



The Danish Military Justice System



Table of content

The Administration of Military Criminal Justice	4
Substantive Military Criminal Law	5
International Investigations and Armed Conflict	6
Military Disciplinary Cases - Summary Proceedings	7
The Danish Military Prosecution Service	8

The Administration of Military Criminal Justice



The neoclassical building of the City Court of Copenhagen from 1815 offers a quote from the preamble to the Law of Jutland from 1241 "*with law shall though build the country*".

General Procedural Provisions

The Danish Military Criminal Justice System is an integral part of the Danish legal system and relies on the same fundamental principles of justice. The Military Administration of Justice Act refers to the general (Civilian) Administration of Justice Act and comprises a limited number of additional provisions specific 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 rules aimed at facilitating a *fair trial* for the defendant and 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 systems.

The basic principles in the Justice System are the presumption of innocence, the burden of proof placed on the Prosecution Service, the application of "in dubio pro reo", the free assessment of evidence, the rights of the defendant to remain silent, the right to be brought promptly before a judge when arrested and equality of arms between the prosecution and the defence counsel.

The European Convention of Human Rights was implemented into Danish law by an act of Parliament in 1992.

The legal guarantees provided in the Convention forms part of the Danish Criminal Justice System.

Military criminal cases are heard by the ordinary courts by a single judge or with lay judges or jurors depending on the severity and nature of the case. Military Courts were abolished in 1919. A District Court ruling may be subject to appeal to a High Court (Court of Appeal) and a judgment of that Court may – with a special permit from the Appeals Permission Board – be appealed to the Supreme Court.

A reform of the Military Criminal Justice System in 2005 separated the powers of the Military Prosecution Service from those of the military commanders. Military criminal cases are subject to the jurisdiction of the Military Prosecution Service only. The reform entered into force on 1 January 2006.

Military Criminal Jurisdiction

The Military Criminal jurisdiction extends to military personnel in active service and discharged military personnel with regard to military duties imposed after their discharge. During an armed conflict the jurisdiction extends to everybody serving in the armed forces or accompanying a unit thereof.

Substantive Military Criminal Law

The Military Penal Code

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

The 2005 Law Reform introduced a substantive decriminalization of military offences. The Military Penal Code now only covers violations of a more severe nature. Furthermore the violation has to be committed either with intent or by gross negligence. Lesser degrees of negligence no longer constitute a criminal offence but might be sanctioned within the framework of summary proceedings.

Based on the lessons learned in the peace support missions and other international military missions, the Military Penal Code contains a series of specific provisions which applies in armed conflict.

The specific military offences comprise inter alia articles related to

- the duties of the subordinate (i.e. disobedience, mutiny, disrespectful behaviour),
- the duties of the superior and peer (i.e. harassment, abuse of position, offensive treatment, degrading rituals etc.),
- drunkenness and controlled substances,
- other types of dereliction of duties (inter alia neglect of duty as a guard, absence without leave, destruction of military property, other neglect of duties),
- "crimes against the efficiency of the military forces" (i.e. treason, espionage, deterioration of war equipment, dispiriting, disclosure of military secrets etc.),
- "other types of crimes during armed conflict" (i.e. abuse of designations for those who provide help to the wounded and sick, the use of war methods or procedures contrary to an international agreement, plundering, robbery from a corpse etc.),
- the prohibition of torture.



Other military criminal cases

Other military criminal cases comprise violations of the general Penal Code (i.e. theft, assault etc.) and violations of provisions in the specialized legislation including the Traffic Act, the Weapons Act and the Health and Safety at Work Act.

In recent years some fifty percent of the sanctions have been imposed for violations of the Military Penal Code while the rest of the sanctions have been imposed for violations of the civilian legislation with a *nexus* to the military service.

Sanctions in Criminal Cases

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

Other orders are available for the Court to decide as well.

The Military Prosecution Service is responsible for ensuring that penalties and orders imposed by the Courts are enforced.

International Investigations and Armed Conflict



Danish soldiers on patrol in Afghanistan

Investigations in Operational Theatres

The Military Prosecution Service is a military authority subordinate to the Minister of Defence and the military prosecutors and investigators have formal status as military personnel. Due to this formal status the Military Prosecution Service may access operational areas in a foreign country and conduct an investigation while being covered by Status of Forces Agreement (SOFA), as applicable, for the particular mission.

The investigations are conducted independently of the chain of command.

The Military Prosecution Services' investigators, assisted by Danish military police units in the mission area, conduct investigations where Danish military personnel have been involved in breach of rules and regulations applicable to them.

The Military Prosecution Service also initiates investigations, where Danish military service personnel are killed or seriously injured in the line of duty.

Investigations may be conducted in cooperation with military law enforcement authorities of alliance partners as well.

Armed Conflict

The specific provisions on armed conflict in the Military Penal Code apply, "when Danish forces in or outside the country are involved in an armed conflict".

