

2020

# The Danish Military Justice System

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The pediment of the City Court of Copenhagen (1815) quotes the preamble to the ancient Law of Jutland (1241):

*»With Law shall though build the Country«*

# Table of Contents

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<b>PREFACE</b> .....	5
<b>1. INTRODUCTION TO THE DANISH MILITARY JUSTICE SYSTEM</b> .....	7
<b>2. MILITARY CRIMINAL JUSTICE</b> .....	8
General procedural provisions	8
Military criminal jurisdiction	9
The Military Penal Code	9
Other military criminal cases	10
Sanctions in criminal cases	10
Criminal proceedings	10
Specific proceedings pertaining to military assistance to the police	11
<b>3. INTERNATIONAL INVESTIGATIONS AND ARMED CONFLICT</b> .....	12
Introduction	12
International law	12
International investigations	13
Armed conflict in the context of the Military Penal Code	14
"War articles" of the Military Penal Code	14
Jurisprudence	14
<b>4. SUMMARY PROCEEDINGS</b> .....	15
The Military Disciplinary Act	15
The proceedings	16
The disciplinary sanctions	16
Specific provisions pertaining to military assistance to the police	17
The Civil Servants Act	17
<b>5. THE DANISH MILITARY PROSECUTION SERVICE</b> .....	18
<b>6. ORGANIZATION OF THE MINISTRY OF DEFENCE AND AGENCIES</b> .....	21
<b>INDEX</b> .....	22

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# Preface



## Justitia

Bronze sculpture by the Danish sculpturer  
Jette Vohlert.  
The Western High Court.

Photo: RDAF Photo Services.

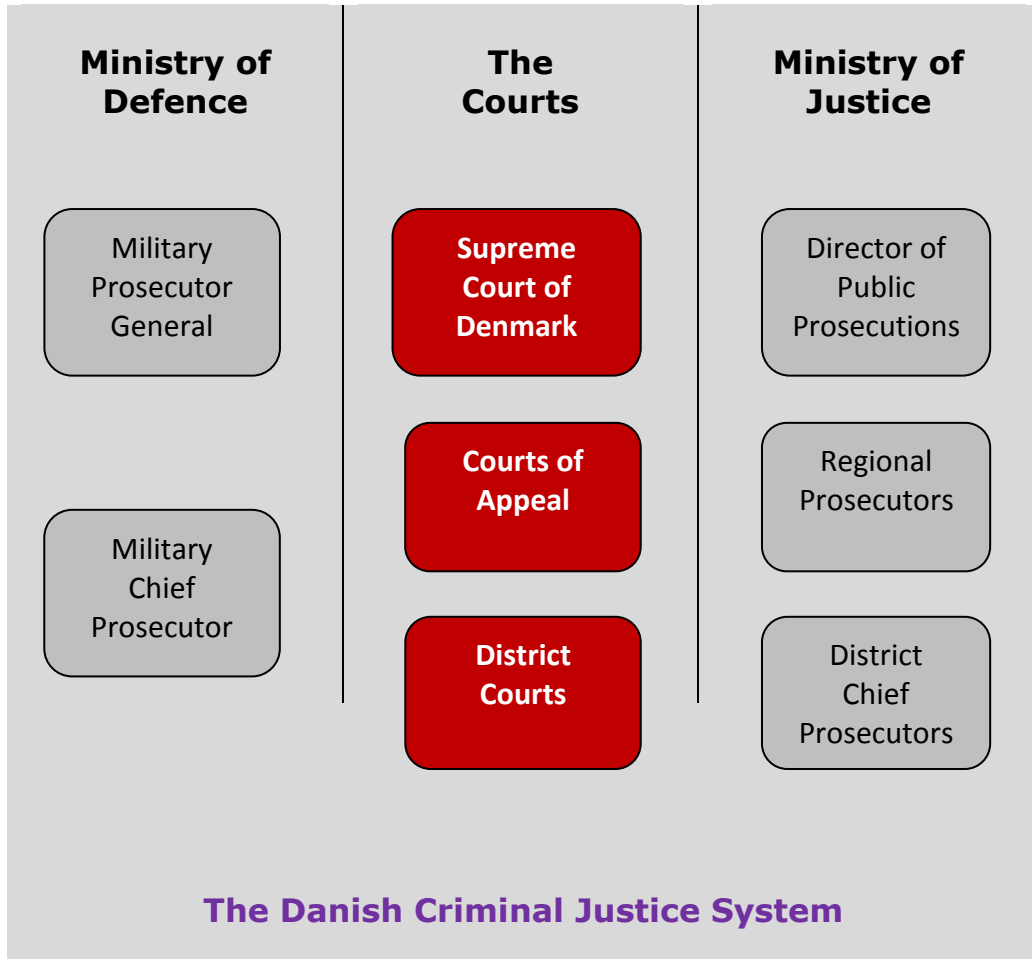
The Kingdom of Denmark maintains a separate justice system for the Armed Forces. With the 2005 legislative reform the Danish Parliament affirmed the need for a separate justice system to meet the unique requirements of military discipline in particular with a view to the international operations that Denmark has participated in since the early 1990s.

