), for each hour. If rendering of a service is necessary at an extraordinary time or under exceptional circumstances, the total compensation according to paragraph (1) or (2) may be increased by up to DM 65.

#### **SECTION 6. WITNESSES AND EXPERTS FROM A FOREIGN COUNTRY**

Witnesses and experts who are ordinarily resident in a foreign country may, with due consideration to their personal situation and especially to their regular means of earning a living, in the exercise of reasonable discretion, be accorded rates of compensation that are higher than those provided in sections 2 through 5.

#### **SECTION 7. SPECIAL COMPENSATION**

(1) If the parties to a proceeding have advised the court that they have agreed on specific compensation for the services of the expert or on a specific hourly rate, the compensation or specific hourly rate must be accorded if sufficient funds were deposited by them with the state treasury.

(2) A statement to this effect by only one of the parties is sufficient if the court consents. Consent to the assessment of a specific hourly rate will only be given if the compensation permissible pursuant to section 3 is not exceeded. Before giving such consent, the court will hear the other party. Consent and denial of consent are unappealable.

#### **SECTION 8. REIMBURSEMENT OF EXPENDITURES**

(1) The expert will be reimbursed as follows:

1. For the cost arising from the preparation and rendering of the opinion, including the required expenditures for assistants, as well as for materials and tools used in an examination.

2. For the taking of photographs used in the opinion, the amount of DM 4 for the first print and DM 1 for all other prints.

3. For the preparation of the written expert opinion, including the necessary expenditures for assistants, DM 4 for each started page.

4. For the turnover tax due on his compensation, if this tax does not remain unassessed according to section 19, paragraph (1), of the Turnover Tax Law.

(2) That portion of the general cost incurred by the expert with respect to assistants (paragraph (1), no. 1 above) may be recompensed by a supplement of up to 15 percent of the sum payable as reimbursement for expenditures for the employment of assistants.

(3) (rescinded).

## **SECTION 9. TRAVEL EXPENSES**

(1) Witnesses and experts will be reimbursed for travel expenses up to the costs incurred for the use of the most-favorably priced public transportation or, if the total distance to travel is up to 200 kilometers, compensation will be made for the costs incurred by use of the person's own vehicle or a vehicle provided by a third person at no cost. Higher travel expenses will be reimbursed if, by use of transportation other than the most-favorably priced public transportation, the total amount of compensation is not increased or if higher travel expenses are required due to special circumstances.

(2) Where use is made of regularly running public transportation, reimbursement will be made for actual expenditures, including baggage charges, to the full extent of applicable tariffs; in case of travel by rail or ship, up to the rate of first-class travel by train or ship. Reimbursement for cost of travel will be assessed with due regard to the personal situation of the witness or expert. Reimbursement will be made for the cost of surcharge tickets required for certain trains.

(3) When using their own motor vehicle or a motor vehicle provided by a third person at no cost--

1. Experts will be reimbursed DM 0.52 to cover the purchase, maintenance, and operational costs, as well as wear and tear of the motor vehicle; and

2. Witnesses will be reimbursed DM 0.40 to cover operational costs and the wear and tear of the motor vehicle

per each driven kilometer, plus regular expenses in cash incurred due to the use of the vehicle for the trip, in particular parking fees.

(4) Reimbursement for the cost of travel performed in the course of the proceedings will be made only if it results in a saving of additional compensation that would have been payable if the witness or expert had remained at the place of the proceedings.

(5) If the witness or expert departs for the place of the proceedings from a location other than that indicated in the summons, or that which he promptly reported to the summoning authority, or if he returns to a location other than the one so indicated, thus increasing the total cost of travel, reimbursement will, as a maximum, be made for the cost of travel from the location indicated in the summons or promptly reported to the summoning authority or for return travel to such location. Reimbursement will be made for such additional cost in the exercise of reasonable discretion if the witness or expert was obliged to make these trips because of special circumstances.