The ramifications of this provision are:

- The jurisdiction extends to everybody serving in the armed forces or accompany a unit thereof,
- the jurisdiction extends to anyone committing an offence against the efficiency of the military forces as well as other types of crimes during armed conflict,
- an increased severity of sanctions may be imposed on certain offences related to the dereliction of military duties.

So far stricter sanctions have been imposed by courts in cases concerning disobedience, absence without leave and gross negligence of military duties.

Military Disciplinary Cases - Summary Proceedings

The Military Disciplinary Act

The Danish military legal system also comprises a system for dealing with disciplinary offenses of a minor nature by summary proceedings. These military disciplinary cases are subject to the jurisdiction of the Military Commanders.

In accordance with the Military Disciplinary Act of 2005 these minor offenses are investigated by the military commanders.

If the military commander is in doubt as to whether the case should be investigated as a criminal offense or a disciplinary case, the matter is referred to the Disciplinary Chief. If the Disciplinary Chief is in doubt, the matter is referred to the Military Prosecutor for final decision.

The purpose of disciplinary responsibility is to ensure discipline within the armed forces. Disciplinary responsibility shall be imposed where – as a consequence of a dereliction of duties – disciplinary reasons call for such a sanction, but where criminal sanctions are not warranted or needed.

The summary proceedings carry administrative sanctions and the Public Administration Act apply unless otherwise provided in the act.

The disciplinary measures comprise inter alia reprimand, additional work and exercise, additional service or a disciplinary fine. The fine may amount to a maximum of 1/10 of the monthly salary of the person in question for each offence.

The *legal remedy* to a disciplinary sanction imposed by a military commander is an appeal to the Military Disciplinary Chief. The decision of the Military Disciplinary Chief may in turn be appealed to the Military Disciplinary Board. The Board is composed of a District Court Judge (chairman), a representative of the armed forces appointed by the Chief of Defence, and a representative of the personnel category of the person on whom the disciplinary measure has been imposed.

A decision of the Board may be brought before the ordinary courts as prescribed by Article 63 in the Danish Constitution.

The Civil Servants Act

If the disciplinary measures in the Military Disciplinary Act are deemed inadequate – inter alia in cases where demotion and discharge would be appropriate – disciplinary proceedings according to the Civil Servants Act may be relevant. Such proceedings may also be initiated following a conviction in a criminal case.

Proceedings pursuant to the Civil Servants Act are not available for disciplinary offences heard summarily in accordance with the Military Disciplinary Act.

The Danish Military Prosecution Service

Organization

The organization and responsibility of the Danish Military Prosecution Service – in Danish "*Forsvarets Auditørkorps*" – are set out in the Military Administration of Justice Act and the (Civilian) Administration of Justice Act.

The Military Prosecution Service is an independent service 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 Military Prosecution Service is a two tier organization comprised of the Office of the Military Prosecutor General (the Judge Advocate General) and the Office of the Military Senior Prosecutor (Judge Advocate). The latter is comprised by lawyers and investigators. Decisions taken by the Military Senior Prosecutor in criminal cases are subject to appeal to the Military Prosecutor General.

Responsibility

Law enforcement

The key responsibility of the Military Prosecution Service is to ensure enforcement of the law in accordance with the rules in the Administration of Justice Act where a breach of the law carries a criminal sanction.

The Military Prosecution Service is responsible for investigating and prosecuting violations of the Military Penal Code as well as other (civilian) legislation related to the military service.

Investigations are initiated when there is a reasonable supposition that a criminal act has been committed. A case may be subject to a preliminary examination prior to initiating an investigation.

The Military Prosecution Service

An independent authority responsible for the investigation and prosecution of military criminal cases.

In line with the principles in article 2 of the European Convention of Human Rights as further developed by the jurisprudence of the European Court of Human Rights, the Military Prosecution Service also conducts investigations of service related incidents where Danish military service personnel are seriously injured or killed in connection with military service.

The guiding principles are set out in section 96(2) of the Administration of Justice Act which prescribes that the Prosecution Service shall proceed with every case at the speed permitted by the nature of the case thereby ensuring that those liable to punishment are prosecuted while those innocent are not. This is the fundamental principle of objectivity that governs the Criminal Justice System.

Other responsibilities

The Military Prosecution Service has responsibilities outside the criminal field as well. The service is a key player in the Danish Defence's Legal Advisory Service.

The Military Prosecutor General's Office is responsible for training Danish Military Legal Advisors in obligations under International Humanitarian Law.

This scheme was created in 1997 to fulfil the obligations to facilitate legal advice to military commanders, in particular in the field of Humanitarian Law as prescribed by Article 82 of the Additional Protocol 1

to the Geneva Conventions of 1949 relative to the protection of victims of armed conflict.

Furthermore, the Military Prosecution Service conducts inquiries in connection with disciplinary proceedings against civil servants employed within the field of responsibility of the Ministry of Defence.

Finally, the Military Prosecutor General's Office provides advice to the Home Guard authorities on the fitness of membership of members or applicants convicted of a criminal offence.