The Danish Military Justice System is structured as a dualistic system with a clearly defined separation between criminal justice operated by the Military Prosecution Service and summary proceedings operated by the chain of command.

I am pleased to present this brief and updated introduction to the organization of the Danish Military Justice System and the duties and functions of the Military Prosecution Service.

Copenhagen, March 2020

*Lars Stevnsborg*  
Military Prosecutor General



# 1. Introduction to the Danish Military Justice System

## Why a separate military jurisdiction in peace-time?

»In international theatres of operations discipline is of the utmost importance as a breach of discipline may have fatal consequences for the soldiers and the mission.

Therefor a speedy and efficient enforcement of the military duties and discipline through sanctions is required even prior to deployment.«

Draft Bill L 54, FT 2004-05

## The purpose of military justice

The purpose of military justice is to safeguard the efficiency and readiness of the armed forces through maintaining order and discipline in compliance with international law.

With the 2005 Reform, the Danish Military Justice System was divided in two parts:

- *criminal proceedings*
- *summary proceedings*

The competent authority for criminal proceedings is the Military Prosecution Service (MPS) whereas the summary proceedings are operated as a non-judicial system by the military commanders under the supervision of the Ministry of Defence Personnel Agency. The purpose of the two strands is to maintain discipline in the armed forces.

The two strands – though strictly separated between the MPS and the military commanders – are connected.

First, they serve the same purpose; secondly they extend to the same personnel; thirdly the MPS makes the final decision on whether a case must be dealt with as a criminal case or a disciplinary case; and fourthly, a disciplinary case may be opened *after* the charges in a criminal case have been dropped or after an acquittal in Court.

The personal jurisdiction of the Military Justice System extends to all military personnel as defined in the Military Personnel Act, including officers and personnel with military status outside the chain of command – such as military prosecutors and investigators, musicians and chaplains – as well as civilians with temporary military status.

Discharged military personnel is subject to the Military Justice System as regards military duties imposed after discharge. Civilians are subject to the Military Justice System in armed conflict only.

## 2. Military Criminal Justice

### The Administration of Justice Act

»§ 96(1). It is the duty of the public prosecutors to prosecute crimes in cooperation with the police and in accordance with the provisions in this Act.

(2). The public prosecutors must proceed with any case with the speed allowed by the nature of the case, and thereby not only ensure that those culpable are held responsible but also that prosecution of the innocent does not take place.«

### The Military Administration of Justice Act

»§ 1. During the hearing of military criminal cases, the provisions in the Administration of Justice Act on criminal cases shall apply unless otherwise provided.«

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### General procedural provisions

The Danish Military Criminal Justice System is an integral part of the general criminal justice system and abides by its fundamental principles of justice. The military criminal justice procedures follow those applied in civilian criminal law with some differences due to the nature of military service.



The Danish criminal justice system is based on the *adversarial* process. The Administration of Justice Act sets out a wide range of detailed provisions aiming to facilitate a *fair trial* for the defendant as well as protecting the rights of victims and witnesses. The aim is also to strike a fair balance between the rights of the individual and the interests of society, including the necessary efficiency of the criminal justice system.

The basic principles are the presumption of innocence, "*in dubio pro reo*" (Latin for "[when] in doubt, for the accused"), the right of the defendant to remain silent in accordance with the prohibition against self-incrimination, the right of a defendant to be brought promptly before a judge when arrested and equality of arms between the



prosecution and the defence counsel. Further, the burden of proof is placed on the Prosecution Service and the assessment of evidence by the courts is free, i.e. not bound by specific rules.

Section 96 of the Administration of Justice Act sets out the guiding principles for all prosecutors – whether civilian or military – that the Prosecution Service shall, at all times, proceed with timeliness and ensure that those liable to punishment are prosecuted while those innocent are not. This is the fundamental principle of *objectivity* and *fairness*.

The European Convention on Human Rights (ECHR) is incorporated into Danish law. Thus, the Danish legal system complies with the legal guarantees in the Convention, as well as those of the International Covenant on Civil and Political Rights (ICCPR).

All military criminal cases are heard by the ordinary courts in compliance with the rules and procedures set out in the Administration of Justice Act and the Military Administration of Justice Act.

Transparency is central to the justice system and the courts are generally open to the public. Military criminal cases are – like civilian criminal cases – heard by the District Court either by a single judge presiding alone or a panel of lay judges or jurors depending on the nature and severity of the case.

A District Court ruling may be subject to appeal to a High Court and a judgment of a Court of Appeals may – with a special leave from the Appeals Permission Board – be heard by the Supreme Court.

Military Courts (Courts-Martials) were abolished in connection with the general Administration of Justice Reform in 1919.

### **Military criminal jurisdiction**

The Military Administration of Justice Act and the Danish Military Penal Code define the military criminal jurisdiction.

