

HEADQUARTERS  
UNITED STATES EUROPEAN COMMAND  
UNIT 30400, BOX 1000  
APO 09128

DIRECTIVE  
NUMBER 45-4

23 April 2001

**LEGAL**

Administration of Military Justice

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1. **Summary.** This Directive prescribes policies and procedures for the administration of military justice in Headquarters, U.S. European Command (HQ USEUCOM). This Directive establishes service elements and appoints Service Element Commanders for HQ USEUCOM. The authority to act as a Service Element Commander requires no further action or writing beyond this Directive. The primary purpose of this Directive is to ensure, to the maximum extent possible, consistency in disciplinary actions and procedures regardless of the member's Service.
  2. **Applicability.** This Directive applies to the following personnel and units: military personnel assigned or attached to HQ USEUCOM, including those permanent standing elements referred to herein or specifically made subject to this Directive by appropriate directive or order; military personnel assigned or attached to Offices of Defense Cooperation (ODCs), Logistics Operations Cells (LOCs), and Military Liaison Teams (MLTs) within the EUCOM area of responsibility (AOR); military personnel assigned or attached to the European Stars and Stripes (ESS); direct reporting units of HQ USEUCOM, including the Joint Analysis Center (JAC) and the George C. Marshall European Center for Security Studies (the Marshall Center); Special Operations Command Europe (SOCEUR), including special operations forces (SOF) deployed into the EUCOM AOR; and Joint Task Forces (JTFs) or any other organization formed by or assigned to HQ USEUCOM.
  3. **Internal Control Systems.** This Directive is not subject to the requirements in EUCOM Directive (ED) 50-8, Management Control Program.
  4. **Suggested Improvement.** The HQ USEUCOM Judge Advocate (ECJA) is the proponent for this Directive. Suggested improvements should be sent to: HQ USEUCOM, ATTN: ECJA, UNIT 30400, BOX 1000, APO AE 09128.
  5. **References.**
    - a. Title 10 U.S.C. §§ 815-823, Uniform Code of Military Justice (UCMJ) articles 15-23.
    - b. Manual for Courts-Martial, United States (2000) (MCM).

- c. Department of Defense (DoD) Directive 5132.3, DoD Policy and Responsibilities Relating to Security Assistance, 10 March 1981.
- d. Department of Defense Directive 5505.6, Investigations of Allegations Against Senior Officials of the Department of Defense, 12 July 1991.
- e. Joint Publication 0-2, Unified Action Armed Forces (UNAAF), 24 February 1995.
- f. Navy JAGINST 5800.7C, Manual of the Judge Advocate General, as changed 1998.
- g. Air Force Instruction 51-202, Nonjudicial Punishment, 1 October 1996.
- h. Army Regulation 27-10, Military Justice, 20 August 1999.
- i. USAREUR Regulation 27-10, Military Justice, 1 February 2001.

## 6. **Explanation of Terms.**

a. **Administrative Actions.** There are numerous administrative actions available to help leaders maintain good order and discipline. Leaders use these non-punitive corrective measures to improve a service member's efficiency and not as punishment for a military offense. They include, but are not limited to, rehabilitative measures, such as counseling, corrective training, admonitions, and reprimands; suspension or withdrawal of privileges, such as pass privileges and driving privileges; and adverse actions, such as relief for cause and other measures. To the extent consistent with the member's Service regulations, Service Element Commanders (SEC), Commanding Officers, Officers in Charge, Directors, Office Chiefs, and Supervisors have the authority to impose or initiate administrative actions.

b. **Collateral Administrative Actions.** Collateral administrative actions include those actions necessitated by a commander's finding of misconduct and taken in accordance with the applicable regulations of the member's Service, such as reduction in pay grade, forfeitures, revocation of security clearances, and the preparation of special performance evaluations or ratings. Collateral administrative actions also include the initiation of Army Regulation (AR) 15-6 or equivalent investigations and disposition of article 138 complaints.

c. **Directors and Office Chiefs.** Directors and Office Chiefs include the heads of the HQ USEUCOM directorates and special staff. Directors and Office Chiefs are not the equivalent of commanding officers for military justice and other administrative and collateral actions unless also designated as a Service Element Commander pursuant to this Directive.

d. **Joint Force Commander (JFC).** JFC is a general term applied to a combatant commander, subunified commander, or joint task force commander authorized to exercise combatant command (command authority) or operational control over a joint force. For the purposes of this directive, the terms JFC and Multi-Service Commander (MSC) are used interchangeably.

e. Personnel Assigned or Attached to HQ USEUCOM. Personnel assigned or attached to HQ USEUCOM include all personnel permanently assigned or temporarily attached to HQ USEUCOM, including reservists, personnel in a temporary duty status (TDY), and liaison officers who function as an integral part of the HQ USEUCOM staff.

