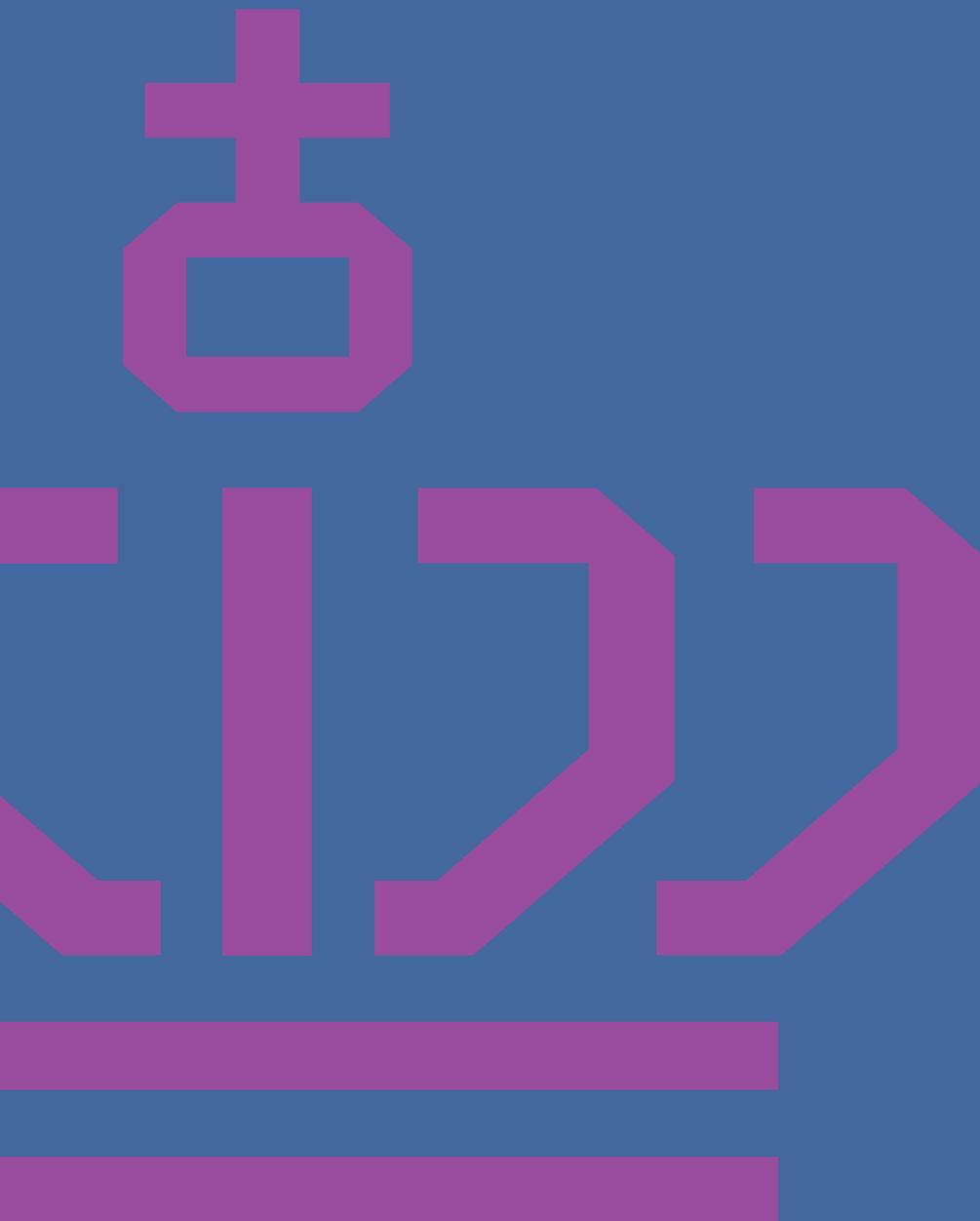


The Danish Military Justice System



The Danish Military Criminal Justice System



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 the Country be built".

General Procedural Provisions

The Military Criminal Justice System is an integrated part of the Danish legal system and abides by its fundamental principles of justice. The Military Administration of Justice Act refers to the general (civilian) Administration of Justice Act adding specific provisions 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 in the Criminal Justice System are the presumption of innocence, the burden of proof placed on the Prosecution Service, the application of the principle "*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 guiding principles for the prosecutors 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 governing the Criminal Justice System.

