

THE FRENCH COMMISSION OF APPEAL FOR THE FORCES

(La commission des recours des militaires : CRM)

Background

One of the nicknames of the armies in France is « The Great Unspeaking ». This nickname comes from the fact that French soldiers cannot be members of a political party or trade union, but it also means that protests are not viewed favourably and, even, in the majority of cases are altogether forbidden. Before 1964 the General Discipline Regulation pronounced that *“Discipline is the main strength of the army. One must obey without hesitation or murmur.”*

However, in the General Discipline Regulation of 1975, a procedure of appeal in matters of discipline was introduced, though it never worked well : the applicants had to apply to the chief of staff or to the general inspector of their branch of the forces and this had a deterrent effect upon the would-be applicants.

For other matters the applicants could either make an appeal based on goodwill, or working through his hierarchical structure or otherwise proceed directly to a legal challenge in an administrative court (the administrative courts are the branch of the French judiciary which deals with conflicts between individuals and the state). For the last twenty-five years or so, there has been a very significant increase of judicial recourse in the French society which, naturally also affects the French military community.

As there were so many judicial appeals coming from officers, non commissioned officers (NCOs) and private soldiers (but also from civil servants of the ministry of Defence and other ministries) in administrative jurisdictions, a law moved in 2000 that no judicial appeal could be judged by an administrative court if it had not been preceded by a prior administrative appeal.

The Minister of Defence, Mister Alain RICHARD who is also a senior member of the Council of State, created the Commission of appeal for the forces in 2001.

The ministry of Defence has been the only ministry to create a commission to deal with these prior administrative appeals, aimed solely at the military. The trades unions of the Defence are opposed to such a provision for civil servants because they fear losing a significant area of influence.

Structure and processes

The main characteristics of the working practices and composition of the CRM are as follows:

- Any personal decision can be challenged in front of CRM within two months after the decision, except decisions relative to recruitment, discipline and pensions.
- Each request received by CRM is referred to the office who took the disputed decision and to the support branch. They are asked to respond within one month explaining the process and grounds for the decision.
- This answer is communicated to the applicant who can reply and provide new elements of fact and even contest some of the elements of the official response.
- One of the 15 military lawyers, the “Rapporteur”, examines the request, the official response, the plaintiff’s reply, the applicable rights, the facts of the case and he or

she proposes a solution in law: either a partial or total agreement or rejection of the appeal before writing a draft ministerial decision including a resumé of the applicable rights and the facts to be taken into account.

- The “Rapporteur général”, who is a civilian administrative magistrate, oversees the work of the “Rapporteurs” and provides guidance for the most complex cases. He has access to all submissions and draft decisions and gives an opinion which may differ from that of the “Rapporteur”. The particular interest of the “Rapporteur général” being an administrative magistrate is that he can advise how an administrative judge will react in the context of a legal review and this can be valuable in some cases.
- The president, after having reviewed all the requests and the draft decisions, convenes the members of the commission, generally every fortnight (except during summer : only one commission is held during the month of August). If the “Rapporteur” and the “Rapporteur général” do not agree on the same answer, the president presents the two answers to the members of the commission.
- The commission is composed of :
 - o Four general officers (Army, Navy, Air Force, Gendarmerie), usually four star generals with significant experience either in human resources or in operations, or both. These four general officers examine all submissions and vote on each of them.
 - o One general representing the military branch or service of the applicant (Army, Navy, Air Force, Gendarmerie, Forces Medical Service, Fuel Service, General Ordnance Office, Military Justice and so on). This general officer examines and votes only for the submissions of his military branch or service.
 - o One representative of the Human Resources Director of the Ministry of Defence who examines and votes on all submissions.
 - o The president who examines and votes on all submissions. He has a casting vote in case of equal division of votes.
- On each request, the commission proposes at the relative majority a simple advisory note to the minister who may or may not follow or not this advice.
- Less than four months after the beginning of the procedure, the minister takes a decision which entirely replaces the disputed initial decision : either a total or partial agreement or a rejection. If the applicant is not satisfied, he can contest this new decision, and only this one, in front an administrative jurisdiction.

The role of general officers is very important because when the “Rapporteur” and “Rapporteur général” have given a strictly legal opinion, the general officers with their close knowledge of their military branch can sometimes suggest a different view to take account of the operational, technical, social and human context. Thus, sometimes, the CRM suggests to the minister a decision which is not juridically perfect but which nevertheless brings military usage closer legal rights.

Statistics

From September 2001, the CRM has received more than 23 000 requests, that is, between 2 500 and 3 000 requests a year.

In 2009 the CRM received 3226 requests. The division of these requests between the different military branches or services reveals no significant imbalances : the most numerous the military branch, the most submissions it generates.

What is more interesting is that the ratio is different for officers (about 15 requests per thousand officers), non-commissioned officers (about 8 or 9 per thousand NCOs) and soldiers (only 5 to 6 per thousand private soldiers).

What is the significance of this?

- Officers have a greater knowledge of their rights and less fear of the military hierarchy.
- Not all NCOs have a close knowledge of their rights and some of them may hesitate to dispute decisions for fear of appearing anti-authoritarian, given that most of them are enlisted men and are awaiting a new enlistment contract.
- For private soldiers, ignorance of their rights and fear of refusal of a new contract if they appear anti-authoritarian are obviously more significant factors.