f. Serious Misconduct. Whether misconduct is serious depends on several factors including the nature of the offense and the surrounding circumstances, and the maximum sentence that may be imposed for the offense if tried by a general court-martial. Misconduct is ordinarily considered serious if the offense is punishable under the Manual for Courts-Martial by death or by confinement for greater than one year.

g. Service Element Commanders. A Service Element Commander is an officer on the staff of a multi-service command designated in writing by the MSC, in accordance with Service regulations, as commanding officer of a unit comprised of members of that officer's Service for the purpose of exercising article 15, UCMJ, and other command authority required to ensure the health, safety and discipline of the personnel of that Service. A MSC may designate one or more such units for each Service represented in the multi-service command, such as junior and senior service elements. Sub-unified commanders and other subordinate commands within HQ USEUCOM may also designate Service Element Commanders within their units as appropriate and consistent with regulations promulgated by the Service Secretaries concerned and this Directive. Commanders will forward copies of these designations to ECJA. ECJA will maintain a copy of this Directive and copies of all letters appointing officers as Service Element Commanders.

h. Service Component Commanders. The Service Component Commander is a commander of an Army, Air Force, Navy, or Marine unit located in the EUCOM AOR who exercises general court-martial convening authority (GCMCA) over assigned forces. Service Component Commanders and their subordinate commanders may exercise UCMJ or nonjudicial punishment (NJP) jurisdiction over personnel covered by this directive only when the Commander in Chief, U.S. European Command (CINCEUR), his Principal Assistant, or the appropriate HQ USEUCOM special court-martial convening authority (SPCMCA) forwards a case to them for disposition.

## 7. **Delegations and Designations.**

a. Principal Assistant. In accordance with references a, b, and f through h, CINCEUR has delegated to the Chief of Staff, HQ USEUCOM (ECCS), authority to act as his Principal Assistant to conduct nonjudicial punishment proceedings, which may include serving as the appellate authority under article 15, UCMJ, for cases arising within the command.

b. Designation of Service Element Commanders. The senior member of each Service serving on the HQ USEUCOM staff, including the special staff, shall serve as the Service Element Commander for his respective Service. If the senior member of a Service is the Commander in Chief, Deputy Commander in Chief, or Chief of Staff, U.S. European Command, or a member of the reserve

component, the next senior member of that Service will serve as the Service Element Commander. If the senior member of a Service is ineligible for any reason, CINCEUR shall designate another individual by separate appointment.

c. Headquarters Commandant. Pursuant to 10 U.S.C. § 164, the Headquarters Commandant is designated a MSC for the purposes of nonjudicial punishment, administrative actions, and collateral administrative actions. The Headquarters Commandant shall exercise nonjudicial punishment authority over enlisted personnel, E6 and below, regardless of the member's Service, when a Service Element Commander refers a case to him for action.

d. Office of Defense Cooperation (ODC), Turkey. Pursuant to 10 U.S.C. § 164, the Chief, ODC Turkey, is designated a MSC solely for the purpose of administering nonjudicial punishment for ODC Turkey personnel.

e. U.S. National Intelligence Cell (USNIC) Commanders. Pursuant to 10 U.S.C. § 164, the commanders of USNICs assigned to HQ USEUCOM are designated MSCs solely for the purpose of administering nonjudicial punishment for USNIC personnel.

f. Reservation of Authority.

(1) CINCEUR retains the option to exercise his authority as a general court-martial convening authority for HQ USEUCOM personnel.

(2) CINCEUR retains the option to impose NJP on HQ USEUCOM personnel. This authority is delegated to the Principal Assistant.

## 8. **Policies.**

a. Discipline. Pursuant to reference e, the JFC is responsible for the discipline of military personnel assigned to the joint organization. Within HQ USEUCOM, leaders will administer discipline in accordance with this Directive and the Service regulations of the member concerned.

b. HQ USEUCOM Personnel.

(1) Nonjudicial Punishment (NJP).

(a) Within HQ USEUCOM, Service Element Commanders are empowered to administer discipline under article 15, UCMJ. Additionally, the Headquarters Commandant may also administer NJP in matters involving enlisted personnel, E6 and below, when a Service Element Commander refers a case to him for action.

(b) The decision to impose NJP rests with the applicable NJP authority identified in this Directive. NJP Authorities may administer nonjudicial punishment themselves or they may refer matters,

with the approval of the Principal Assistant, to the appropriate Service Component Command for resolution. Before taking any action, the appropriate NJP authority shall consult with ECJA and shall consider all available options. Normally, Service Element Commanders will refer matters involving enlisted personnel, E6 and below, to the Headquarters Commandant for disposition as appropriate.

