

Abstract: Legal aspects of exercising military constraint powers in missions abroad

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Within the scope of the lawful standardisation of explicit internal legal grounds for exercising “external powers” in the Abroad-Mission-Act of 2001 a temporary arrangement for military missions abroad had also been planned for those missions which were already under way when the legislative amendment became effective on 22nd November 2011. This regulation was supposed to give sufficient time to the executive for preparing and drawing up the respective decrees for the following five concrete missions abroad; EUFOR/ALTHEA (Bosnia), UNDOF (Golan), UNIFIL (Lebanon), KFOR (Kosovo) und ISAF (Afghanistan). Immediately after the legal basis had come into force, the preparatory works for these decrees began. In the course of the textual development of the decrees, all powers stated in international law, including the possibilities of executing them, were taken over in the national regulation. The effectiveness of the “broad” approach, when taking over internationally justified powers into a national regulation of powers by means of a respective decree, showed already from the summer of 2012 onwards in the course of the repeated discussions on the question of military forces of the UNDOF mission supporting refugees caused by the internal disturbances in Syria. This approach at any rate has guaranteed a secure and (at least for the time being) persevering internal legal basis for all Austrian soldiers taking part in this mission abroad for all situational developments in the mission area realistically foreseeable at the moment, and for all allocated assignments, including the executing powers resulting from them. In February 2013 the preparatory works for the issuing of a “powers decree” for the EU training mission in Mali (EUTM Mali) began. According to the fundamental documents released by the EU, a possible execution of constraint powers by the deployed forces, especially within the scope of so-called “force protection”, is provided. For this reason, a respective national legal basis became necessary for the Austrian forces taking part in this mission. After the resolution had been passed by the cabinet on 19th February 2013, the Central Committee of the National Council approved of the decree on 27th February 2013, and the next day it came into effect. This Austrian regulation of powers for missions abroad has also become internationally interesting. Especially in Germany this regulation has slipped into the discussion concerning the necessity and advisability of a national regulation of powers of soldiers in missions abroad, which has been under way on both a technical and a political level for a long time. In Austria, too, the further development of this matter will have to be observed with much interest, especially in view of, on the one hand, the legal fundamental structures which are largely comparable in both states, and on the other hand, the longstanding joint missions abroad in a multilateral system.