As mentioned in the introduction, the personal jurisdiction encompasses military personnel in active service and discharged military personnel in specified circumstances. During armed conflict, the jurisdiction extends to anyone serving in the armed forces or accompanying a unit thereof, including civilians.

The subject matter jurisdiction extends to violations of the Military Penal Code as well as violations of other (civilian) penal legislation even in circumstances that are not directly related to military duties when there is a nexus to military service as such offences may have an impact on the standard of discipline, efficiency and morale of the armed forces [Supreme Court Judgment 25 April 2012].

The territorial jurisdiction of the Military Penal Code comprises crimes committed both within and outside the territory of the Danish state.

### **The Military Penal Code**

The Danish Military Penal Code comprises a series of specific offences against the duties of service personnel.

The 2005 Law Reform introduced a substantive decriminalization of military offences. Since 2006, the Military Penal Code covers *only* violations of a more severe nature that have been committed either with intent or by gross negligence. Lesser degrees of negligence do *not* constitute a criminal offence but might be sanctioned within the framework of summary proceedings (see below).

The Military Penal Code includes several service offences that are unique to military service such as disobedience of a lawful command, mutiny, harassment, absence without leave, negligent performance of duty as well as a number of offenses that would be prejudicial of good order and discipline such as disrespectful behaviour, abuse of position, degrading rituals and abuse of alcohol and controlled substances.

A specific set of ‘War Articles’ comprises provisions applicable in armed conflict only. These provisions include violations of the law of armed conflict as set out by applicable treaties to which Denmark is a party, including the Hague Conventions, the Geneva Conventions and their Additional Protocols as well as relevant rules of customary international law. See further on this issue section 3 on International Investigations and Armed Conflict.

In 2008, Parliament introduced legislative amendments to the Military Penal Code and the Civil Penal Code comprising parallel provisions in the two laws to support increased penalties for offenses committed by torture as defined in the 1984 UN Convention against Torture and Other Cruel, Inhumane or Degrading Treatment, or Punishment.

While the period of limitation relating to specific offence normally depends on the maximum penalty of the crime in question, there is no limitation period for prosecuting torture in Denmark due to the gravity of the crime.

### Other military criminal cases

Other military criminal cases comprise violations of the Civil Penal Code, the most frequent being theft and other property offences, assault etc., and violations of certain provisions in specialized legislation such as the Traffic Act, the Weapons Act, the Health and Safety at Work Act and the Environ-

mental Act committed with a service nexus, on military areas or in military barracks.

In recent years, the majority of sanctions imposed have been for violations of the Military Penal Code, and the rest for violations of the civilian legislation with a nexus to military service.

### Sanctions in criminal cases

Under Danish criminal law an offender may be punished by imprisonment, fine or an alternative sanction in the form of community service. The Court may order an offender to be deprived of the proceeds of crime or may issue an order to pay compensation to the victim. Further, the Court may impose an additional sentence such as the suspension of a driving license.

The MPS is responsible for the enforcement of penalties and orders imposed by the Courts in military cases.

A prison sentence imposed in military criminal cases is served in the ordinary prisons as service prisons or detention barracks are no longer in existence in Denmark.

### Criminal proceedings

The MPS is the sole competent body to investigate and prosecute military criminal cases.

Investigations may be launched *ex officio* or upon a report from military commanders or individuals when there is a reasonable suspicion that a criminal act has been committed. Investigations into serious service related accidents, e.g. when servicemen are seriously injured or killed in connection with service, are initiated *ex officio* as a matter of principle.

A case may be subject to a preliminary examination prior to the initiation of an investiga-

tion. Based on such a preliminary examination, a formal criminal investigation may be launched, or in case there is no basis for such an investigation, the case may be closed immediately.

In other circumstances, an investigation would furnish the evidence necessary for a decision on indictment. According to section 743 of the Administration of Justice Act, the purpose of a criminal investigation is to clarify whether the conditions for imposing criminal responsibility are present and to provide information for the purposes of the criminal proceedings.

If the investigation does not support an indictment the MPS will close the case.

On the other hand, if the case is ready for an indictment there are several different ways in which the case may proceed. In certain cases a fine is appropriate and if the accused pleads guilty and is willing to pay the proposed fine, the case may be concluded outside the Court. However, if the charged person does not plead guilty the case goes to Court with an indictment. In cases where the MPS requests a term of imprisonment, the case is brought to Court with an indictment or a request for a Court hearing (in case of guilty pleas).

### Specific proceedings pertaining to military assistance to the police

In 2018, the Military Penal Code was amended by an Act of Parliament in order to accommodate the new scheme for military assistance to the police following a series of amendments to the Police Act.

These amendments establish that the Military Penal Code is not applicable to criminal infractions committed by military personnel *when* assisting the national police. This type of assistance is under the direction of the police and consequently it was thought best that the same provisions should apply for

both police officers and military personnel, i.e. the Civil Penal Code.

