# 法國軍事審判制度與發展

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關鍵詞:軍事審判、軍事法官、平時與戰時、公平審判、訴訟權

**Keywords:** Military Trial, Military Judge, Peacetime and Wartime, Fair Trial, Right to Litigation

## 摘 要

自 1982 年法國軍事司法法典改革以來,已歷經四十多年。1982 年修法時, 廢止了和平時期的常設軍事法院,使軍事審判之程序走向一般化。其軍事審判 體系區分平時與戰時而適用不同之審判組織與程序,此項區分方式,與我國現 行體制相似。不同的是,在戰時的軍事審判體系當中,法國在法院組織上,具

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本文初稿曾發表於2024年3月6日國防部法律事務司、社團法人台灣法學會主辦之「軍事審判之過去、現在及轉型學術論壇」。作者感謝研討會三位與談人(國立陽明交通大學科技法律學院金孟華教授、中央研究院法律學研究所廖福特研究員及銘傳大學法律學院林士欽助理教授)惠賜寶貴與談意見,以及匿名審查人之悉心審閱,並賜予具體修改意見,作者受益良多,銘感於心,惟本文之文責仍由作者自負。

有軍事背景之軍事法官參與審判。軍事法官之參與,依其專業背景,得可以較 一般司法體系之法官更加理解駐外軍隊之運作、戰時之背景與軍隊紀律需求等 情況,可增加判決的專業與妥適性,值得我國參考。在和平時期,依照法國現 行體制,軍事事件之審理,係基於刑事訴訟法典之基礎,由普通法院之特別法 庭審理。目前專門負責審理軍事事務的普通法院共有九個,其中巴黎的法院較 大管轄權,審理在法國境外或外國作戰期間發生的違法行為。

## The System and Development of French Military Justice

# Tsai, Yi-Chung

#### **Abstract**

Since the reform of the French Code of Military Justice in 1982, more than forty years have passed. The 1982 amendment abolished the permanent military courts in peacetime, thereby steering military trial procedures toward normalization. The French system of military justice distinguishes between peacetime and wartime, applying different judicial bodies and procedures depending on the situation—a distinction similar to the current system in Taiwan. The difference, however, lies in the wartime military justice system: in France, military judges with a military background participate in the adjudication. Given their professional experience, such judges can better understand the operations of deployed forces abroad, the wartime context, and the needs of military discipline, thereby enhancing the professionalism and appropriateness of judgments—an approach worth Taiwan's consideration. In peacetime, under the current French system, the adjudication of military cases is conducted on the basis of the Code of Criminal Procedure, handled by special chambers within ordinary courts. At present, there are nine ordinary courts with dedicated jurisdiction over military matters. Among them, the Paris court has broader authority, being responsible for cases involving unlawful acts committed abroad or during overseas military operations.