

ACT no. 531 of 24/06/2005

Military Administration of Justice 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:

§1 During the hearing of military criminal cases, the stipulations in the administration of justice act on criminal cases shall apply unless otherwise provided.

§2 Military criminal cases are

- 1) cases about the violation of military penal code against people who under §§ 1 and 2 of the military penal code can be held liable for a crime relating to violation of such act.
 - 2) cases regarding other punishable crimes against people as stated under (1) when the violation relates to the service or has been committed in or because of the service, within military area, or in military quarters provided, and
 - 3) cases stated under (2) against prisoners of war and medical staff and military chaplains who are retained to assist prisoners of war or against foreign military personnel and other people interned in this country and who are, according to international agreement signed by Denmark, entitled to treatment as prisoners of war.
- (2) The act shall apply to people mentioned under (1), 3), unless otherwise provided for in the international agreements covering the treatment of such people.

§3 If a person is at the same time prosecuted on several counts which are not all prosecuted by the military prosecution services, the person in question shall be prosecuted in a military criminal action. If the military and the general prosecution agree, the case shall be heard as an ordinary criminal case.

(2) If several people are prosecuted at the same time on a count which does not for all the people accused belong under the military prosecution service, the case as such can be heard either as a military or a general criminal case when the military and the general prosecution services agree on this.

§4 If the consideration for military safety so requires, the court may decide

- 1) that the hearing shall be held behind closed doors, cf. §29 of the Administration of Justice Act,
- 2) that the court shall be closed during the negotiation before the court order regarding the closing of the doors, cf. §29 c of the Administration of Justice Act,
- 3) that the right to access to documents regarding sentences and court orders shall be limited, cf. §41 b, (3), §41 c, (3), and §41 f (1), (3) and (5),
- 4) that the right to access to documents for the counsel for the defence and the accused shall be dispensed with, cf. §729 c (1) of the Administration of Justice Act, and
- 5) that the duty of secrecy shall be imposed on a witness, cf. §189 of the Administration of Justice Act.

(2) If the considerations stated above under (1) so require, the judge advocate shall be able to decide

- 1) that the right of access to documents in criminal cases which have been completed shall be limited, cf. §41 d, (3) of the Administration of Justice Act,
- 2) that the handing out of a copy of the indictment or request for court hearing is limited, cf. §41 f (2) of the Administration of Justice Act,

- 3) to refuse to give his/her consent to handing out to the accused or others the material obtained by the judge advocate for the case relating to the charge, cf. §729 a (3) and §729 b (2) of the Administration of Justice Act,
- 4) that the counsel for the defence shall be ordered not to pass on information received by the counsel for the defence from the judge advocate, cf. §729 a (4) of the Administration of Justice Act, and
- 5) that the right of access for the person who has been charged to documents regarding the case shall be limited, cf. §729 d (3) of the Administration of Justice Act.

§5 In addition to the courts stated in Chapter 63 of Administration of Justice Act, trials can be held before the court under the jurisdiction of which the accused is serving or where the ship to which the person in question belongs is registered or has sought or is seeking harbour.

(2) Furthermore, the trial can be held before the court at the place where the accused was serving when the crime was committed or where the ship to which the person in question belonged was registered.

§6 The judge advocate general and the judges advocate shall prosecute crimes in trials to be heard as military criminal cases.

(2) When investigating military cases, the judges advocate shall be assisted by assisting judges advocate.

(3) The Minister of Defence shall be the superior of the judge advocate general and the judges advocate and shall supervise them.

§7 When hearing military criminal cases, the judge advocate general and the judges advocate, respectively, shall be in charge of the tasks which have according to the Administration of Justice Act been referred to the Public Prosecutor, the Assistant Public Prosecutors and the Chiefs of Police, respectively, cf. however §9.

(2) The Minister of Defence shall be in charge of the tasks within the military administration of justice which have according to the Administration of Justice Act been referred to the Minister of Justice.