Accordingly, investigations are conducted by the Independent Police Complaints Authority (IPCA) and the provisions of the Military Penal Code are not applicable in such circumstances. Further, the decision to charge and indict rests with the civilian prosecution service. However, according to section 1020 m of the Administration of Justice Act, the MPS assists the IPCA and the civilian (regional) prosecutor with cases, and upon the request of the IPCA, it may conduct a case as a military criminal case *“if knowledge of military conditions or regulations are of particular relevance to the case at hand, and if the military and civilian prosecutor so agrees”*.

# 3. International Investigations and Armed Conflict

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

## »Article 43 - Armed forces

1. The armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party. Such armed forces shall be subject to an internal disciplinary system which, inter alia, shall enforce compliance with the rules of international law applicable in armed conflict.«

## Introduction

In a number of situations, the MPS has conducted international investigations in relation to military operations outside the Danish territory. Such investigations may arise from suspected violations of the Military Penal Code in military missions abroad.

Further, the MPS conducts *ex officio* investigations into the death or injury of Danish military personnel abroad or the suspicious death or serious injury of civilians as a result of use of force by Danish military personnel abroad (collateral damage).

It is for the Danish MPS to decide when circumstances or conditions that should be investigated exist.

## International law

Pursuant to Article 43 of Additional Protocol I to the Geneva Conventions States are obligated to establish an internal disciplinary system within their armed forces i.a. to enforce compliance with international law applicable in armed conflict.

International humanitarian law and international human rights law further contains rules requiring states to conduct *ex officio* investigations in the event of a suspected violation of certain rules of international law.

The international human rights rules that commit Denmark to undertake investigations to ensure the effective protection of these rights in armed conflict are primarily concerned with the right to life and the right not to be subjected to torture. The duty to investigate under the ECHR depends on whether Danish jurisdiction applies, for example in relation to military operations in the territory of a foreign State. For further details on this matter, see section 3. 4.2. of the Danish Military Manual.

It can generally be said that international law requires States to commence an investigation in situations in which the death of an individual appears to be suspicious, and in situations of armed conflict in which the adversary's combatants have died in circumstances that must be regarded as suspicious, for instance, through the use of perfidy.

The jurisprudence of the European Court of Human Rights has established that the right to life under ECHR Article 2 comprises a procedural obligation to take all reasonable steps to ensure that an effective investigation is conducted into alleged breaches of the right to life. According to the Court's case law, this procedural obligation under ECHR Article 2 continues to apply even in difficult security conditions, including in the context of armed conflict, although the specific circumstances in which the use of force took place must be taken into consideration by the investigation.

The requirement of effectiveness entails investigation must be capable of leading to a decision as to whether the use of force was justified and, when and as appropriate, to the identification and punishment of those responsible.

The Court has further established that to be effective the authority conducting the investigation must be independent both hierarchically, institutionally and practically of those who are the subject of the investigation.

Further, the requirement of effectiveness entails that investigation is instituted promptly and carries out with reasonable expedition and that the investigation is transparent.

Although these requirements relate only to investigations into alleged breaches of the right to life in cases where ECHR Article 2 is applicable, the MPS endeavors – as a matter of policy - to comply with these requirements in all investigations.

In practice, the Military Chief Prosecutor (the Judge Advocate) ascertains whether the military personnel assisting the MPS with an investigation meet the criteria of independence, i.e. that the military personnel in question not only is – but is seen to be –

operationally independent from the military chain of command.

### International investigations

The MPS is a military organization and the military prosecutors and investigators have formal status as military personnel outside the chain of command. Consequently, the MPS may access operational areas in a foreign country and conduct investigations while being covered by Status of Forces Agreements (SOFA) as applicable in the particular mission.

Investigations are conducted independently of the chain of command by an investigation team from the MPS and may be launched *ex officio* as required by international law. As stipulated in the Military Administration of Justice Act, the MPS may rely on the assistance of military agencies – in particular the Military Police units - in the operational theatre. Under such circumstances, the Military Police acts upon the direct instruction and responsibility of the Military Chief Prosecutor.

In connection with the operation of the Danish forces in Afghanistan, a practice has evolved in which the Military Chief Prosecutor reviews and assesses reports on unintended collateral damage in connection with hostilities in which Danish forces have been involved. The purpose is to determine the sequence of events, including whether Danish forces have acted within the applicable rules on the use of force, including the rules of international humanitarian law.

Thus, the MPS has investigated a number of cases of civilian deaths in connection with hostilities, notwithstanding that a direct duty to do so is not found in international law. In none of the cases were Danish soldiers ruled to have acted in breach of use-of-force directives or other rules.

### Armed conflict in the context of the Military Penal Code

The Military Penal Code contains a number of provisions which are only applicable “*when Danish forces in or outside the country are involved in an armed conflict*”.

In practice, the assessment as to whether or not an armed conflict exists is conducted by the Ministry of Foreign Affairs, e.g. in connection with a submission to Parliament on the deployment of Danish Armed Forces to an international operational theatre, cf. section 19 (2) of the Danish Constitution.