However, the regular progression of the number of requests shows that progressively the appeal process is no longer considered as an absolute evil even in the hierarchical societies that constitute the military community.

It also means that a proportion of the individual decisions are wrong and need to be corrected.

First, what are the most numerous subjects of appeal?

- The most numerous submissions, and this right from the institution of the system in 2001 : relate to annual grading, accounting for 650 to 700 requests (i.e : about 25% of the total) although if you compare these 700 requests with the 340 000 members of the military, you have a rather weak ratio of 2 per thousand.
- Then, the CRM receives each year about 250 appeals against transfers from a regiment, air base or ship to an other in an other town, as well as appeals relating to contracts, pay, bonuses and allowances and repayment of house-moving costs. These subjects constitute in each case about 8% of all appeals, but again, compared to the number of the relevant decisions, appeals make up a very small proportion. For example, each year about 35 000 displacements are ordered, but only 250 are contested because the repayment is not sufficient.

With the development of the internet a lot of submissions look very much alike. Applicants share information and so the CRM often has to examine groups of appeals for which the legal research required is limited (the arguments being in each case the same), but for which it is nevertheless necessary to follow all the steps of the procedure.

Then, how many submissions are wholly or partially approved?

First a large number of submissions are abandoned and do not require a ministerial decision :

- About 600 submissions are refused either because they are presented more than two months after the disputed decision, or because the applicant does not supply the disputed decision, or makes an appeal on a matter in which the CRM is not competent.
- And about 500 requests are directly approved by the original office which recognizes that an error was made and corrects it. They are called internal approvals.

In 2008, the CRM examined 1531 appeals : 405 relative to annual grading and 1126 others.

- For the 405 appeals relative to annual grading , 26 were wholly approved (6,41%), 114 were partially approved (28,14%) and 265 were rejected (65,43%). Most of partial approvals were rather superficial involving some verbal changes, important for the dignity of the applicant, but rarely significant for his or her future career.
- For the 1126 other appeals which are very varied (transfers, contracts, pay, bonuses and allowances and repayment of displacement costs), 213 were totally agreed (20,51%), 49 were partially agreed (4,35%) and 864 were rejected (76,73%).
- In the end, the minister wholly approved 239 appeals out of the 1531 examined by the CRM (15,61%), partially approved 163 (10,64%) and rejected 1129 (73,74%).
- But if one adds up the total and partial approvals by the minister and the 500 internal approvals we have a total of about 900 appeals receiving a more or less positive answer, that is to say about 30%.
- Each year, there is about 200 judicial appeals in front an administrative court after a ministerial decision proposed by CRM. If we compare this to the 3000 initial requests it may seem satisfactory : barely 6,6% of the initial contestations appear in front an administrative court. In fact we must not get ahead of ourselves : a lot of soldiers who do not hesitate to ask the CRM to correct a situation they consider to be unfair, would not go in front an administrative court. In fact, the real ratio of filtration for the administrative courts is about 12% which is the same ratio between first and second proceedings in administrative courts.
- One may consider that the work of CRM is relatively satisfactory given that, out of the approximatively seventy disputed appeals which arrive each year at Council of State, the highest administrative jurisdiction, more than ninety five per cent confirm the ministerial decision .

Thoughts and conclusions

So, what can be said about this particular institution after eight full years of operation?

1. It has made an acceptable idea that a decision taken by a senior officer can be contested by anyone. This was not clear nine years ago, but is now generally accepted, even if there is still some resistance. A hierarchical superior is not always right, he may be wrong but it is possible to correct his errors, of his own accord thanks to internal approvals or via the minister.
2. The increasing number of requests is both a bad thing and a good. Success is also a danger.

This is a bad thing because it shows that in some cases people prefer to appeal to CRM rather than to institute a fair and frank discussion to resolve their conflicts and this is a pity because all this costs a lot of money: the internal cost of an appeal by the CRM is about 725 € for a single decision. It is also a bad thing because we can not sort out the good requests from the bad and in some cases it is not a pre-jurisdiction which is required but rather a psychiatric hospital : the record holder has already made 23

appeals in less than eight years. And even, in some cases of appeals on annual grading, the commission would like to be more severe than the disputed grading but it constrains itself from doing this because of the potential for a significantly negative effect : people would hesitate before making an appeal if they knew that the reviewed decision could be worse than the disputed decision.

However, this is a positive because it shows that military world is capable of improvement and change, because injustices can be repaired and because it permits the identification and correction of bad administrative habits as well as the discovery of areas in which rights are neglected.

Today, the CRM has become an instrument of mediation, education and democracy and it would be probably impossible to do without it both for soldiers and for the administrative courts.

Our pre-jurisdiction system allows a smooth transition from a world which has long been ruled by principles of hierarchy and discipline and anti-contestation towards a more democratic world in which rights of all are respected. As things stands a significant number of appeals are abandoned simply because the official response explains clearly the rules of human resources management and a many submissions receive an internal approval. One of the main aims of the CRM is to increase the number of internal approvals because it shows that respect for human rights is really developing.

All is not yet perfect, sometimes for example the commission considers that the initial official response is not quite fair, frank or complete, but even if it has its doubts it can do nothing without the ability to examine the evidences in greater depth.

But, overall, we are on the right track.