



Civilian Misconduct



Please note that this Information Paper only provides basic information and is not intended to serve as a substitute for personal consultations with a Legal Assistance Attorney.

GENERAL INFORMATION

While Germany has jurisdiction over civilians in all criminal matters during peacetime, both on and off post, it typically cedes jurisdiction to the U.S. military in minor cases if the military can show suitable corrective administrative action is available. However, Germany is not **required** to cede jurisdiction. And even if the German authorities choose not to cede jurisdiction, adverse administrative action by the US military may be instituted against the civilian.

Moreover, misconduct committed entirely within the context of a civilian's employment will usually be handled by the employing agency. It does not require outside administrative action unless community interests are directly affected. However, civilians should be aware that corrective action may be taken for misconduct occurring during non-working hours if there is a nexus to their employment.

Civilians stationed overseas are highly scrutinized. Those in leadership positions are held to an especially high standard and may receive harsher penalties than those in non-leadership positions for the same offense. As stated on the Civilian Human Resources Agency Europe Region's (CHRA-EUR's) Civilian Personnel Online (CPOL) website's Employee Handbook - Employee Conduct: "As U.S. Government employees in Europe, it is essential that individuals conduct themselves in a manner that will bring credit to their profession and to the nation they represent. Remember the conduct and actions of U.S. citizens are continually on display and under scrutiny by European residents. The high ethical and moral standards expected in stateside communities are even more essential overseas."

CIVILIAN MISCONDUCT ACTION AUTHORITY

U.S. Army Europe handles civilian misconduct through the Civilian Misconduct Action Authority (CMAA), a program that establishes policies and procedures for responding to misconduct by persons (excluding Active Duty military) who are eligible to receive individual logistical support from the various U.S. military commands in Europe. The CMAA program coverage extends to all U.S. civilians receiving U.S. logistical support in the U.S. Army Garrison (USAG) Stuttgart footprint, regardless of their command sponsorship status.

The CMAA program is mandated by Army in Europe Regulation 27-9, Legal Services, Misconduct by Civilians. It empowers the Garrison Commander (GC) with broad authority to adjudicate all instances of civilian misconduct. The GC in turn delegates this duty to the Assistant Civilian Misconduct Action Authority (ACMAA).

Procedural rules built into the system ensure basic fairness. The CMAA investigates and determines whether a violation of law or regulation has occurred using a preponderance of the evidence standard. "Preponderance of the evidence" means that if there is evidence to show the allegations are "more likely than not" to be true, administrative action will be taken. If the CMAA decides to pursue administrative action, it notifies the civilian in writing of the allegations and the administrative action it intends to take. The administrative action comes in one of two forms: (1) a Letter of Counseling or (2) a Warning, or a Notice of Intent (NOI). Letters of Counseling or Warning are issued for minor administrative actions, are not appealable, and require no further action. They are simply issued to address an incident of misconduct. The respondent has the right to submit a reply, which the CMAA will put in the case file. However, the CMAA will usually not reconsider its decision and will close the file.

If the CMAA elects to issue an NOI, the respondent will be informed of the right to examine the investigative file and respond to the CMAA. Evidence within the case file may be withheld, however, when there is good cause, such as classified documents, medical information, or information that would endanger the life or safety of law enforcement. The alleged offender is then usually given three days to respond before any action is taken. The respondent may also request an opportunity to appear before the CMAA and present an argument orally but the CMAA is not obligated to grant this request.

The CMAA may then issue a Notice of Adverse Action (NAA) explaining the penalties being imposed as well as what, if any, appeal process is available to the offender. Adverse action can affect a civilian's logistical support, such as AAFES Exchange or Commissary shopping privileges, ration cards, Army Post Office usage, access to Morale, Welfare, and Recreation (MWR) facilities and services, and installation access. Adverse action may even include termination of government housing if a sponsor or family member is involved in illegal use of the premises or misconduct that threatens the safety, health, or welfare of neighbors. Additionally, the CMAA has the power to impose curfew and Early Return of Dependents (EROD) on civilian wrongdoers. The adverse action imposed will have a rational relationship to the offense committed, e.g., shoplifting at an AAFES facility will result in loss of AAFES privileges.

Alleged offenders have the right to appeal certain administrative actions if a case is handled inappropriately. Appeals must be submitted within five days of receiving notification of administrative action.

The CMAA does not take action that directly impacts the civilian's career. However, the Civilian Personnel Office may take into the consideration the CMAA's actions when determining career penalties under its regulations should the matter also be brought to the attention of the civilian employee's supervisor. The Management Employee Relations (MER) Specialist within the Civilian Personnel Office advises agencies on how to handle personnel penalty matters and career impact.

REHABILITATION AND RESTITUTION OPPORTUNITY (R&RO) PROGRAM

Sometimes an NOI or NAA will include an R&RO offer. The R&RO program is voluntary and is used to determine whether an offender is willing to alter his behavior and become a responsible member of the community. Usually an R&RO is offered instead of more severe action. The terms and conditions for successful completion of the R&RO, as well as consequences for failing to do so, will be explained thoroughly in the NOI or NAA. If the offender accepts an R&RO offer, he or she may be required to: perform volunteer services in the community, as long as the services bear a direct relationship to the misconduct committed; make restitution to or perform services for victims, including the garrison, affected by the misconduct, to compensate them for the damages or losses they incurred; attend and participate in programs that identify, diagnose, and treat underlying disorders that affect the offender's behavior, or which educate offenders about ways to better manage their personal lives; remain at home for specified hours of the day; receive periodic home visits from appropriate personnel; or periodically report in person to appropriate personnel.

R&ROs will usually only be offered to first time offenders. Declining an R&RO offer, or failing to successfully complete the program, will result in the CMAA instituting other adverse action.

APPEALS

When adverse action is subject to appeal, the respondent or his sponsor must submit the appeal to the CMAA within five calendar days of receipt of the NAA. The appeal should state the relief requested and why the action being appealed is inappropriate. Respondents may also choose to include character references and other material in support of the appeal, but an extension of time to submit the appeal will not be granted to obtain these documents. The CMAA may, at this stage, elect to grant the appeal and close the case. If the CMAA does not grant the appeal, it will forward the appeal and case file through command channels to the appellate authority, together with a recommendation on further action. The appellate authority will then provide a written response to the appeal, either denying the appeal or stating which relief it is granting, depending on what it deems appropriate. The matter is then remanded to the CMAA for implementation of the adverse action.

For further information, contact the Legal Assistance Office, Stuttgart Law Center, DSN 421-4152; Civ 0711-729-4152 or make an appointment at www.stuttgartcitizen.com/appointments.