In relation to the application of the Military Penal Code, the existence of an armed conflict has the following ramifications:

- the jurisdiction under the Code extends to anyone serving in the armed forces or accompanying a unit thereof, including civilians,
- the jurisdiction under the Code extends to anyone committing an offence against the efficiency of the military forces as well as other types of crimes during armed conflict,
- a specific set of substantive provisions on armed conflict are activated, and
- increased levels of sanctions are activated for certain ordinary offences related to the dereliction of military duties.

### “War articles” of the Military Penal Code

The main provisions applicable in armed conflict are found in the Military Penal Code, sections 28 to 35 on *crimes against the effectiveness of the military forces* and sections 36 to 38 on *other types of crime during armed conflict*.

The provisions on *crimes against the effectiveness of the military forces* prohibit conduct, which is considered particularly harmful to the armed forces. These provisions include war treason (§ 28), espionage (§ 29),

intentionally altering or replacing ammunition or other types of war equipment (§ 30), cowardice (§ 31); intentional disclosure of military secrets harmful to the defence of the state (§ 32), intentional omission to prevent mutiny etc. (§ 33), intentionally causing the dispiriting of forces (§ 34); and intentional unauthorised contact with the adversary (§ 35).

The provisions on *other types of crime during armed conflict* are intended to protect individuals during armed conflict. Section 36(1) prohibits a specific violation of international humanitarian law, namely intentional misuse or disrespect of protected distinctive emblems and signs designed to protect religious or medical personnel, units and establishments, e.g. misuse of the Red Cross emblem. Section 36(2), on the other hand, is more generally formulated and prohibits the intentional use of methods of warfare and weapons are criminal offences contrary to international law. Other crimes during armed conflict are pillage (section 37) and intentional looting of the property of the dead (section 38).

### Jurisprudence

Over the years, the MPS Service has conducted a number of investigations under difficult security conditions some of which lead to charges being filed. So far, the courts have imposed stricter sanctions in cases concerning disobedience, absence without leave and gross negligence of military duties in operational theatres.

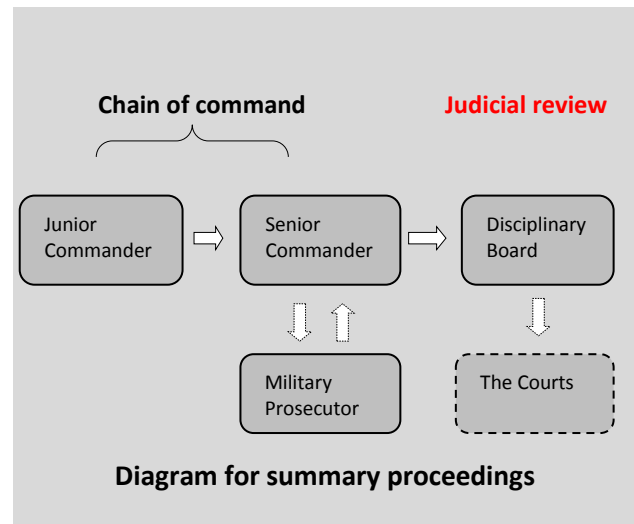
## 4. Summary Proceedings

### The Military Disciplinary Act

The Act comprises provisions on jurisdiction, offences, applicable sanctions, procedural rights, appeal, review and periods of limitation.

### The Public Administration Act

The Act and related guidelines comprise regulations for public administration, including provisions on disqualification due to conflict of interests, representation, access to files and other rights of a party to an administrative case.



### The Military Disciplinary Act

The Danish Military Justice System comprises also a system for addressing disciplinary offenses of a minor nature by way of summary proceedings.

The purpose of a system of summary proceedings is to ensure discipline within the armed forces. Disciplinary responsibility shall be imposed where there has been a dereliction of duties and disciplinary reasons call for such a sanction, but where criminal sanctions are not warranted or needed.

Summary proceedings are non-criminal proceedings based on the inquisitorial process with a view to addressing minor offences expediently and orally. The process is governed by the Military Disciplinary Act of 2005 ([link](#)) which sets out provisions facilitating *fair proceedings* for the accused soldier.

The jurisdiction in summary proceedings extends to personnel covered by the military criminal jurisdiction as described above.

### The proceedings

With the 2005 Military Justice Reform, the summary proceedings carry administrative sanctions and the Public Administration Act and fundamental administrative principles as well as guidelines set by the Parliamentary Ombudsman apply unless otherwise provided in the Military Disciplinary Act. The Reform enhanced the rights of the accused and added a judicial review mechanism.

Summary proceedings are initiated by a military commander, usually of an OF2 level, and are subject to the jurisdiction of the chain of command. The military commanders are responsible for the enquiry and in accordance with a general principle of Danish administrative law it is their duty to establish all relevant facts before a case is decided.

