

ACT no. 532 of 24/06/2005

Military Disciplinary Act

BE IT KNOWN that the Folketing has enacted and We Margrethe the Second, by the grace of God, Queen of Denmark, have given Our Royal Assent to the following Act:

Chapter 1

Purpose of the Act

§1. Under the present act the purpose of disciplinary responsibility shall be to ensure discipline within the armed forces.

(2) Disciplinary responsibility shall be imposed where, as a consequence of a violation of the stipulations of §§4 and 5, there is for disciplinary reasons a need for a sanction, but where punishment is not warranted or needed.

Chapter 2

Scope of the Act, etc.

§2. The present act shall apply to military personnel in active service and discharged military personnel regarding military duties imposed on such personnel after their discharge.

(2) The present act shall also apply to international military personnel interned in this country and other people who are, according to international agreements accepted by Denmark, entitled to treatment as military personnel.

§3. In an armed conflict, the present act shall also cover:

- 1) Anybody serving in the armed forces or accompanying a unit thereof, and
- 2) Prisoners of war and medical staff and army chaplains who are retained to assist prisoners of war, provided that there are no stipulations to the contrary in current international agreements.

Chapter 3

Dereliction of duty and disciplinary measures

§4. Disciplinary measures according to §6 can be imposed on a person who

- 1) does not obey an official order from a superior or a guard, or who obeys any such order in a clearly unsatisfactory way,
- 2) in action or words offends a superior or a guard,
- 3) exposes a peer to offending treatment, including degrading rituals,
- 4) disturbs public order or appears visibly under the influence of alcohol, narcotics, stimulating or narcotising drugs, etc., and who through his/her clothes etc. clearly shows that he/she is serving in the armed forces,
- 5) in connection with international service disturbs public order or appears visibly under the influence of the substances mentioned above under 4),
- 6) neglects his/her duties as a guard,
- 7) leaves the place of service or is absent from service without cause,
- 8) causes objects belonging to the armed forces to disappear, be destroyed or damaged, or
- 9) is in any other way guilty of dereliction of duty.

§5. Furthermore, disciplinary measures can be imposed on the superior who

- 1) by discrimination, harassment or in any other way persecutes one or more subordinates,
- 2) omits intervention against a subordinate's offending treatment of his/her subordinates or peers, or
- 3) by word or action offends a subordinate,

(2) The above shall also apply to the superior who receives a gift, an advance of money, or any other privilege from a subordinate without cause.

§6. Disciplinary measures shall be the following:

- 1) Reprimand
- 2) Presentation
- 3) Work and additional exercise in part of the spare time
- 4) Additional service
- 5) Disciplinary fine

(2) Disciplinary fine shall amount to a maximum of 1/10 of the monthly salary of the person in question for each offence.

(3) The Minister of Defence shall set up additional rules regarding the use of disciplinary measures, including the size of disciplinary penalties.

Chapter 4

The hearing of disciplinary cases

§7. The Minister of Defence shall set up additional rules regarding the authority to impose disciplinary measures and the scope of such authority.

§8. Any superior who finds that there is a reason for imposing a disciplinary responsibility on one or more of his subordinates, shall as soon as possible report the case in writing to his immediate superior if the person in question does not have disciplinary authority.

(2) If the report has been forwarded to a superior who does not have the authority to make a decision, the superior in question shall immediately re-forward the report to the disciplinary authority.

§9. A person who finds that there is a reason to impose disciplinary responsibility shall report this in writing to the disciplinary chief. § 8 (2) shall apply accordingly.

§10. The disciplinary authority shall be responsible for the clarification of the matter. Before a decision is made, the reported person shall be given a chance to make a statement regarding the actual facts of the matter which may be of importance to the decision. The disciplinary authority shall fix a deadline for such statement.

(2) The disciplinary authority shall as soon as possible summon the person reported to a questioning, stating that the person in question has been reported in a specific disciplinary matter and has a right to appear with an observer.

(3) The disciplinary authority shall present the person reported with the report, stating the intended disciplinary measures, and stating that the person in question is entitled, but not obliged, to make a statement. If the matter can be decided on the basis of the information presented, the disciplinary authority shall make a decision immediately.

§11. If the disciplinary authority is in doubt as to whether the case should be treated as a criminal case, the matter is presented to the disciplinary chief. If the disciplinary chief is in doubt, he/she shall ask the judge advocate to make the decision.

§12. The disciplinary decision shall be made in writing, stating a reason.

(2) The reason for the decision shall include a reference to the regulations according to which the decision was made, and a statement of the actual facts of the case which have been of material importance for the decision. The reason shall also include the main considerations behind the decision made and the fixing of the disciplinary measure.