## **SECTION 10. PER DIEM**

(1) Witnesses and experts will receive a compensation for expenses incurred incidental to their absence from their place of residence or their court attendance at their place of residence. This compensation will be assessed with due regard to the personal situation of the witness or expert.

(2) Such compensation for expenses incurred incidental to an absence from one's place of residence will not exceed the per diem allowance to which judges in Travel Expense Category B are entitled under the provisions of the Regulation Governing Reimbursement for Cost of Travel to Judges in the Federal Service (*Vorschriften über die Reisekostenvergütung der Richter im Bundesdienst*). The provisions under which the per diem allowance is reduced or denied for trips that are started or terminated on the same calendar day apply accordingly. In case of absence of up to 6 hours, reimbursement for necessary expenses up to DM 6 will be made. If the witness or expert had to stay overnight at a place other than his place of residence, he will be reimbursed for expenses insofar as they are reasonable.

(3) When the witness or expert attends proceedings at his place of residence, per diem at a rate of up to DM 6 will be paid for each day on which the witness or expert is required to be absent from home for more than 4 hours.

## **SECTION 11. COMPENSATION FOR OTHER EXPENDITURES**

(1) The witness or expert also will be reimbursed for cash expenditures not specifically listed in sections 8 through 10 to the extent that they are necessary. This applies especially to the cost of a necessary substitute and cost for accompanying persons who may be required.

(2) The amount assessed for expenses on writing materials applied to transcripts and copies which were prepared on request, because it was necessary, or for the expert's reference file, is calculated based on the amounts assessed for the court's expenses on writing materials stipulated in the Law Concerning Court Costs, if it pertains to the same expert opinion.

## **SECTION 12. ROUNDING-OFF**

The total compensation to be paid to a witness or expert will be rounded off to DM 0.10.

## **SECTION 13. COMPENSATION AGREED UPON**

The highest State (*Land*) authority or an agency appointed by the *Land* authority may make agreements with experts whose services are requested frequently for compensation within the scope of compensation permissible under this law.

## **SECTION 14. ADVANCE PAYMENT**

(1) Summoned witnesses and experts will, on their request, be granted an advance payment if they do not have the means to afford the cost of travel, or if they cannot be expected to advance these costs from their own resources because of the high cost of travel.

(2) Furthermore, an expert will, on his request, be granted an advance payment if, as a result of the services required of him, he is prevented, entirely or predominantly, from engaging in the regular pursuit of his occupation for a continuous period of at least 30 days, or if the preparation of the expert opinion requires cash expenditures and it cannot reasonably be expected of the expert, particularly because of the amount of the expenditures, to advance his own funds.

(3) Section 16 applies accordingly.

## **SECTION 15. LAPSE OF CLAIM, STATUTE OF LIMITATIONS**

(1) Witnesses and experts are compensated only on request.

(2) Unless the witness presents his claim for compensation to the competent court or competent office of the public prosecutor within 3 months after termination of his attendance, claim lapses.

(3) The court (section 16, paragraph (1)) may demand the expert to submit a claim within a certain period. This period will be at least 2 months. In making such a demand on the expert, the expert must be advised of the consequences of failing to meet the time limit. The court may, on request, extend the time limit. The claim lapses if the expert fails to submit the claim within the fixed time period. If the expert, through no fault of his own, was impeded from meeting the time limit, he will, on request, be granted reinstatement if he submits a claim within 2 weeks after overcoming the impediment and provides justification supporting the request for reinstatement.

(4) Section 196, paragraph 1, number 17 of the German Civil Code will remain unaffected.

(5) Claims for reimbursement of compensation paid in excess are subject to a 2-year limit; section 10, paragraph 3, of the Law Concerning Court Costs will apply accordingly.