In case of doubt whether a specific case should be pursued as a disciplinary case or investigated as a criminal offense, a military commander refers the matter to the Senior Commander (as a rule level OF5). The Senior Commander may in cases of continued doubt refer the matter to the Military Chief Prosecutor, who makes the final decision on the application of the law. A commander may not opt to transfer a disciplinary case to military criminal proceedings. However, repeated minor offences may constitute a criminal offence, and as such they will be addressed in the criminal and not the disciplinary system.

The procedural rights of the accused comprise i.a. the following:

- the right to be promptly informed of the charge and the possible sanction with a view to preparing a defence

- the right to be heard over the facts of the case and to respond to the charge within reasonable time
- the right to have the case heard and determined without undue delay
- the right to be present during the proceedings and to have witnesses examined
- the right to be accompanied by a spokesperson of the accused's choice
- the right to have access to the evidence
- the right not to be compelled to testify against him or herself or to admit responsibility.

The commander's decision is given promptly and in writing stating the *reasons* for the decision, including a reference to the relevant *regulations*, the relevant *facts* of the case, the main considerations behind the disciplinary sanction imposed as well as information on the rights of review or appeal. The decision shall be served upon the accused. For practical reasons a form has been developed to facilitate this process.

### The disciplinary sanctions

The disciplinary sanctions available to a commander serve two purposes, which should be considered when selecting the sanction in question: the sanction is a penalty for dereliction of duties, but it also has educational purposes.

The disciplinary sanctions available are reprimand, additional work and exercise, additional service or a disciplinary fine of up to a maximum of 1/10 of the monthly salary of the person in question for each offence. The sanctions do *not* comprise detention, demotion or involuntary discharge.

The legal remedy to a disciplinary sanction imposed by a military commander is a request for review by the Senior Commander. The Senior Commander's decision may in turn be appealed to the Military Disciplinary Board



for judicial review. Such an appeal may not result in the alteration of a judgment to the detriment of the appellant (the prohibition on *reformatio in peius*).

The Board is composed of a representative of the armed forces appointed by the Chief of Defence (presently an OF5) and a representative of the ranks of the person on whom the disciplinary measure has been imposed, i.e. from the personnel organizations of the officers, the non-commissioned officers, the privates and the conscripts, and it is presided over by a District Court Judge.

Decisions of the Disciplinary Board may be brought before the ordinary courts by the subject of proceedings in accordance with the Danish Constitution. In such cases, the prohibition on *reformatio in peius* equally applies so that the appeal to the court may not result in the alteration of the decision to the detriment of the appellant.

The limitation period for initiating summary proceedings is two years after the offence took place, but the limitation period may in certain cases be suspended. Summary proceedings may be initiated following acquittal in a criminal case.

### Specific provisions pertaining to military assistance to the police

As has been mentioned above, a series of amendments to the Police Act were adopted by Parliament in 2018 with a view to facilitating military assistance to the police.

Accordingly, non-criminal enquiries pertaining to the misconduct of military personnel assisting the police lie with the IPCA, which is now competent to evaluate the appropriateness of conduct and use of force in this context. However, although enquiries are conducted by the IPCA, the decision on whether the conduct on military personnel

has disciplinary consequences remains with the chain of command.

While the MPS has no competence in these cases, the Service assists the IPCA within this framework. When the IPCA has come to a decision as to whether certain conduct was liable to criticism, the decision is reported to the chain of command, which in terms may decide to initiate summary proceedings.

### The Civil Servants Act

In certain cases – i.a. in cases where *demotion / reduction in rank* and *discharge* of an officer from military service would be an appropriate sanction – the disciplinary sanctions set put in the Military Disciplinary Act may be deemed inadequate. In such cases, disciplinary proceedings according to the Civil Servants Act may be relevant. Notably, such proceedings may also be initiated following a conviction in a criminal case as they do not constitute legal proceedings for the purposes of the principle “*ne bis in idem*” (the prohibition of double jeopardy).

However, if a disciplinary offence has been the subject of summary proceedings in accordance with the Military Disciplinary Act, a case may *not* be initiated pursuant to the Civil Servants Act.

Consequently, subsequent to an acquittal in court or to the disposal of charges in a criminal case, a decision must be made whether to institute disciplinary proceedings under the Military Disciplinary Act or whether to launch proceedings according to the Civil Servants Act.

# 5. The Danish Military Prosecution Service

## Organisational structure

The organisation and responsibility of the MPS is set out in the Military Administration of Justice Act.

Although part of the organisation of the Ministry of Defence, the MPS is independent and does not form part of the military chain of command. The service is subordinate only to the Minister of Defence in the same way as the Civilian Prosecution Service is subordinate to the Minister of Justice.

The MPS is a two tier organization headed by the Military Prosecutor General (*the Judge Advocate General*) and comprised of the Office of the Military Prosecutor General and the Office of the Military Chief Prosecutor (*the Judge Advocate*).