(3) The decision shall include instructions on how to make a complaint.

(4) The decision shall be served to the person in question.

§13. A person on whom disciplinary measures have been imposed under §6, (1) (3) and (4) shall be entitled to a postponement of the implementation of the decision for up to three times 24 hours from the serving of the disciplinary measure, unless the disciplinary chief finds that the purpose of the disciplinary measure will thereby be lost.

§14. A person on whom disciplinary measures have been imposed by a person other than the disciplinary chief shall within 14 days from the serving of the decision be entitled to bring the decision before the disciplinary chief. The decision cannot be changed to the detriment of the person on whom the disciplinary measure has been imposed.

(2) The disciplinary chief shall be able to decide to hear the complaint even if the deadline has been exceeded, if the delay is considered excusable.

(3) A complaint to the disciplinary chief shall not have delaying effect, unless so decided by the disciplinary chief.

§15. It shall be possible to request that the decision of the disciplinary chief is brought before the disciplinary board within four weeks from the serving of the decision. The decision cannot be changed to the detriment of the person on whom the disciplinary measure has been imposed.

(2) The disciplinary board shall be able to decide to hear the complaint even if the deadline has been exceeded, if the delay is considered excusable.

(3) A complaint to the disciplinary board shall not have delaying effect, unless so decided by the disciplinary board.

§16. If a disciplinary measure which has been completed is cancelled or mitigated, it shall also be decided whether the change shall lead to financial compensation or any other type of compensation, including time off.

(2) The Minister of Defence shall be able to set up more detailed rules regarding compensation under (1).

§17. The disciplinary board shall consist of a city court judge (chairman) a representative of the armed forces appointed by the Defence Chief, and a representative of the personnel group of the person on whom the disciplinary measure has been imposed. The two last-mentioned representatives shall be appointed according to the recommendation of the personnel organisations which are entitled to negotiate, cf. (3), however.

(2) The members shall be appointed by the Minister of Defence for a period of four years, cf. (3), however. A substitute shall be appointed for each of the members of the board. Re-appointment shall be possible.

- (3) The member participating in cases regarding conscripted personnel on whom a disciplinary measure has been imposed shall be appointed for a fixed period according to recommendation from the spokesmen of the conscripted personnel.
- (4) The Minister of Defence shall set up the more detailed stipulations regarding the activities of the disciplinary board, etc.

§18. The decision of the disciplinary chief can only be brought before the courts when the decision has been tried or the case dismissed by the disciplinary board, however cf. (2).

(2) The decision of the disciplinary chief can be brought before the court if the board has not made a decision within two months after the case was brought before the board.

(3) Cases to test decisions of the disciplinary board shall be brought against the board. Other cases shall be brought against the Defence Command.

(4) Decisions according to (1) and (2) shall be brought before the city court where the plaintiff is serving. If the person in question has been discharged, the case shall be brought before the city court where the plaintiff has his place of residence.

§19. The right to initiate a disciplinary action shall terminate two years after the offence.

(2) The deadline under (1) shall be interrupted when the person in question is informed that a report has been made, or that a criminal case has been initiated.

(3) If a criminal case which has ended without a sentence is forwarded to the disciplinary chief, the person in question must at the same time be informed in writing. If the case is forwarded to the disciplinary chief after sentence, the person in question shall be informed in writing no later than at the end of the deadline for appeal.

§20. Military officials shall not be covered by the stipulations in §20, (2) and (3) of the Officials Act, and §§21-24 when the case is among the cases to be treated according to military disciplinary legislation.

§21. The Minister of Defence shall be entitled to set up more detailed stipulations on the treatment of disciplinary cases.

Stipulations regarding effective dates and transitional periods

§22. This legislation shall become effective as at 1 January 2006.

(2) Cases which are being heard at the effective date of the act shall be completed according to the previous rules of Chapter 15 of the Military Administration of Justice Act.

(3) In cases settled by a disciplinary measure after the effective date of the act, only the disciplinary measures mentioned in §6 shall be imposed.

(4) Retention at the place of service which has been imposed as a disciplinary measure before the effective date of the act, but which has not been served on that date, shall lapse, after which the disciplinary authority shall make a new decision according to the stipulations of the present act.

§23. The present act shall not apply to the Faeroe Islands and Greenland, but can by royal request be made effective for these parts of the country with the deviations necessitated by the specific circumstances in the Faeroe Islands and Greenland.

Issued at Amalienborg, 24 June 2005
Witness Our Royal Hand and Seal

MARGRETHE R.

/Søren Gade