(3) The Minister of Defence shall in military criminal cases be in charge of the tasks which have according to act on the execution of punishment etc. been referred to the Minister of Justice regarding postponement of and pardons regarding imprisonment and execution of fines, cf. §10 and §90 (2) of act on execution of punishment etc.

(4) The Minister of Defence shall in military criminal cases set up stipulations regarding the administrative processing of cases regarding pardon and the processing of cases regarding postponement of imprisonment and the administration of cases regarding cancellation of fines and cases regarding collection of fines.

(5) Furthermore, the Minister of Defence shall be able to set up detailed stipulations to the effect that the judge advocate's decision regarding postponement of or payment in instalments of fines cannot be appealed to a higher administrative authority.

§8 Military authorities shall assist the judges advocate.

(2) The police shall assist the judges advocate during the investigation.

(3) The police shall on their own be able to take urgent investigation steps in military criminal cases and shall in that case inform the judge advocate immediately.

§9 In cases where it has not in advance been possible to obtain the authorisation of the judge advocate, military authorities shall be able to take any urgent investigation step in military criminal cases. The judge advocate shall immediately be informed accordingly.

(2) The judge advocate general shall set up detailed stipulations regarding the investigation steps mentioned in (1), including the type of military personnel which is able to take such steps.

§10 A superior shall be able to arrest a subordinate who shows gross disobedience or grossly disrespectful behaviour if such arrest is considered necessary because of disciplinary considerations.

§11 An accused can be remanded in custody when there is a reason to suspect that the person in question has committed a violation of the military penal code which can according to legislation lead to imprisonment, and if there is a particular reason to assume that if the accused remained free, this would have a seriously deteriorating effect on discipline.

(2) Remanding in custody under (1) can be extended to a maximum of seven days.

(3) Remanding in custody under (2) cannot be used if the crime can be expected to lead to a fine.

§12 Where there is probable cause to believe that a crime has been committed which must be heard as a military criminal case, and which may according to the law lead to imprisonment, a search can be undertaken within a military area without a court order if the search is of material importance for the investigation; this does, however, not apply to service tenancies and rented residences. The search may include the clothes worn by the people with whom the search is carried out.

§13 When entering and leaving a military area, military authorities may without a court order inspect the contents of clothes, baggage, bags, etc., and of transport vehicles.

(2) To the extent that it is necessary in order to carry out the inspection, objects may be taken into temporary custody, and people may be retained. In this connection, the military authorities shall be allowed to use the necessary power. According to request, the police shall assist the military authorities in this respect.

(3) The Minister of Defence shall be able to set up more detailed stipulations regarding inspection under (1) and (2).

§14 The 24-hour deadline according to §760 (2), §796 (3) and §806 (3) of the Administration of Justice Act can in connection with service outside Denmark, in case of warships on expedition or otherwise in extraordinary circumstances if necessary be extended for up to three times 24 hours.

§15 The judge advocate and other military authorities shall at any time be entitled to demand that serving military personnel who use motorised vehicles or in other ways carry out tasks for which special blood alcohol percentage limits have been fixed shall undergo a breathalyser test.

(2) If a person refuses to undergo a breathalyser test, or if the person in question is unable to cooperate, the person in question can be presented for the collection of a blood sample and a urine sample. This also applies if the breathalyser test gives reason to believe that §20 of the military penal code has been violated or the blood alcohol percentage limit fixed under §21 or §§53 and 54 of the Traffic Act has been exceeded.

(3) If there is probable cause to believe that military personnel is serving under the influence of narcotics, the person in question can be presented for the collection of a blood sample and a urine sample.

§16 Notice of appeal of the decision of the court in a military criminal case can be given to a superior.

§17 The present act shall become effective as at 1 January 2006.

(2) At the same time the military administration of justice act, cf. consolidated act no. 643 of 30 September 1987 shall be abolished.

§18 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