

軍人權益事件處理法中權利救濟體系之建構

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關鍵詞：違失行為、軍事審判、維持軍紀、聯邦國防紀律法

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摘 要

為改善目前軍人多元併行的行政內部權利救濟管道，並使軍人訴訟權保障能符合司法院釋字第 785 解釋的要求，軍人權益處理法採取了諸多開創性的措施，重新建構軍人的權利保障體系：首先「官兵權益保障會」在組織上將改隸

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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」。作者感謝研討會兩位與談人（司法院行政訴訟及懲戒廳副廳長楊坤樵法官、國立政治大學法學院廖元豪副教授）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，惟本文之文責仍由作者自負。

於地方軍事法院，並由其審議復審及再申訴案件；其次，另於高等軍事法院設置「勤務法庭」審理軍人權益保障事件的第一審行政訴訟；對於勤務法庭之判決不服者，可再向高等行政法院提起上訴。在軍人權益事件處理法建構的權利保障體系下，本文將探討提起行政訴訟前的行政內部救濟管道的區分及其審議標的、勤務法庭的組織及其合憲性框架，以及軍人權益保障行政訴訟程序的審級結構等關鍵性議題。

The Construction of the Military Relief System in the Servicemember Relief Act

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Abstract

In order to improve the current multiple and parallel intra-administrative rights relief channels for military personnel, and ensure that the protection of military litigation rights can meet the requirements of the 785th Interpretation of the Justice Yuan, the Servicemember Relief Act has taken many pioneering measures to reconstruct the rights of military personnel. Rights protection system: First of all, the “Committee for the Protection of the Rights and Interests of National Military Officers” will be organizationally transferred to the local military court, which will review, review and re-appeal cases; secondly, a “Service Court” will be set up in the High Military Court to hear the protection of the rights and interests of military personnel. First-instance administrative litigation for the incident; those who are dissatisfied with the judgment of the Service Tribunal may appeal to the High Administrative Court. Under the rights protection system constructed by the Servicemember Relief Act, this article will explore the distinction of internal administrative relief channels before initiating administrative litigation and the subject of review, the organization of the service tribunal and its constitutional framework, and