The Office of the Military Chief Prosecutor is located in Viborg (Jutland) with a rapid response team of investigators in the Greater Copenhagen area.

Decisions made by the Military Chief Prosecutor in criminal cases are subject to review by the Military Prosecutor General.

## Mission, vision and strategy

As part of the organization of the Ministry of Defence, the MPS defines its overall objective and purpose in relation to the general mission and vision of the Ministry of Defence:

### The joint mission of the Ministry of Defence

- Together we work for the security and interests of Denmark and the security of its citizens

### The joint vision of the Ministry of Defence

- We operate and develop tasks so as to maximise efficiency in relation to the resources available.
- We are a professional and widely recognized collaborator.
- We create joint capacity through loyal and trustful cooperation.

Based on this joint mission and vision, the MPS has developed a strategy based on the core values of *independence, professionalism, transparency* and *respect*. These values encompass a number of e specific strategic objectives, which center on *just & fair prosecutions, quality & efficiency, a competent & well trained staff* and *transparency*.

## Duties and functions

The key responsibility of the MPS is to enforce the law in accordance with the rules in the Administration of Justice Acts for penal

law violation as set out in section 1 (above). Military criminal cases are subject to the exclusive jurisdiction of the MPS.

The MPS is responsible both for the investigation and prosecution of military criminal cases and thus comprises a Criminal Investigations Department (CID) and a number of prosecutors. The MPS has the competence to initiate cases and it does not depend on cases being referred by other authorities.

### Other duties

The MPS also has a number of responsibilities outside the realm of Criminal Justice.

The Service plays a central role in the Military Legal Advisory Service of the Danish Armed Forces. The existing Military Legal Advisory Service was created in 1997 to fulfil the obligations to facilitate legal advice to military commanders, in particular in the field of international humanitarian law, as prescribed by Article 82 of the Additional Protocol 1 to the Geneva Conventions of 1949 relating to the Protection of Victims of Armed Conflict.

While the Military Legal Advisors are under the command of Defence Command Denmark, the Military Prosecutor General's Office is responsible for their education and training in the field of international humanitarian law.

Furthermore, the Military Prosecutor General's Office provides advice etc. to the Ministry of Defence pertaining to international humanitarian law and military justice as well as to the Home Guard Command and selection boards on the fitness of members or applicants convicted of a criminal offence in terms of membership or continuation of membership of the Home Guard



The Office of the Military Prosecutor General is located in the Citadel of Copenhagen.

### Office and personnel

In the parliamentary Defence Agreement of 2014 it was decided to further strengthen the independence of the MPS' case management.

The implementation of the agreement comprised the amalgamation of the operational prosecutors' offices into one single office, located in central Jutland, supported by a rapid response team of investigators in the Greater Copenhagen area, as well as a move from the military bases to civilian facilities. The Military Prosecutor General resides in Copenhagen. The re-organisation was completed in 2015.

The MPS staff comprises prosecutors, investigators and other legal and administrative staff. The military prosecutors are mainly recruited from the Civilian Prosecution Service while the investigators are recruited from the National Police. Legal advisors and other staff are recruited broadly including from the national Armed Forces.

### Annual report

As transparency is central to the Military Criminal Justice System, the Military

Prosecutor General publishes an annual report to the Minister of Defence which is available at [www.fauk.dk](http://www.fauk.dk).

The annual report covers a fiscal year and contains information on significant developments, case-work and statistics pertaining to military criminal proceedings.

### Some notes on the historical evolution

The first Military Prosecutor General (*Judge Advocate General*) of the Danish Army was appointed by Royal Decree of 3 June 1659 as a legal advisor to the King on military law. With the King's law reforms of 1683, three Royal Acts were established for civil society, the Army and the Navy. The latter two comprised elements of criminal procedural law and substantive criminal law and were in force until the 1919 justice Reform.

Later, in 1867, a joint prosecutions and legal service for the Army and Navy was established as an organization by an Act of Parliament.

The Criminal Justice Reform of 1919 detached the Service from the chain of command and gradually the role of the Service as a military legal service was transformed to its role of today

### Symbols

In 1951, after the end of World War Two, a heraldic coat of arms was approved and in addition a gilt regimental badge was created as a collar and cap badge for wearing on the Army uniform for the MPS personnel with military status.

The Royal Crown refers to State Agencies. The wreath of thistle and the crossed fasces refer to the special uniform that was approved after the Military Justice Reform of 1919. The crossed fasces refer to the power and jurisdiction of the Roman magistrates, the axe

being a symbol of full authority in the field (*militiae*).

The purple colour is the branch colour for the MPS and has been the signature colour of prosecutors since 1688 when the prosecutors at the Supreme Court began wearing black gowns adorned with purple. Since 1920, following the general Criminal Justice Reform, such gowns have been worn by all prosecutors in the Courts of Appeal as well.