(c) NJP authorities will apply the regulations of the member's Service when conducting NJP proceedings and will process appeals in accordance with paragraph 9g of this Directive.

(2) Referral to Service Component Command. Prior to referring a matter to a Service Component Commander, Service Element Commanders shall coordinate with ECJA and obtain the approval of CINCEUR's Principal Assistant. HQ USEUCOM reserves the right to act if the Service Component Command declines to refer charges or administer NJP.

(3) Role of Directors and Office Chiefs in Disciplinary Matters. Directors and Office Chiefs are empowered to impose or initiate administrative actions consistent with the regulations of the member's Service. Directors and Office Chiefs are not commanding officers under Service regulations unless also designated as a Service Element Commander. Accordingly, measures requiring action by a "commanding officer" must be referred to an appropriate authority.

(4) Role of the Headquarters Commandant. To the extent consistent with applicable Service regulations, the Headquarters Commandant shall have the authority to act on those matters requiring action by a "commanding officer" regardless of the member's Service. This includes the authority to impose NJP on all HQ USEUCOM enlisted personnel in the grade of E-6 and below, when a Service Element Commander refers a case to him for action.

(5) Role of the USNIC Commanders. To the extent consistent with applicable Service regulations, USNIC Commanders shall have the authority to act on those matters requiring nonjudicial punishment action by a "commanding officer" regardless of the member's Service.

c. SOCEUR Personnel. Pursuant to reference e, the following policies are established:

(1) The SOCEUR Commander (COMSOCEUR) is responsible for the health, welfare, and good order and discipline of military personnel assigned to the SOCEUR.

(2) COMSOCEUR shall publish rules and regulations establishing uniform policies applicable to the personnel of all Services within SOCEUR, where appropriate. Such rules and regulations will address, for example, hours and areas authorized for liberty, apprehension of service personnel, and other matters COMSOCEUR deems appropriate.

(3) As a MSC, COMSOCEUR may designate Service Element Commanders. COMSOCEUR and designated Service Element Commanders shall apply the regulations of the member's Service when conducting NJP proceedings. Appeals and other actions involving review of NJP imposed by COMSOCEUR or Service Element Commanders will follow the appropriate

regulation of the member's Service. Collateral processing, such as personnel and finance actions and unfavorable notations in selection records and personnel files, shall be accomplished within the member's Service channels.

(4) Discipline within SOCEUR will normally be administered by COMSOCEUR or the Service Element Commanders appointed by COMSOCEUR. In addition, COMSOCEUR may refer cases to an appropriate Service Component Command for resolution. COMSOCEUR reserves the right to act if the Service Component Command declines to refer charges or administer NJP.

(5) In accordance with article 23(a)(3)&(6) of reference a, COMSOCEUR is a special court-martial convening authority (SPCMCA). Regardless of the member's Service, COMSOCEUR may convene a special court-martial empowered to adjudge a bad conduct discharge.

(6) Pursuant to R.C.M. 201(e)(2)(A) and 201(e)(2)(C) of reference b, COMSOCEUR is authorized to convene special courts-martial and summary courts-martial over members of any Service assigned to SOCEUR. Subject to the policies and provisions of this Directive and unless specifically withheld by CINCEUR, in addition to convening a special court-martial empowered to adjudge a bad conduct discharge for a member of any Service, COMSOCEUR may exercise all other disciplinary and administrative authority contained in references a and b, and in the applicable regulations of the member's Service.

(7) Additionally, COMSOCEUR will exercise NJP and court-martial convening authority over SOF deployed into the EUCOM AOR.

d. Joint Task Force (JTF) Personnel. Pursuant to reference e, the following policies are established:

(1) JTF Commanders (COMJTF) are responsible for the health, welfare, and good order and discipline of military personnel assigned to their JTF.

(2) COMJTF shall publish rules and regulations establishing uniform policies applicable to the personnel of all Services within the JTF, where appropriate. Such rules and regulations will address, for example, hours and areas authorized for liberty, apprehension of service personnel, and other matters COMJTF deems appropriate.

(3) As a MSC, COMJTF may designate Service Element Commanders. COMJTF and designated Service Element Commanders shall apply the regulations of the member's Service when conducting NJP proceedings. Appeals and other actions involving review of NJP imposed by COMJTF or Service Element Commanders will follow the appropriate regulation of the member's Service. Collateral processing, such as personnel and finance actions and unfavorable notations in selection records and personnel files, shall be accomplished within the member's Service channels.

(4) Discipline within a JTF will normally be administered by COMJTF or the Service Element Commanders appointed by COMJTF. In addition, COMJTF may refer cases to an appropriate Service Component Command for resolution. COMJTF reserves the right to act if the Service Component Command declines to refer charges or administer NJP.

