



DEPARTMENT OF THE ARMY  
HEADQUARTERS, 35TH AIR DEFENSE ARTILLERY BRIGADE  
UNIT #2075  
APO AP 96278

EAAD-Z

SEP 05 2017

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: 35th Air Defense Artillery Brigade Policy Letter #12 – Withholding Authority to Dispose of Certain Cases

1. References.

- a. Manual for Courts-Martial (M.C.M.), United States, 2012 Edition
- b. United States – Republic of Korea Status of Forces Agreement, with Agreed Minutes, and Understandings on Implementation
- c. Memorandum, Secretary of Defense, 20 April 2012, subject: Withholding Initial Disposition Authority Under the Uniform Code of Military Justice in Certain Sexual Assault Cases
- d. Army Regulation (AR) 27-10 (Military Justice), 11 May 2016
- e. Memorandum, APCG, 3 October 2013, subject: Withholding Initial Disposition Authority Under the Uniform Code of Military Justice in Sexual Offense Cases
- f. United States Forces Korea (USFK) Regulation 1-44 (Criminal Jurisdiction Under Article XXII, Status of Forces Agreement), 1 March 2010
- g. Army in Korea (AK) Regulation 27-10 (Legal Services, Military Justice), 16 March 2012
- h. Memorandum, EACG, 5 February 2016, subject: Eighth Army Command Policy Letter #15, Withholding Authority to Dispose of Certain Cases
- i. Memorandum, EACG, 1 April 2016, subject: Eighth Army Command Policy Letter #18, Separation Actions Concerning Soldiers Convicted in Republic of Korea (RoK) Foreign Tribunal/Court
- j. Memorandum, EACG, 1 April 2016, subject: Eighth Army Command Policy Letter #16, Suspension of Pass Privileges for Soldiers under Investigation by Republic of Korea Authorities

2. Purpose. To ensure cases involving Soldiers assigned or attached to 35th Air Defense Artillery Brigade involved in allegations of misconduct committed against

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Korean Nationals, to include Korean National Police (KNP), and their property are disposed of at my level.

3. Background. Rule for Courts-Martial 306(a) permits superior commanders to withhold from subordinate commanders the authority to dispose of offenses in individual cases, types of cases, or generally. AR 27-10, paragraph 3-7d, authorizes commanders having authority under the Uniform Code of Military Justice (UCMJ), Article 15, to limit or withhold the exercise of such authority by subordinate commanders.

4. Policy.

a. Alleged Misconduct Against Korean Nationals. Authority to dispose of alleged misconduct committed by Soldiers assigned or attached to 35th Air Defense Artillery Brigade involved in allegations of misconduct committed against Korean Nationals, to include KNP, and their property is withheld from all subordinate commanders. This reservation includes, but is not limited to, the authority to issue reprimands, relieve for causes, administer non-judicial punishment under Article 15, UCMJ, and convene courts-martial.

b. Notification and Forwarding. All subordinate commanders will immediately contact me via telephone, with a follow-up electronic mail notification within 2 hours of any credible allegation of misconduct described above in paragraph 4.a. All subordinate commanders will ensure that a thorough investigation into any alleged misconduct is completed and forwarded through the Brigade Judge Advocate to me with recommendations as to final disposition. Commanders should not interfere with KNP investigations, but should forward those investigations to me. Once a case is submitted, I will make the final determination of whether I will handle it personally or whether I will release jurisdiction to a subordinate commander.

c. Limitations. Nothing in this policy should be interpreted to contradict or affect other regulations or withholding policies issued by superior commanders. This includes, but is not limited to:

(1) E-8 and Above. The Commanding General (CG), 8th Army's withholding to dispose of all allegations of misconduct committed by Soldiers in the grade of E-8 and above.

(2) Sexual Offenses. As the Special Court-Martial Convening Authority, my authority to dispose of all alleged offenses committed or attempted under Articles 120, 120a, 120b, and 120c of the UCMJ.

(3) RoK Jurisdiction. The RoK's authority of exclusive jurisdiction over those offenses which violate only the law of the RoK, but not U.S. law, and the RoK's primary

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jurisdiction to prosecute Soldiers who violate the laws of the RoK when such acts do not arise out of performance of official duty or when such acts are committed against non-Status of Forces Agreement individuals and their property. UCMJ action may not be taken against Soldiers for the same or similar crimes under the UCMJ if they have already been prosecuted for that crime by a RoK court, unless otherwise approved by the CG, Eighth Army.

d. RoK Investigations and Convictions. Commanders are reminded to:

(1) Suspend pass privileges for Soldiers under investigation by RoK authorities for criminal conduct against Korean Nationals.

(2) Take appropriate action (e.g. flag, involuntary extension of date eligible for return from overseas, international hold) to retain Soldiers in the RoK suspected of being involved in alleged offenses of RoK law until such issues have been resolved. Soldiers on international hold will have their temporary duty, permanent change of station, leave, or other travel orders revoked.

(3) Initiate separation under AR 635-200 or AR 600-8-24 when a RoK foreign tribunal/court convicts an enlisted Soldier or officer of an offense where a punitive discharge is authorized for the same or a closely related offense under the M.C.M., or when a sentence includes confinement for six months or more. If retention is sought, the subordinate commander will forward a recommendation for retention through the chain of command to the CG, Eighth Army.

e. Nothing in this policy limits the discretion of subordinate commanders to act on cases over which authority has not been withheld and should not be interpreted to indicate that allegations must be disposed of in a particular manner. For cases where authority is withheld to a certain level and a lower level commander believes that they can appropriately address the misconduct at their level, the commander shall expeditiously forward all available evidence through the intermediate commander and Brigade Judge Advocate with a request to release authority. This may be done by electronic email where the appropriate commander is myself.

5. POC for this policy is the Brigade Judge Advocate at (315) 783-5581.

6. Ready in Defense!

  
RICHARD W. WRIGHT  
COL, AD  
Commanding

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