

**Law 31/01/2002 number 6, confirming act of decree-law 1<sup>st</sup> /12/2001 number 421, as amended, containing urgent provisions on the participation of military personnel in the multinational operation called “Enduring Freedom”. Changes to military penal code of war, as confirmed by royal decree 20/2/1941 number 303**

**Preamble**

The Chamber of Deputies and the Senate of the Republic have passed;  
THE PRESIDENT OF THE REPUBLIC  
Promulgates  
the following law:

**Art.1.**

1. The decree-law 1<sup>st</sup> /12/2001 number 421, containing urgent provisions on the participation of military personnel in the multinational operation called “Enduring Freedom”, is converted into law with the changes at the annex enclosed herewith.
2. This law becomes effective the day after its publication on the Official Gazette.

**Art. 2.**

1. The military penal code of war, as confirmed by royal decree 20/2/1941 number 303 is changed as follows:
  - a) article 9 is replaced by the following:  
“Art. 9. – (Expeditionary forces abroad) – Until a new organic order on military criminal matters does not enter into force, expeditionary forces for military armed operations abroad are subject to the military criminal law of war even in time of peace from the beginning of border crossing or from the moment they embark on a ship or aircraft, their crews from the moment they are notified the destination of the expedition. Limited to matters related to operations abroad mentioned at the previous paragraph, the command and control and support military personnel of the expeditionary corps remaining on the national territory or on the territory of other countries are also subject to the military criminal law of war, from the moment they are notified assignment to those functions, for offences committed in connection with service”;
  - a) at article 15, the second paragraph is replaced by the following:  
“For the purposes of the provisions of this code, the term Allied State also comprises the State associated in war operations or participating in the same expedition or campaign;”
  - c) at article 47, after the first paragraph the following is to be added: This code recognises as a military offence any other violation of the penal code committed by a member of the Armed Forces by abuse of the powers or violation of duties related to the military status or in a military site and considered as an offence against:
    - 1) the State;
    - 2) public administration;
    - 3) the administration of justice;
    - 4) public order;
    - 5) public safety
    - 6) public faith;
    - 7) public morality;
    - 8) persons;
    - 9) property.

Any other violation of the penal code committed by a member of the armed forces in a military site or in relation to military service against military service or military organisation or member of the armed forces or member of the civil population on the foreign territory where operations are

ongoing is also a military offence.

Finally, any other violation of the penal code such as offences in the field of control of weapons, ammunition and explosives and of production, use and illegal trafficking of narcotics and psychotropic substances committed by a member of the Armed Forces in a military site”;

d) article 165 is replaced by the following:

“Art 165 (Application of military criminal law in relation to armed conflicts) – The provisions of this title apply in any armed conflict, regardless of any declaration of the state of war”;

e) after article 184 the following is added: "

Art. 184-bis. - (Taking of hostages) – The serviceman who violates the prohibitions to take hostages provided for by the norms on international armed conflicts is punished with two to ten years military imprisonment.

The same punishment is applicable to the serviceman who threatens to wound or kill a person not carrying weapons or not showing a hostile attitude, in order to force that person to deliver persons or property.

If violence is done article 185 applies”;

f) at article 185, first paragraph, the words: “up to two years” are replaced by the following: “up to five years”;

e) after article 185 the following is added:

“Art. 185-bis. - (Other offences against persons protected by international conventions) – Except when the fact constitutes a more serious offence, the serviceman who, for reasons associated with the war, is guilty of torture or inhuman treatment, illegal transfers or other conduct prohibited by international conventions, including biological experiments or medical treatments not justified by health conditions, against war prisoners, civilians or other persons protected by international conventions, is punished with one to five years military imprisonment”;

h) articles 17, first, second , third paragraphs, 18, 19, 20, 87, 155 and 183 are abrogated;

i) the heading of Title II of the first book is replaced by the following: “(Supreme Commander)”, the heading of article 17 is replaced by the following: “(Supreme Commander)”, the following words are added to the heading of article 47: ". Military offence for the purposes of the military penal code of war”.

### **Art. 3.**

1. In the case of the multinational operation called “Enduring Freedom”, the military penal code of war applies to the individuals mentioned at art. 9 of the military penal code of war as amended by this law.

### **Enclosure – AMENDMENTS MADE DURING CONFIRMATION OF DECREE-LAW 1 DECEMBER 2001, NUMBER 421**

f) at article 5, second paragraph, the words: “The personnel at paragraph 1” are replaced by the following:

“To the personnel at paragraph 1”.

f) at article 8, first paragraph, the words are added: “of this decree”. This law, bearing the Seal of State, shall be inserted in the Official Records of the Laws and Decrees of the Republic. This law must be complied with and enforced as a law of the State.