(5) In accordance with article 23(a)(3)&(6) of reference a, COMJTFs are SPCMCAs. Regardless of the member's Service, the COMJTF may convene a special court-martial empowered to adjudge a bad conduct discharge.

(6) Pursuant to R.C.M. 201(e)(2)(A) and 201(e)(2)(C) of reference b, COMJTFs are authorized to convene special courts-martial and summary courts-martial over members of any Service assigned to that JTF. Subject to the policies and provisions of this Directive and unless specifically withheld by CINCEUR, in addition to convening a special court-martial empowered to adjudge a bad conduct discharge for a member of any Service, COMJTFs may exercise all other disciplinary and administrative authority contained in references a and b, and in the applicable regulations of the member's Service.

e. Office of Defense Cooperation (ODC) Personnel. Pursuant to reference c, the following policies are established:

(1) The ODC Chiefs are responsible for the maintenance of good order and discipline of all personnel within their organizations regardless of Service. They are responsible for ensuring that alleged offenses by personnel within their organizations are promptly reported to ECJ4 and ECJA. Additionally, they are responsible for taking appropriate corrective action within their authority.

(2) ODC Chiefs are empowered to impose or initiate administrative actions consistent with the regulations of the member's Service. With the exception of ODC Turkey, ODC Chiefs are not commanding officers under Service regulations.

(3) Except for ODC Turkey, if the ODC Chief determines that punitive action such as courts-martial or NJP may be warranted, the case shall be referred, through ECJ4 and ECJA, to the appropriate Service Element Commander within HQ USEUCOM for further action in accordance with this Directive.

(4) The Chief, ODC Turkey, is a MSC for NJP purposes. ODC Turkey will coordinate the disposition of all alleged offenses with ECJA and CINCEUR's Principal Assistant.

f. Joint Analysis Center (JAC) Personnel. Pursuant to reference e, the following policies are established:

(1) The JAC Commander (COMJAC) is responsible for the health, welfare, and good order and discipline of military personnel assigned to the JAC.

(2) COMJAC shall publish rules and regulations establishing uniform policies applicable to the personnel of all Services within the JAC, where appropriate. Such rules and regulations will address, for example, hours and areas authorized for liberty, apprehension of service personnel, and other matters COMJAC deems appropriate.

(3) As a MSC, COMJAC may designate Service Element Commanders. COMJAC and the designated Service Element Commanders shall apply the regulations of the member's Service when conducting NJP proceedings. Appeals and other actions involving review of NJP imposed by COMJAC or Service Element Commanders will follow the appropriate regulation of the member's Service. Collateral processing, such as personnel and finance actions and unfavorable notations in selection records and personnel files, shall be accomplished within the member's Service channels.

(4) Discipline within the JAC will normally be administered by COMJAC or the Service Element Commanders appointed by COMJAC. In addition, COMJAC may refer cases to an appropriate Service Component Command for resolution. COMJAC reserves the right to act if the Service Component Command declines to refer charges or administer NJP.

(5) In accordance with article 23(a)(3)&(6) of reference a, COMJAC is a SPCMCA. Regardless of the member's Service, COMJAC may convene a special court-martial empowered to adjudge a bad conduct discharge.

(6) Pursuant to R.C.M. 201(e)(2)(A) and 201(e)(2)(c) of reference b, COMJAC is authorized to convene special courts-martial and summary courts-martial over members of any Service assigned to JAC. Subject to the policies and provisions of this Directive and unless specifically withheld by CINCEUR, in addition to convening a special court-martial empowered to adjudge a bad conduct discharge for a member of any Service, COMJAC may exercise all other disciplinary and administrative authority contained in references a and b, and in the applicable regulations of the member's Service.

g. European Stars and Stripes Personnel (ESS). Pursuant to reference e, the following policies are established:

(1) The ESS Commander (COMESS) is responsible for the health, welfare, and good order and discipline of military personnel assigned to ESS.

(2) COMESS shall publish rules and regulations establishing uniform policies applicable to the personnel of all Services within ESS, where appropriate. Such rules and regulations will address, for example, hours and areas authorized for liberty, apprehension of service personnel, and other matters COMESS deems appropriate.

(3) COMESS has requested that ESS personnel come under HQ USEUCOM's jurisdiction for military justice. This Directive accepts jurisdiction over COMESS personnel. Accordingly, COMESS and the Service Element Commanders appointed by CINCEUR for HQ USEUCOM shall apply the regulations of the member's Service when conducting NJP proceedings. Appeals and other

actions involving review of NJP imposed by COMESS or Service Element Commanders will follow the appropriate regulation of the member's Service. Collateral processing, such as personnel and finance actions and unfavorable notations in selection records and personnel files, shall be accomplished within the member's Service channels.