## **SECTION 16. ASSESSMENT BY A COURT**

(1) The compensation due a witness or expert will be assessed by court decision if the witness, expert, or the State treasury applies for judicial assessment; or if the court considers it appropriate. Competence will be attached to the court or judge before whom the witness or expert appeared. If the services of the witness or expert were required by the prosecutor, competence will be attached to the court to which the office of the public prosecutor pertains.

(2) Such assessment by the court is subject to appeal (*Beschwerde*) if the amount in controversy exceeds DM 100. Only the witness or expert and the State treasury are entitled to file such an appeal. There is no time limit for the appeal. The filing of such an appeal with one of the Federal Courts of Appeal is not permissible. The appeal will be filed with the court that rendered the decision to be appealed. The court itself may grant the appeal.

(3) Motions, declarations, and appeals may be made to the records of the clerk of the court, or they may be filed in writing without the assistance of an attorney.

(4) Decisions rendered pursuant to paragraph (1), (2) will not be used to impose a levy against the party liable for payment of the court costs.

(5) The proceedings on the appeal (*Beschwerde*) will be free of court costs. Reimbursement for expenses will not be made.

## **SECTION 17. INTERPRETERS AND TRANSLATORS**

(1) The provisions of this law apply to interpreters and translators accordingly.

(2) Interpreters will be compensated for their services as experts; translators will be compensated according to the following provisions.

(3) The compensation for the translation of a text from one language into another language will be DM 2 per line. In case of a difficult translation, particularly because of the use of technical terms or because of poor readability of the text, the compensation may be increased up to DM 5.80; for extremely difficult texts, up to DM 8.40 per line. The minimum compensation for one or for several translations commissioned at one and the same time will be DM 25.

(4) A line is construed to mean a line of the completed written translation, comprising an average of 50 characters. If Latin characters are not used in the translation but the translation was made from a text composed of Latin characters, the lines of the Latin characters will be the means of determining compensation. Incomplete lines of more than 30 characters will count as full lines; incomplete lines of 30 characters or less will be combined to make full lines.

## **SECTION 17A. THIRD PARTY COMPENSATION**

(1) The provisions of this law will apply accordingly to third parties who, for the purpose of securing evidence, based on a request by a prosecuting authority--

1. Submit objects (section 95, paragraph (1), section 98a, of the German Code of Criminal Procedure) or avert the obligation to do so pursuant to a proposal by the prosecuting authority,

2. Provide information,

3. Make possible the monitoring and recording of telecommunications (section 100b, paragraph (3), of the German Code of Criminal Procedure), or

4. By technical measures in the telecommunication system are able to identify--

a) Those telecommunication devices by means of which a specific telephone number was dialed (call-tracing device),

b) The calls made from a telecommunication device (meter-comparison device);

they do not apply for the making available of the telephonic time announcement, the furnishing and making available of ready-for-use dial connections; they do not apply for the furnishing of ready-for-use permanent lines, which are not installed for specific monitoring measures.

(2) Third parties will be compensated in the same manner as witnesses.

(3) If a third party makes use of the services of an employee or another person, the expenses incurred (section 11) will be reimbursed within the scope of section 2, paragraphs (2) and (5).

(4) The necessary use of a privately owned dataprocessing system to carry out a screen search (*Rasterfahndung*) will be compensated if the capital invested for both the hardware and software used in a specific case exceeds DM 20,000. The compensation for the use of a dataprocessing system in which the capital invested amounts up to DM 50,000 will be DM 10 per each hour of use; the total period of use will be rounded up to the full hour. In case of other dataprocessing systems--

1. The use of the system for the development of a special user program required for a specific case will be compensated by an extra charge of DM 20 per each hour for which compensation must be paid pursuant to paragraph (2) or (3).

2. A calculated flat rate in the amount of one ten-millionth of the invested capital will be compensated per second of the time in which the central processing unit is used (CPU-second) for the remaining period of use and the necessary personnel costs incurred; the amount charged per CPU-second will be rounded up to the full DM 0.05 and will not exceed DM 3.

The amount of the capital invested and the CPU-time used will be proven.

