

**The protection of the rights of armed forces personnel
in multinational missions
by the Commission of appeal for the forces**

1. The legal framework for the protection of the rights of armed forces personnel in deployments abroad

1.1 The general rights and responsibilities:

The military , as defined in the French national defence code, specifies the rights and responsibilities of all armed forces personnel wherever they are deployed and in fact some articles are especially dedicated to deployments abroad either because they grant a specific guidance for use of force or coercion or because the local legislation is not known by each soldier :

“The armed forces personnel must obey the orders of their commanders and are responsible of the effective fulfilment of the missions that were entrusted to them. However, they must not be ordered to and must not commit acts contrary to the laws, customs of war and international agreements. The responsibility of a subordinate does not absolve his superiors from any of their responsibilities.” (Article L 4122-1)

“The State is required to protect armed forces personnel against all threats and attacks they can endure in the course of their duty and to make up for, if necessary, the resulting loss or harm. The State is also obliged to give its protection to an armed forces personnel if legal proceedings are engaged against him for events which are not personal misdeeds” (Article L 4123-10)

“Excepts when referring to article 121-3 of the Penal code, armed forces personnel can be sentenced... for non deliberate acts done in the exercise of their functions only if it is stated that they have not done their due diligence...” (Article L 4123-11)

“An armed forces personnel is not criminally responsible when, in respect of the rules of international right and in the framework of a military engagement abroad, he carries acts of coercion or he uses armed force or he orders to do it, when it is required for the mission accomplishment purposes.” (Article L 4123-12-2)

1.2 Armed forces personnel get bonuses when deployed abroad:

The pay and allowances of deployed abroad armed forces personnel are increased with respect to the normal ones.

	Ordinary pay and allowances in France	Afghanistan pay and allowances	Gap
Captain married with 2 children	EUR 3 223	EUR 7 087	EUR 3 864 (+ 120%)
Senior enlisted	EUR 1 502	EUR 3 631	EUR 2 129 (+ 142%)

married with 2 children			
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Deployed armed forces personnel have also free housing and feeding and they frequently can use a cheap access to telephone and Internet.

1.3 In case of death or serious injury in action special allowance is given to the military or to his family:

The “Fonds de prévoyance militaire”, literally translated by “Military reserve fund”, is fed by monthly deductions on the soldier’s wages, and by an annual State’s contribution. This fund allows the payment of important financial helps to killed or wounded soldiers in operations.

The amount of these payments can represent up to four annual pays (depending of the soldier’s pay index) in case of death in an act of war.

1.4 Making up for loss and harm by the Commission of appeal for the forces and tribunal:

During a shooting exercise in Gabon, a NCO had been very severely wounded at his arm by one of the participants, due to a poor organization of the exercise. A fault of the Administration is recognized. As a consequence, all the prejudices of the victim must be repaired: personal and financial. His barrister asked for 700 000 euros and eventually, he was granted 460 000 euros.

If this applicant is not satisfied of this repair, he can appeal this decision in front an administrative court. But it is not sure that this court will be more generous than Commission, because it will perhaps raise the point that the applicant had a part of responsibility in this damage.

1.5 Support by the Army organism for help to the wounded personnel and their family:

The CABAT, literally translated by “Army agency for the assistance of wounded personnel”, provides moral and financial support to soldiers wounded in the course of operations abroad. Created on 1st September 1993 by the Chief of Staff of the French Army, the CABAT is a specific organization under the command of the military governor of Paris.

It acts on a national level :

- to provides an assistance and a better help to the wounded soldiers and their families ;
- to responds to material difficulties linked to the injury and its consequences ;
- to makes process of reinsertion in civilian life easier.

2. The role of the Commission of appeal for the forces in protecting the human rights of armed forces personnel in deployments abroad

The Commission protects the armed forces personnel deployed abroad as it does for personnel in France. Sometimes, because of distance or of dramatic circumstances, it takes benevolent decisions, but it also takes confirmative decisions which give to the applicants the certainty that their cases have been seriously examined. The most characteristic decisions concern questions of pay and allowances. A case of refusal to extend the MOD’s of legal protection will also be briefly discussed.

2.1 The Commission can invalidate the recovery of an overpayment after a wounded paratrooper lost his paratrooper aptitude and special allowance:

This example concerns a senior enlisted, seriously wounded during a mission in Afghanistan by the blast of an improvised explosive device (IED). Six months later, his administration notified him of an overpayment amounting to EUR 2 500, due to his anticipated repatriation from Afghanistan to France. In this case, regularization was lawful, but it appeared that the circumstances leading up to this overpayment couldn't be ignored.

So, in consideration of this soldier's sense of duty and sacrifice, the CRM has showed magnanimity and has decided to accept the applicant's request by cancelling the overpayment.

2.2 The Commission can invalidate the recovery of MSA given by United nations when truly supported expenses are greater:

A "gendarme" (French military policeman) deployed in Haiti for one year had received from French administration his pay and allowances for deployment abroad (see upper, it would have normally been sufficient) and a Mission Supply Allowance from the UN. At the end of his deployment he had to refund the MSA. But as he showed clearly that French pay and allowances were insufficient, the CRM agreed his request not to refund the MSA.

2.3 The Commission can confirm the refusal of legal protection for a soldier who had killed a man in Ivory Coast:

During Operation "Licorne" in Ivory Coast, a soldier accidentally killed a man and legal protection had been refused, as there were a lot of personal faults of an exceptional seriousness. The soldier appealed this former decision in front of CRM. And the CRM confirmed the refusal of legal protection.

The facts were:

The soldier, a sentry, thinking that his rifle was not loaded, had, for fun, aimed at the gardener of the Bouake Camp, and pressed the trigger. A burst of three bullets had wounded to death the gardener.

Sent for an unintentional homicide in front of the Paris military court which exercises jurisdiction over the crimes committed abroad by armed forces personnel, he had asked the legal protection, that is to say, the payment of his barrister's fees by the State. His demand had been refused because the homicide did not result of an organisation fault which would have brought about the responsibility of the State, but it resulted from numerous personal faults : he had smoked cannabis before his guard, his rifle was loaded and ready to fire although the safety orders said it should not be, and he had aimed at a non threatening man and in the end had shot him.

The Commission confirmed the refusal of legal protection for the same reasons which had been stated during the two previous occasions. In this case, the CRM has not protected the soldier but it has defended Human rights.