(4) Discipline within ESS will normally be administered by COMESS or the Service Element Commanders appointed by CINCEUR for HQ USEUCOM. In addition, COMESS and the Service Element Commanders appointed by CINCEUR for HQ USEUCOM may refer cases to an appropriate Service Component Command for resolution. COMESS and the Service Element Commanders appointed by CINCEUR for HQ USEUCOM reserve the right to act if the Service Component Command declines to refer charges or administer NJP.

h. U.S. National Intelligence Cell (USNIC) Personnel. Pursuant to reference e, the following policies are established:

(1) The USNIC Commander is responsible for the health, welfare, and good order and discipline of military personnel assigned to the USNIC.

(2) The USNIC Commander shall publish rules and regulations establishing uniform policies applicable to the personnel of all Services within the USNIC, where appropriate. Such rules and regulations will address, for example, hours and areas authorized for liberty, apprehension of service personnel, and other matters the USNIC Commander deems appropriate.

(3) The USNIC Commander shall apply the regulations of the member's Service when conducting NJP proceedings. Appeals and other actions involving review of NJP imposed by the USNIC Commander will follow the appropriate regulation of the member's Service and this Directive. Collateral processing, such as personnel and finance actions and unfavorable notations in selection records and personnel files, shall be accomplished within the member's Service channels.

(4) Discipline within the USNIC will normally be administered by the USNIC Commander; however, the USNIC Commander may refer cases to an appropriate Service Component Command for resolution. The USNIC Commander reserves the right to act if the Service Component Command declines to administer NJP.

i. Special Interest Cases.

(1) Service Component Commanders and SPCMCAs must keep CINCEUR informed of all cases of special interest within the AOR. Specifically, cases involving the following shall be immediately reported to ECJA either by the servicing legal office or the appropriate commander:

(a) Any case involving the death of a service member, dependent, or DoD civilian.

(b) Any case likely to generate media attention.

(c) Any case that may result in a criminal trial by the host nation involving a service member, dependent, or DoD civilian.

(d) Any case likely to result in a claim against the United States involving criminal or negligent conduct of a service member, dependent, or DoD civilian.

(e) Any case involving accusations or allegations of misconduct involving an officer or enlisted member, E8 or above.

(2) The servicing legal office or appropriate commander shall forward copies of investigative reports involving these matters, including preliminary reports, to ECJA as soon as practicable. Additionally, the servicing legal office or appropriate commander shall update ECJA as the cases progress.

j. **Minimizing Disclosure of Information.** Reports of incidents and investigations of misconduct will be handled and transmitted in a manner that limits disclosure to personnel with an official need to know. Information and reports concerning alleged misconduct will normally be marked "FOR OFFICIAL USE ONLY." Use of "Eyes Only" messages may also be appropriate in some cases.

## 9. **Procedures.**

a. **Applicability.** The procedures outlined in paragraph 9 apply to all personnel covered by this Directive except those personnel assigned to HQ USEUCOM SPCMCA's.

b. **Report of Offense.** Anyone who has information that a military member of HQ USEUCOM may have committed an offense punishable under the UCMJ must promptly report this information to the member's Service Element Commander, Director, or Office Chief. Upon receipt of this information, the member's Director or Office Chief shall promptly consult the appropriate Service Element Commander, as well as ECJA, to determine if a preliminary inquiry is warranted, the scope of any such inquiry, and the procedures that will be followed. After consultation with ECJA and the appropriate Service Element Commander, allegations of serious misconduct should be immediately referred to a criminal investigative service in accordance with paragraph i below.

c. **Preliminary Inquiry.** In cases requiring further investigation but not referral to a criminal investigative service, the Director or Office Chief, after consultation with the appropriate NJP authority and ECJA, may detail an officer, senior to the accused, to conduct a preliminary inquiry. If no qualified officer is available within the directorate, the matter will be reported to the Director, ECJ1, who shall designate an officer to be detailed as the preliminary inquiry officer. A sample memorandum appointing a preliminary inquiry officer is at Appendix A. Prior to beginning the investigation, inquiry officers will consult with a judge advocate from ECJA.

