

FUNCTIONS OF THE MILITARY CRIMINAL JUSTICE IN VENEZUELA

Highlights:

- Military criminal jurisdiction should deal only with the military. However, especially since the mass protests of 2014, civilians have been prosecuted for alleged military crimes.
- At present, this is a state policy and a common practice that does not obey a pre-established pattern.
- In 2020, the National Constituent Assembly, an illegitimate and unconstitutional body, approved the Constitutional Law of the Bolivarian National Armed Force
- According to this law, the president of the Martial Court and the President of the Criminal Judicial Circuit must be military. More specifically, they must be an Officer, General or active Admiral.
- The President of the Martial Court and the President of the Criminal Judicial Circuit must be appointed by the President of the Republic after being evaluated by on an open competition held by the Evaluation Committee, appointed by the Minister of Defense.
- The Military Attorney General and the Military Public Defenders are appointed in the same manner.
- Human resources as well as financial, material and technical resources are provided for the proper functioning of the members of the Military Justice System by the Ministry of Defense.
- All the above functions contradict the Constitution. Having military justice serve as part of the judiciary and means that its judges must be appointed by the Supreme Court of Justice under standards that guarantee their independence.

Constitutional Chamber of the Supreme Court of Justice (4th level):

Composed: 7 justices.

Duties: To review the constitutionality of the sentences of the Criminal Chamber of the Supreme Court of Justice .

Regulations: article 25, paragraphs 10, 11 and 12 of the LOTSJ.

Criminal Cassation Chamber of the Supreme Court of Justice (3rd level):

Composed: 5 justices.

Duties: To hear the appeal for dismissal against the judgments of the Martial Court.

Regulations: articles 266 numeral 8 of the CRBV, 29 of the LOTSJ, 451 and 452 of the COPP.

Martial Court (2nd level²):

Composed: 5 judges: president, chancellor, rapporteur, first member and second member.

Duties: To hear appeals against the decisions of the control and trial judges.

Regulations: articles 439 to 450 of the COPP.

1 Created primarily to replace the parliament elected in December 2015, which was made up mostly of opposition deputies.

2 In some instances, it acts as a first- and only-level tribunal: when it comes to prosecutions against Military Generals of the Army, the National Guard or the Air Force and Official Admirals of the Navy.

Caption

LOTSJ: Organic Law of the Supreme Court of Justice

COPP: Organic Code of Criminal Procedure

CRBV: Constitution of the Bolivarian Republic of Venezuela

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Military courts of first instance (1st level):

Types (or functions): control, trial, and execution.

The order of the courts is henceforth not hierarchical.

Rather, it is chronological according to the stages of the criminal process

1st stage

MILITARY COURTS OF CONTROL

Composition: 1 judge per court.

Duties: To monitor the investigations of the Military Attorney General's Office, to determine whether the crime charged has allegedly been committed, and whether it warrants keeping the accused in pretrial detention if they are not already detained. In addition, the courts may do the following:

- * Produce evidence.
- * Stage a lineup.
- * Grant authorizations for searches and interception of communications, upon request of the Public Military Ministry.
- * Resolve exceptions and other requests of the parties such as the application of the procedure by admission of the facts, or alternative measures to the prosecution process.

Regulations: articles 65 to 67, 109, 264 and 309 to 314 of the COPP.

2nd stage

MILITARY TRIAL COURTS

Composition: 3 judges per court.

Duties: Conduct an oral and public trial based on the accusation made by the Military Attorney-General's Office, admitted by the supervisory judge, in which the trial judge decides on the acquittal or conviction of the accused, and ultimately, on the corresponding penalty.

Regulations: articles 68, 315 to 352 of the COPP.

3rd stage

MILITARY ENFORCEMENT COURTS

Composition: 1 judge per court.

Duties: To carry out the acts necessary to execute the sanction contained in a conviction issued by a competent court.

Regulations: articles 69, 109, 470 to 503 of the COPP.