(5) The privately owned electronic dataprocessing system is equivalent to one owned by a third party if the directly attributable costs incurred for providing the information (section 11) cannot be determined exactly.

(6) In deviation from paragraphs (2) and (3), an amount of DM 300 for a twin-wire permanent line and an amount of DM 600 for a four- or multiple-wire permanent line will be compensated in the cases of paragraph (1), no. 3, for the ready for use installation of a permanent line per each terminal which is not part of the equipment of the operator of the permanent line; for using permanently installed lines and switched connections the fees stated in the general scale of fees will be reimbursed.

**SECTION 18. TRANSITIONAL PROVISIONS**

In case of an amendment to this law, compensation of experts and translators will be subject to the current law for the entire period of time, if the request for services was made before the amendment becomes effective. The same will apply to the amendment of regulations referred to in this law.

**PART II  
FEE SCHEDULE FOR EXPERTS**

No.	Designation of Services Rendered	Compensation in DM
1	The physician who views a corpse, parts of a corpse, or a fetus, or who assists in the judicial viewing of a corpse will, receive for his services and the dictation of his report	75
	For several such services rendered on one and the same occasion, the physician will receive a maximum of	185
	If reports must be made in writing or must subsequently be dictated, the physician will receive for each such report	40
	As a maximum	130
2	Each autopsy participant will receive	
a	For the autopsy	305
	For an autopsy performed under particularly unfavorable external conditions, the compensation will be	430
	For an autopsy performed under other particularly unfavorable conditions (condition of the corpse), the compensation will be	620
b	For dissection of parts of a corpse or for the autopsy of a nonviable fetus	130
	For the dissection or autopsy under particularly unfavorable conditions, the compensation will be	185
	This compensation will encompass the dictation of the report, including a preliminary opinion.	
3	For the issuance of a certificate attesting to his findings or when he furnishes information in writing that does not express an expert opinion, the physician will receive	20 to 40

	If the work required is unusually copious, the physician will receive	70
4	For the report of his medical findings including a brief expression of his expert opinion, or for a form-letter-type expert opinion in which the questions are limited to case history, facts, and findings, and require only a brief expression of his expert opinion, the physician will receive	60
	If the work required is unusually copious, the physician will receive	115
5	For the examination of foodstuff, a utensil, medication, air, gases, soil, sludge, water, or sewage and the like, and for a brief written expression of an expert opinion, the compensation with respect to each specimen will be	5 to 80
	In case of unusually copious or difficult examinations, the compensation will be up to	2,000
6a	For a microscopic, physical, chemical, toxicological, bacteriological, serological examination, if the material to be examined is human or animal in nature, the compensation with respect to each organ or body fluid will be	8 to 80
	In case of unusually copious or difficult examinations, the compensation will be up to	2,000
b	Preparation of a DNA sample and testing of its suitability (for example, high molecular weight, human origin, extent of degradation) up to	320
	The compensation includes used materials, if these are substances of low value, and a brief expression of an expert opinion.	
7	The following compensation will be paid:	
a	For every electro-physical examination of a human being	20 to 180
b	For the electronic scanning examination of a human being or of a corpse, to include the contrast additive	20 to 470
	This compensation will also encompass the brief expert opinion to be rendered and the expenses required for the examination.	
8	For blood group determinations, the compensation for each individual to be examined will be	
a	For determination of the ABO blood groups	20
	For determination of subgroups	15
b	For determination of the MN factors	15
c	For determination of the factors of the Rh-complex (C, C <sup>w</sup> , C, D, E, e, and others)	
	per factor	20
	as a maximum total	110
d	For determination of the blood factors P, K, S and others, if directly determinable	
	per factor	20
	as a maximum total	110
e	For determination of factors that can only be indirectly proven (D <sup>u</sup> , s, Fy, and others)	
	per factor	35
	as a maximum total	135
f	For determination of all the factors of the HLA antigens of class I by means of lymphocyte toxicity tests with at least 180 antisera	560
g	For the additionally required titration test	40
h	For the additionally required special test (for example, absorption, determination of the dose's effect)	45
i	For determination of the types of acid erythrocytephosphatase, determination of phosphoglucomatase, adenylatkinase, adenosin-deaminase, glutamatepyruvate-transaminase, esterase D, 6-phosphogluconate-dehydrogenase, and other enzyme systems	45
k	For determination of the factors of the Gm-system or of the Inv-system	
	per factor	45
	as a maximum total	145