d. **Conduct of Preliminary Inquiry.** Although the preliminary inquiry is informal, it must be thorough and impartial, fully developing evidence in the case, as well as any matters in extenuation and mitigation. The report of inquiry should include the written statements of any witnesses and relevant documentary evidence, such as police reports, logs, receipts, and vouchers. Statements may be sworn or unsworn. Additionally, unless the subject of the inquiry has already requested or retained an attorney, the inquiry officer should offer the subject an opportunity to make a statement, but only after first advising the individual of his or her rights against self-incrimination. The DA Form 3881, *Rights Warning Procedure/Waiver Certificate*, or an equivalent form, should be used to record the rights advisement. The inquiry officer must determine whether the subject of the inquiry has consulted and retained counsel. If the individual has retained counsel, the inquiry officer may not question that individual without counsel being present. If there is any need to obtain information from the subject, the inquiry officer shall contact the subject's counsel. If at any time during an interview an individual requests counsel, all questioning must cease and the individual shall be referred to an attorney. If an individual requests an attorney but one is not available in the area, the inquiry officer shall contact ECJA for assistance in identifying one.

e. **Preliminary Inquiry Report.** The inquiry officer shall report findings and recommendations to the appointing authority. A suggested format for a preliminary inquiry report is at Appendix B. The report will include a recommendation on the appropriate disposition of the case.

f. **Further Processing.** The Director or Office Chief, in consultation with ECJA and the appropriate Service Element Commander, shall review the inquiry officer's findings and recommendations to determine whether further action is warranted. If upon review of the preliminary inquiry, the Director or Office Chief, in consultation with ECJA and the appropriate Service Element Commander, determines that punitive action may be warranted, he or she shall forward the matter to the appropriate Service Element Commander for disposition. The Service Element Commander, in coordination with ECJA, will promptly review the matter and take action he or she considers appropriate.

(1) If the Service Element Commander determines that no action is warranted, the matter will be referred back to the individual's supervisor.

(2) If the Service Element Commander determines that an offense has been committed and that trial by court-martial may be appropriate, the matter will be forwarded through CINCEUR's Principal Assistant to the Service Component Commander of the individual's Service for any action the Service Component Commander may consider appropriate.

(3) If the Service Element Commander determines that an offense has been committed and that imposition of NJP is appropriate, such authority may impose NJP, refer matters involving enlisted personnel, E6 and below, to the Headquarters Commandant for disposition, or forward any potential NJP action to the Service Component Commander concerned for any action that the Service Component Commander deems appropriate. Prior to referring a matter to a Service Component

Commander, NJP authorities shall coordinate with ECJA and obtain the approval of CINCEUR's Principal Assistant.

(4) On completion of an action, Directors, Office Chiefs, Service Element Commanders, and other NJP authorities will forward a copy of the action taken to the Headquarters Commandant and ECJA for further action and reporting as required.

g. Appeals of Nonjudicial Punishment. See Appendix C for specific appellate procedures.

(1) Appeals of NJP imposed by COMESS; Chief, ODC Turkey; and Service Element Commanders designated by CINCEUR will be acted on by CINCEUR's Principal Assistant, unless limited by Service regulations. Appeals of NJP imposed by Service Element Commanders designated by someone other than CINCEUR will be handled by the appellate authority designated by the commander who established the service elements.

(2) Appeals of NJP imposed by the Headquarters Commandant or USNIC Commanders will be acted on by the appropriate Service Element Commander, unless limited by Service regulations.

h. Transfer of Personnel for Disciplinary Purposes. In some cases, particularly in more isolated locations, it may be necessary to temporarily transfer an individual to facilitate the investigation and processing of the disciplinary action. In such cases, HQ USEUCOM may request the Service Component Commander or the GCM authority for the individual's Service to designate a receiving command where legal and investigatory resources are more readily available.

i. Serious Misconduct. As in all cases, those involving serious misconduct require that great care be taken to properly obtain and preserve evidence. Accordingly, individuals with information regarding allegations of serious misconduct shall promptly notify HQ USEUCOM (ATTN: ECJA), as well as the servicing criminal investigation office. Individuals suspected of serious misconduct may be transferred to a command of their own Service for further processing of the case.

j. Allegations Against Senior Officials. Allegations of misconduct against general/flag officers, Directors, or Office Chiefs shall be reported immediately to CINCEUR's Principal Assistant and ECIG for processing of the case consistent with this Directive and applicable Service regulations. Allegations involving serious misconduct against general/flag officers or civilians above grade GS/GM-15 must be reported to the DoD Inspector General via ECIG in accordance with reference d.

k. Pretrial Restraint.

(1) Definition. Pretrial restraint, as defined under R.C.M. 304, is moral or physical restraint on a person's liberty. Pretrial restraint may include conditions on liberty, such as an order directing a person to do, or refrain from doing, specific acts; restriction, such as an order limiting a person's movement to or from certain areas; and confinement. All forms of pretrial restraint can significantly affect subsequent judicial actions.

