

ABSTRACT

Thesis Title : The Problem of Procedure for Military
Disciplinary Punishment
Student's name : Captain Nitin Orungrote
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Advisory Committee :

1. Prof.Lieutenant General Prasit Jaicheun Chairperson
2. Assoc.Prof.Dr.Vira Lochaya
3. Dr.Wichai Sungprapai

Since the state has a duty to provide military strength to achieve the public interest of peace keeping and development of the country, the relationship between the state and the military must be according to public law. Military personnel should be protected in their right to not be punished illegally by either their superiors or commanding officers, especially the protection of right as prevention, or, on the other hand, the proceedings for disciplinary punishment of military personnel. In these situations, the proceedings must accord with the rule of law, such as, freedom from interest, the hearing of both sides and the reasonableness of the decision. Nevertheless, these rules must also comply with the rule of absolute command in the military system.

This research will analyze these principles of law and study the procedural steps presently used in military disciplinary procedures in Thailand, and how the rights of the military personnel are protected according to the rule of law and the rule of absolute command in military system.

The results of this research demonstrates that under the Military Disciplinary Act B.E. 2476, and the Army Explanatory Order on the Power and Duty of a Commanding Officer and a Legal Officer Concerning Investigation, dated 22 November B.E. 2493 there are some defects in certain proceedings wherein, basic legal rights are not provided for the accused. For example, the commanding officer has full power to punish the accused without investigation in cases of "obvious offences". There is also no provision that states the qualifications of the person who has the power to initiate a disciplinary case, and no provision that states the procedures for hearings in cases of non-obvious offences. Other problems include the lack of flexibility in giving the reasons for making a decision, and delays in proceedings.

The proposed solutions for the above-mentioned of problems are that the procedures for disciplinary breaches which are mentioned in the Military Disciplinary Act, B.E. 2476, and the regulations concerned should be modified.