Office and Personnel

Within the recent political Defence Agreement of 2014 it was decided to further strengthen the independence in the management of military criminal cases. The number of prosecutor's offices were reduced to one, located in Jutland, supported by a rapid response team in greater Copenhagen. It was further decided to relocate the prosecutor's offices to a location outside the military bases and establishments. The structure of the Military Prosecutor General's Office was maintained.

The Military Prosecution Service is composed of prosecutors, investigators and other staff. The military prosecutors are mainly recruited from the Civilian Prosecution Service while the investigators are recruited from the Danish National Police. Legal advisors and other staff are often recruited from the Defence.

Annual Report

The Military Prosecution Service submits an annual report on Military Justice in Denmark. The report provides statistics on military offences and passed sentences as well as summaries of specific cases of

general interest. The annual Reports are available on www.fauk.dk (in Danish).

A detailed description of the Danish Military Justice System and a collection of legal texts (in Danish) are available on the website as well.

History

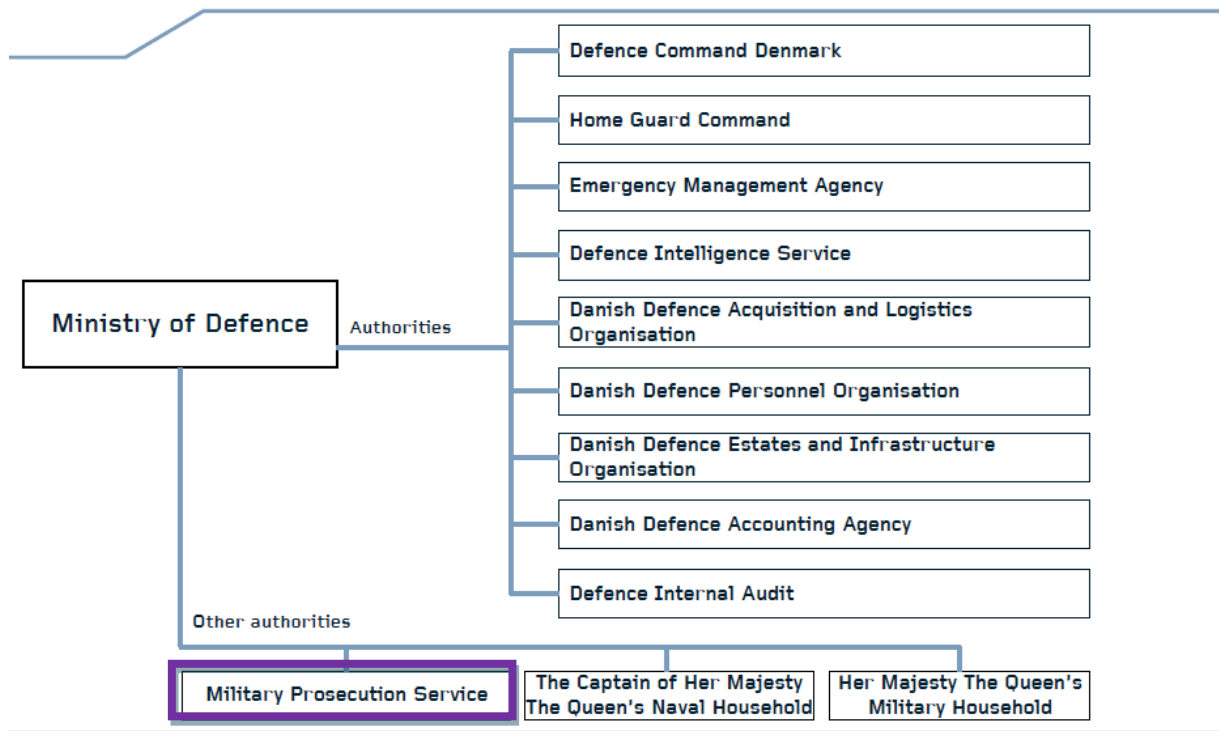
The Office of the Military Prosecutor General (the Judge Advocate General) was founded by Royal Decree of 3 June 1659 and Military Senior Prosecutors (Judge Advocates) have been attached to the Danish armed forces for centuries. The Military Prosecutions Service was established as an institution by an Act of Parliament in 1867.



The historical badge of the Military Prosecution Service:

"In a black shield an oval golden wreath of thistle with red flowers tied by a red bow. Hereon two crossed red Roman lictor's rods with fasces and silver-axes".

Organisation of the Ministry of Defence



The organisation of the Danish Ministry of Defence pursuant to the Defence Agreement of 2014.

Source: MoD. www.fmn.dk.

FORSVARETS AUDITØRKORPS
THE MILITARY PROSECUTION SERVICE



ØSTBANEGADE 83, 1. FLOOR
2100 KØBENHAVN Ø

TELEFON: 7226 5000
TELEFAX: 7226 5035

MAIL: FAUK@MIL.DK
WEB: WWW.FAUK.DK

CVR.: 16 28 71 80
EAN: 5798000201996