(2) Authority to order pretrial restraint. R.C.M. 304 and 305 authorize pretrial restraint. Any commissioned officer may order pretrial restraint of enlisted personnel. Only a commanding officer to whose authority the individual is subject may order pretrial restraint of officers or civilians. Normally within HQ USEUCOM, only the Headquarters Commandant or the appropriate Service Element Commander will order pretrial restraint.

(3) Procedures. The use of any type of pretrial restraint shall be limited to the greatest extent possible. Any pretrial confinement will be coordinated with ECJA prior to imposition. If such pre-coordination is not possible, ECJA will be informed as soon as possible, but not later than 24 hours after confinement is imposed.

l. Search Authority.

(1) Policy. A nonconsensual search of a person or place may only be conducted when authorized by a commanding officer or a military judge, or in certain limited circumstances when an officer, noncommissioned officer or military policeman determines that the exigencies of the situation require a search without such authorization. Searches must be based upon probable cause, which is defined as a reasonable belief that a crime has been committed and evidence thereof is located in the place or on the person to be searched. Whenever possible, a military attorney should be consulted prior to the search.

(2) Authority to Order Search. The officer in command who has control over the place where the property or person to be searched is located is the appropriate commanding officer to authorize a search of that area. No searches of property located off post may be authorized without coordination through law enforcement and host nation authorities. Noncompliance with the provisions of this Directive does not render an otherwise lawful search unlawful. In addition to COMSOCEUR, COMJAC, and COMJTFs, the Headquarters Commandant has the authority to order a search within HQ USEUCOM.

m. Victim and Witness Assistance Program. The victim and witness assistance program will be administered in accordance with applicable DoD directives and Service regulations.

n. Funding. Expenses associated with courts-martial or administrative discharge boards will usually be funded in accordance with the member's Service directives. If HQ USEUCOM must incur expenses in processing a disciplinary matter, such as TDY expenses for a preliminary inquiry officer, military counsel, or witness, the expenses shall be charged to a central account under the direction of the HQ USEUCOM Comptroller.

## 10. Special Procedures for HQ USEUCOM SPCMCA's.

### a. Appeals of Nonjudicial Punishment.

(1) Appeals of NJP imposed by HQ USEUCOM SPCMCA's (COMSOCEUR, COMJTFs, and COMJAC) will be acted on by CINCEUR's Principal Assistant, unless limited by Service regulations.

(2) Appeals of NJP imposed by Service Element Commanders designated by someone other than CINCEUR will be handled by the appellate authority designated by the commander who established the service elements.

### b. Rules for Courts-Martial.

(1) Pretrial Investigations. Pursuant to R.C.M. 405, HQ USEUCOM SPCMCA's have the authority to appoint investigating officers to conduct investigations in accordance with article 32, UCMJ.

(2) Summary Court-Martial. Pursuant to R.C.M. 1301, if the SPCMCA determines that a summary court-martial from the same armed force of the accused is not reasonably available, the SPCMCA may appoint a summary court-martial from a Service different from that of the accused.

(3) Referral of Charges. Pursuant to R.C.M. 601(e)(1), the signature evidencing referral of charges may be that of a person acting by order or direction of the convening authority.

(4) Judge Advocate Courts-Martial Review. ECJA shall provide the review by a judge advocate required by article 64, UCMJ, and R.C.M. 1112.

### c. Coordinating instructions.

(1) Coordination with ECJA. HQ USEUCOM SPCMCA's shall coordinate with ECJA prior to initiating any court-martial.

(2) Referral to Service Component Command. If the SPCMCA determines that action by the member's Service Component Command is appropriate, the SPCMCA may forward the matter with recommendations on disposition to the member's general court-martial convening authority in the Service Component Command. Prior to referring a matter to a Service Component Command, SPCMCA's shall coordinate with ECJA and obtain the approval of CINCEUR's Principal Assistant.

(3) The failure to first coordinate will not, however, affect the validity of any court convened by the SPCMCA or any action taken by the Service Component Command.

d. Reporting Procedures. SPCMCA's shall provide ECJA a monthly update summarizing military justice activities for that month. Reports are due ECJA no later than the 15<sup>th</sup> day of the month following

the reporting period. Additionally, SPCMCA's shall ensure they submit all reports required by Service regulations.

