

أكاديمية نايف العربية للعلوم الأمنية  
كلية الدراسات العليا  
قسم العدالة الجنائية  
تخصص السياسة الجنائية



# المحاكمات في نظام العقوبات العسكري السعودي

بحث مقدم استكمالاً لمتطلبات الحصول على درجة  
الماجستير في العدالة الجنائية  
( تخصص السياسة الجنائية )

إعلاء

محمد بن فهد الجطعي السبيعي

إشراف

د/ رزق بن مقبول الرئيس

الرياض ١٤٢٤هـ - ٢٠٠٣م



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**Department: Criminal Justice**  
**Specialization: Criminal Politics**

Summary of Master research

**Thesis Title: Judicial proceedings in the military penalty act of Saudi Law.**

**Prepared by: Mohammed Bin Fahad Bin Ali Al Subaiei**

**Supervisor Dr.: Rizq Bin Magboul Alrayis**

**Thesis Defence Committee:**

- 1- Dr. Rizq Bin Magboul Alrays  
Supervisor
- 2- Dr. Prof. Mohammed Hassemain Hamad  
Member
- 3- Colonel Dr. Mansour Bin Khadran Aldamouk  
Member

**Defence Date : 2-9-1424H --- 27-10-2003G**

**Research Problem:** It's to substantiate how old is the judicial proceeding of the military acts and to analyze findings therein.

**Research Importance:**

That's is evident from many angles of consideration that:

- 1- The subject was not considered before. No legal or legitimate research was ever conducted and this research has no earlier precedent.
- 2- This research deals with a sector of nationals who are performing lofty message to their country reaching self sacrifice.
- 3- Indicate the security of accused person who are tried in civil or military courts as to gain from these security points that might be in one of them and not in the Law.

**Research Objectives:**

This study is conducted to consider the elements contributing and go into reforming of legislative acts in the military penalty law, which required the followings:

- 1- Get to know the governing principles dominating the military judicial proceedings.
- 2- Bringing up the security acts of the accused or detained personnel, before and after the judgement.
- 3- Trace points of shortness in the military penalty acts if any and find out sides of correction or rectification from legal point as the researcher may justify, or he may need to adopt what ever other laws may file in that regards.
- 4- Take part in studying and upgrading penalty acts for the military judicial proceedings in the Kingdom.

### **Research Hypothesis / Questions:**

This research placed many queries and answered them:

- 1- What are the securities guaranteed and stipulated in council of military laws.
- 2- What are steps governing trial of an accused in the military courts?
- 3- What is the plea to military acts?
- 4- Differences and similarities to military acts in Arab countries and what can be adopted?
- 5- What is the relationship between civil legislation to military judicial system (Council of Justice)?
- 6- Where is ruling body for any conflict therein between military and civil courts?

### **Research Methodology:**

This study enabled analytical approach aiming application methods, looking into real courts verdicts as filed from council of military courts.

### **Main Results:**

- 1- The military penalty acts determine crimes related to national security and military law violations, penalties and proceedings of military claims.
- 2- The military penalties are imposed on civilians the same to the army in some cases. There is difference between the military criminal acts and military disciplinary acts for committing a mistake. There is military proceedings are realized by number of commanders.
- 3- Military penalty acts did not stipulate any military filing suit system.
- 4- Military court council is not part of any military case proceeding.

- 5- The council findings are not final and have to be approved. This approach is internationally adopted.

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## الإهداء

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# المحتويات

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الفصل الأول

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## أصول المحاكمات العسكرية

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### المبحث الثاني

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مقارنة الجريمة العسكرية بالجريمة العادية. وعوامل

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{وَلَوْ أَرَادُوا الْخُرُوجَ لَأَعَدُّوا لَهُ عُدَّةً} (85)

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### المطلب الثاني

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## الفرع الثاني

### مقارنة الجريمة العسكرية بالعادية من حيث أركان الجريمة

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وَمَا كُنَّا مُعَذِّبِينَ

وَمَا كَانَ رَبُّكَ مُهْلِكَ الْقُرَىٰ حَتَّىٰ يَبْعَثَ

حَتَّىٰ نَبْعَثَ رَسُولًا} (130)

رُسُلًا مُّبَشِّرِينَ

فِي أُمَّهَا رَسُولًا يَتْلُو عَلَيْهِمْ آيَاتِنَا} (131)

وَمُنذِرِينَ لِنَلَّا يَكُونَ لِلنَّاسِ عَلَى اللَّهِ حُجَّةً بَعْدَ الرُّسُلِ} (132)

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{وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} (156)

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{وَإِذَا بَلَغَ الْأَطْفَالُ مِنْكُمُ الْحُلُمَ فَلْيَسْتَنْذِرُوا كَمَا اسْتَنْذَرَ الَّذِينَ مِنْ قَبْلِهِمْ} (157)

{إِلَّا مَنْ أَكْرَهَ

{وَقَلْبُهُ مُطْمَئِنٌّ بِالْإِيمَانِ} (158)

{فَمَنْ اضْطُرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَلَا إِثْمَ عَلَيْهِ} (159)

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(166) 202 : 197

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المبحث الثالث  
العقوبة العسكرية طبيعتها ونطاق تطبيقها

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(180) أخرجه الطبراني في المعجم الصغير. ج 2 ص 43 رقم 883 .

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{وَأَنْ تَجْمَعُوا بَيْنَ الْأُخْتَيْنِ إِلَّا مَا قَدْ سَلَفَ إِنَّ

اللَّهُ كَانَ عَفُورًا رَحِيمًا} (205)

: {عَفَا اللَّهُ عَمَّا

سَلَفَ وَمَنْ عَادَ فَيَنْتَقِمُ اللَّهُ مِنْهُ، وَاللَّهُ عَزِيزٌ ذُو انْتِقَامٍ} (206)

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## المبحث الثاني

### دور ديوان المحاكمات العسكري في مجال تطبيق العقوبات

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{وَإِذَا قُلْتُمْ فَاعْدِلُوا وَلَوْ كَانَ ذَا قُرْبَى} (252)

{وَلَا يَجْرِمَنَّكُمْ شَنَاٰنُ قَوْمٍ

عَلَىٰ آلَا تَعْدِلُوا اَعْدِلُوا هُوَ اَقْرَبُ لِلتَّقْوَى} (253)

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{لَقَدْ ظَلَمَكَ بِسُؤَالِ نَعَجْتِكَ إِلَىٰ نِعَاجِهِ} (265)

يَا دَاوُدُ إِنَّا جَعَلْنَاكَ خَلِيفَةً فِي

( فَأَحْكُم بَيْنَ النَّاسِ بِالْحَقِّ وَلَا تَتَّبِعِ الْهَوَى

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فِيضْلِكَ عَنِ سَبِيلِ اللَّهِ } (266)

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الكَاذِبِينَ. وَإِنْ كَانَ قَمِيصُهُ فُدًّا مِنْ دُبُرٍ فَكُذِّبَتْ وَهُوَ مِنَ الصَّادِقِينَ} (289).

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الفصل الثالث

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