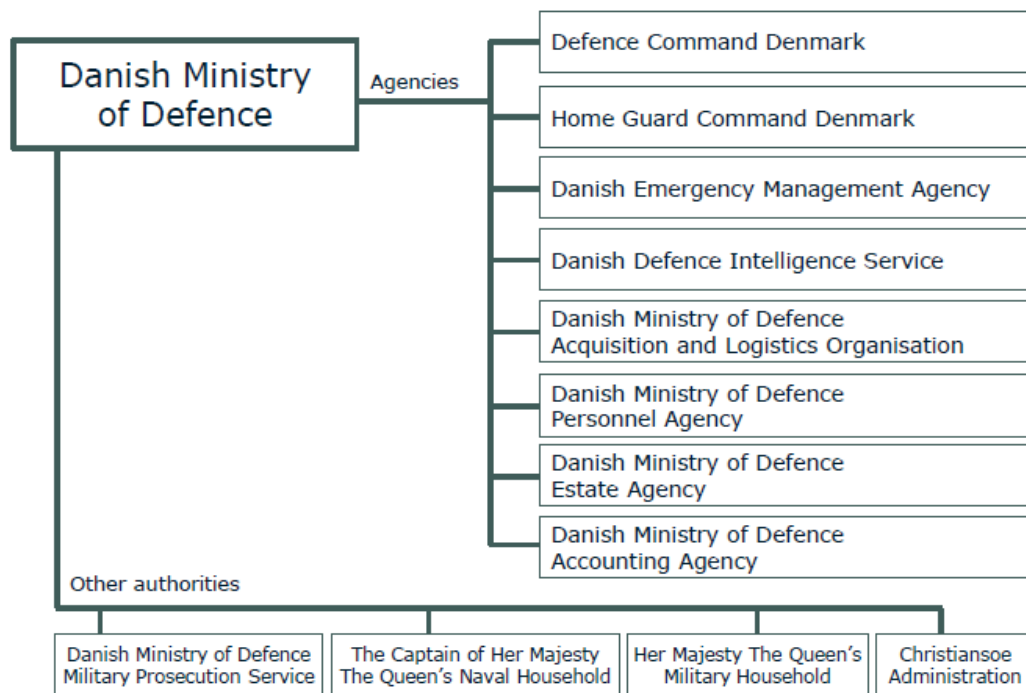


The badge of the MPS

Blazon of the heraldic coat of arms: *"In a black shield an oval golden wreath of thistle with red flowers tied by a red bow. Here on two crossed red Roman lictor's rods with fasces and silver-axes"*.

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# 6. Organization of the Ministry of Defence and agencies



The organisation of the Danish Ministry of Defence including the Defence Command Denmark and other agencies.

Source: the Ministry of Defence 2018, [www.fmn.dk](http://www.fmn.dk)

# Index

- Administration of Justice Act; 8; 9; 19  
 Appeals Permission Board; 9  
 Armed conflict; 7; 9; 10; 12; 13; 14  
 Civil Penal Code; 10; 11  
 Civil Servants Act; 17  
 Civilians; 7; 9; 12; 14  
 Court of Appeals; 9  
 Courts-Martial; 9  
 Danish Military Justice System; 7; 8; 15; 19  
 District Court; 7; 15; 17  
 Environmental Act; 10  
 European Convention on Human Rights (ECHR); 9; 12;  
 13  
 European Court of Human Rights; 13  
 Fair trial; 8  
 Geneva Conventions, 10; 12; 19  
 Health and Safety at Work Act; 10  
 High Court; 9  
 Independent Police Complaints Authority (IPCA); 11  
 International Covenant on Cultural and Political Rights  
 (ICCPR); 9  
 International humanitarian law; 12; 13; 14; 19  
 International investigation; 12; 13  
 Judge Advocate; 13; 18; 20  
 Judge Advocate General; 12; 18; 20  
 Jurisdiction (territorial); 9  
 Jurisdiction (substantive); 9  
 Jurisdiction (personal); 7; 9  
 Military Administration of Justice Act; 8; 9, 13, 19  
 Military assistance to the police; 11; 17  
 Military Chief Prosecutor; 12; 18; 20  
 Military Courts; 9  
 Military Disciplinary Act; 3; 15; 16; 17  
 Military Disciplinary Board; 16; 17  
 Military discipline; 5; 7; 9; 10; 15  
 Military Legal Advisory Service; 19  
 Military nexus; 9; 10  
 Military Penal Code; 3; 9; 10; 11; 12; 14  
 Military Police; 13  
 Military Prosecution Service (MPS); 5; 7; 10; 11; 13; 14; 17;  
 18; 19; 20; 21  
 Military Prosecutor General; 12; 18; 20  
 Objectivity; 9  
 Parliament; 5; 10; 11; 14; 17; 19; 20  
 Regimental badge; 20  
 Right to life; 12; 13  
 Status of Forces Agreement (SOFA); 13  
 Summary proceedings; 5; 7; 9; 15; 16; 17  
 Supreme Court; 9; 20  
 Traffic Act; 10  
 War Articles; 10; 14  
 Weapons Act; 10





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