COMMANDER IN CHIEF:

OFFICIAL:

JOSEPH W. RALSTON  
General, USAF

DAVID R. ELLIS  
LTC, USA  
Adjutant General

APPENDIXES

- A - Sample Preliminary Inquiry Officer Appointment Letter
- B - Sample Preliminary Inquiry Report
- C - Nonjudicial Punishment (NJP) Appellate Authority Matrix

DISTRIBUTION:

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**APPENDIX A****SAMPLE PRELIMINARY INQUIRY OFFICER APPOINTMENT LETTER**

ECJX

*DATE*

MEMORANDUM FOR *INQUIRY OFFICER*, SSN, Headquarters, United States  
European Command, Unit 30400, Box 1000, APO AE 09128

SUBJECT: Preliminary Inquiry into Alleged Misconduct

1. References:

a. Manual for Courts-Martial (MCM), United States (2000 Edition), Rules for Courts-Martial (R.C.M.) 303, Preliminary Inquiry into Reported Offenses.

b. EUCOM Directive (ED) 45-4, *Administration of Military Justice*.

2. This memorandum appoints you to conduct a preliminary inquiry, in accordance with references a and b, into allegations that ***DESCRIBE ALLEGATIONS***.

3. Your inquiry should gather all reasonably available evidence bearing on the guilt or innocence of ***THE SUBJECT OF THE INQUIRY*** and any evidence relating to aggravation, extenuation, or mitigation. You will report to me not later than ***DATE*** your findings of fact, opinions, and recommendations regarding what further actions, if any, should be taken, including any recommended administrative or disciplinary action.

4. You should offer ***THE SUBJECT OF THE INQUIRY*** the opportunity to make a statement but only after properly advising him of his right against self-incrimination using a rights warning procedure and waiver certificate (DA Form 3881). Should ***THE SUBJECT OF THE INQUIRY*** desire to consult with an attorney, you should refer him to the EUCOM Office of the Judge Advocate which will assist him in obtaining legal assistance.

5. You may obtain legal advice in connection with conducting your inquiry from the EUCOM Office of the Judge Advocate, 430-7263/7325.

***DIRECTOR'S SIGNATURE BLOCK***

**APPENDIX B**

**SAMPLE PRELIMINARY INQUIRY REPORT**

ECJX-YZ

MEMORANDUM FOR Director, ECJX

SUBJECT: Preliminary Inquiry into the Alleged Misconduct of ***THE SUBJECT OF THE INQUIRY***

1. Reference memorandum, HQ USEUCOM, ECJX, ***DATE***, subject as above.
2. Preliminary Statement. As directed by the reference, I conducted a preliminary inquiry into the allegations of misconduct by ***THE SUBJECT OF THE INQUIRY***. The statements of witnesses are attached as enclosures.
3. Findings of Fact. ***Describe findings--for example:***
  - a. ***THE SUBJECT OF THE INQUIRY*** was required to be at his place of duty, the ECJX Operations Division Office, by 0800, 8 January 2001 (enclosures 1 and 2).
  - b. ***THE SUBJECT OF THE INQUIRY*** did not report to the Operations Division Office until 1000 on 8 January 2001 (enclosures 1, 2, and 3).
4. Opinions. ***State your opinion--for example:***
  - a. ***THE SUBJECT OF THE INQUIRY*** was absent from his place of duty, without authority, from 0800 until 1000 on 8 January 2001.
  - b. Previous counseling and the letter of instruction have proven ineffective in improving ***THE SUBJECT OF THE INQUIRY***'s behavior.
5. Recommendation. ***Recommend a disposition--for example:*** Refer this case to the Army Service Element Commander to be handled under Article 15, UCMJ; **or** NJP is not recommended; **or** recommend appropriate administrative actions, such as a memorandum of reprimand.

Encls

JOHN E. DOE  
MAJ, EN  
Inquiry Officer

## APPENDIX C

### Nonjudicial Punishment (NJP) Appellate Authority Matrix

#### If NJP is imposed by:

- Service Element Commander
- CDR, European Stars & Stripes
- Chief, ODC Turkey, or USEUCOM  
Special Court Martial Convening Authority:  
COMSOCEUR, COMJTF, and COMJAC
  - Army/Air Force Members
  - Navy Members
  - Marine Corps Members
- Headquarters Commandant/USNIC  
Commander
  - Army/Air Force Members
  - Navy Members
  - Marine Corps Members

#### Appeal goes to:

- Chief of Staff, HQ USEUCOM<sup>1</sup>
- Chief of Staff, HQ USEUCOM
- Service Specific Procedures
  - Chief of Staff, HQ USEUCOM
  - Service Element Commander<sup>2</sup>
  - Commander, MARFOREUR
- Service Specific Procedures
  - Service Element Commander
  - Service Element Commander<sup>2</sup>
  - Commander, MARFOREUR

#### NOTES:

1. The Chief of Staff, HQ USEUCOM, is the CINC's Principal Assistant for NJP matters including appeals.

2. In cases involving members of the Navy, the Service Element Commander will serve as the appellate authority only if also designated an area coordinator. If the Navy Service Element Commander is not so designated or is junior in grade to the imposing authority, the appeal will be processed in accordance with Service regulations.