l	For determination of a system by means of proteine staining or comparable staining after electrophoresis or focussing (Hp, Pi, Tf, C3)	
	per factor	45
m	For determination of a system by means of immune fixation or immunoblot after electrophoresis or focussing (Gc, PLG, ORM, F XIII, and other)	
	per factor	60
n	For determination of a VNTR-DNA-system or a comparably efficient system	
	per individual and each used tube	220
	maximum amount per individual	1,250
	The compensation also comprises preparation of the material (for example, isolation and the separation of human nucleic acids).	
o	For determination of factors not listed under letters a through n, compensation will be made as to a determination requiring a similar amount of work.	
p	Compensation for the written expert opinion for each individual examined will be	25
	The compensation will encompass expended materials if they are substances of little value; in the case of letter f compensation will comprise material used, including higher-quality substances and test sera.	
9	For each drawing of a blood sample the compensation will be	13
	This compensation will also encompass the preparation of a written record with respect to determination of the identity.	
10	For heredobiological expert opinions in paternity matters, according to recognized heredobiological methods, the compensation will be	
a	For the services rendered by the expert	
aa	Involving the examination of up to three individuals	1,115
ab	For the examination of each additional individual	275
b	For expenditures incurred in the preparation and rendering of the expert opinion	
ba	Involving the examination of up to three individuals	335
bb	For the examination of each additional individual	85

If the expert used the facilities of a public corporation, institution, or foundation, he will receive the compensation under letter b only to the amount of the actual cost incurred; as a maximum, however, the amounts listed under letter b.

The compensation under letters a and b will encompass all of the work performed by the expert and possible assistants, especially the examination, the taking of photographs including the required prints, the making of molds and casts, as well as the examination and evaluation of the entire material; it will further encompass the postal and telephone charges as well as the cost of the preparation of the written expert opinion in three copies and one further copy for the expert's reference file.

The compensation will not encompass the cost of services under numbers 6, 7, 8, and 9 of this fee schedule, nor does it encompass section 0 of the Fee Schedule for Physicians Services (Annex to the Fee Schedule for Physicians Services) or the cost of obtaining an expert opinion from specialized physicians with respect to heredopathological findings.

## GLOSSARY

1st PERSCOM	1st Personnel Command
AAFES	Army and Air Force Exchange Service
AR	Army regulation
ASG	area support group
BSB	base support battalion
CG, USAREUR/7A	Commanding General, United States Army, Europe, and Seventh Army
DA	Department of the Army
DM	deutsche mark
DODDS	Department of Defense Dependents Schools
GCM	general court-martial
GCMCA	general court-martial convening authority
HQDA	Headquarters, Department of the Army
HQ USAREUR/7A	Headquarters, United States Army, Europe, and Seventh Army
ICF	installation confinement facility
JA	Judge Advocate, USAREUR
km	kilometers
LN	local national
MCM	Manual for Courts-Martial
NAF	nonappropriated fund
OJA	Office of the Judge Advocate, HQ USAREUR/7A
OSJA	office of the staff judge advocate
POC	point of contact
RCM	Rule for Courts-Martial
RCS	requirement control symbol
SF	standard form
SJA	staff judge advocate
U.S.	United States
UCMJ	Uniform Code of Military Justice
USACIDC	United States Criminal Investigation Command
USALSA	United States Army Legal Services Agency
USAREUR	United States Army, Europe