

The right to a fair trial - Requirements of impartiality and independence under Articles 14 (1) ICCPR, 8 (1) IACHR and 6 (1) ECHR in relation to military courts



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GRIN Verlag Dez 2008, 2008. Taschenbuch. Book Condition: Neu. 210x148x5 mm. This item is printed on demand - Print on Demand Neuware - Master's Thesis from the year 2008 in the subject Law - European and International Law, Intellectual Properties, grade: 4.5 (CH!), University of Bern (Institut für öffentliches Recht), 25 entries in the bibliography, language: English, abstract: It is the aim of this thesis to analyse the framework and relevant case law on requirements of independence and impartiality under Article 14 (1) ICCPR, Article 8 (1) IACHR and Article 6 (1) ECHR in relation to military courts. One has to bear in mind that most of the judgments discussed were not solely concerned with questions of impartiality and independence, but also with other fundamental rights, thus the paper has to be read in a context and framework of rights entrenched in the respective Convention or Covenant. Military Courts are not a new phenomenon, they were (and are) a feature of the military system and were originally intended as a tool to uphold a structure which is rooted in vertical influence, thus they have a direct nexus to the executive branch of the state which makes them relatively easy to set up and control on the other hand however, due to their proximity to other branches of the state they can blur the line of the underlying principle - separation of powers -. Several problems spring from the latter aspect[.]. Another problem, which will be also discussed below is that of scrutiny, open courts are subject to public scrutiny whereas military or even partly military courts often lack any form of control. This line of reasoning leads to two characteristic groups of cases, firstly cases involving civilians which are trialled by a military court often in relation to state security...

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