The European Convention on Human Rights was incorporated by an Act of Parliament in 1992. Thus the legal guarantees provided in the Convention forms part of Danish Law.

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

Military Criminal Jurisdiction

The Military Criminal Jurisdiction *ratione personae* 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.

The jurisdiction *ratione materiae* extends to violations of the Military Penal Code, other service related crimes or crimes committed in a military area.

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 (q.v.).

The Military Penal Code comprise inter alia provisions 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 (*i.e. neglect of duty as a guard, absence without leave, destruction of military property, other neglect of duties*);
- the prohibition of torture (*i.e. increased penalty for offenses committed by torture*);
- 'crimes against the efficiency of the military forces' (q.v.);
- 'other types of crimes during armed conflict' (q.v.).

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 (i.e. the Traffic Act, the Weapons Act and the Health and Safety at Work Act).



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 order that the offender may be deprived of the proceeds of crime or may issue an order to pay compensation to the victim. The Court may also impose an additional sentence such as suspension of a driving license. Other orders are available for the Court to decide as well.

In recent years more than 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.

The Military Prosecution Service is responsible for the enforcement of penalties and orders imposed by the Law Courts.

International Investigations and Armed Conflict



Investigations in Operational Theatres

The Military Prosecution Service is a military authority subordinate to the Minister of Defence and the military prosecutors and investigators of the Service have formal status as military personnel. Consequently 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 by an investigation team from the Military Prosecution Service.

As stipulated in the Military Administration of Justice Act the Military Prosecution Service may rely on the assistance of military authorities – in particular the Military Police – in the operational theatre. Under these circumstances the Military Police act upon the direct instruction and responsibility of the military chief prosecutor.

Independent investigations

International humanitarian law and human rights law require States to conduct *ex officio* investigations of potential violations of international law committed during international military operations.

The European Court of Human Rights has determined that human rights standards must be complied with and that the obligation to protect the

right to life under article 2 of the European Convention on Human Rights entails a procedural obligation to take all reasonable steps to ensure that an effective, independent investigation is conducted into alleged breaches of the right to life.

This procedural obligation continues to apply in a context of armed conflict.

As further developed by the jurisprudence of the European Court of Human Rights, the persons responsible for and carrying out the investigation must be hierarchically, institutionally and practically independent from those implicated in the events. The requirement of effectiveness also entails thoroughness, transparency, promptness and reasonable expedition.

Although these requirements relates to investigations into alleged breaches of the right to life in article 2 of the European Convention on Human Rights, the Military Prosecution Service endeavors to comply with the requirements in connection to all investigations into military criminal cases.

Accordingly the military chief prosecutor, when assisted by military authorities in a criminal investigation, ascertains whether the assisting military authority meets the criteria of independence. I.e. that the military authority in question not only is, but is seen to be, operationally independent from the military chain of command.

Armed Conflict

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"*.

The assessment as to whether an armed conflict is occurring is conducted by the Ministry of Foreign Affairs, e.g. in connection with the submission to Parliament on the deployment of Danish Armed Forces to an international operational theatre.

In relation to the Military Penal Code the ramifications of the existence of an armed conflict 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,
- the specific set of provisions on armed conflict are activated,
- an increased severity of sanctions may be imposed on certain ordinary offences related to the dereliction of military duties.

The main provisions applicable during 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 for the military forces.

The provisions include treason (section 28); espionage (section 29); deliberate change or replacement of ammunition or other types of war equipment (section 30); cowardice (section 31); deliberate disclosure of a military secret hurtful to the defence of the country (section 32); deliberate omission to prevent mutiny etc. (section 33); deliberately causing dispiriting (section 34); and deliberate unauthorised contact with the enemy (section 35).

The provisions on 'other types of crime during armed conflict' are intended to protect individuals during armed conflict. The provisions prohibit essential violations of international humanitarian law (section 36); looting (section 37); and marauding (section 38).

The provisions in section 36(1) prohibits a specific violation of international humanitarian law, namely deliberate abuse or disrespect of distinctive emblems designed to protect religious or medical personnel, units and establishments, i.e. abuse of the Red Cross emblem.

The provisions in section 36(2) is wider and more generally formulated and prohibits deliberate use of war methods or procedures contrary to an international agreement signed by Denmark or international customary law.

So far the courts have imposed stricter sanctions 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 who are responsible for the investigations of these minor offenses in accordance with the Military Disciplinary Act of 2005.

If a 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 (senior officer). 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 applies 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 Disciplinary Chief. The decision of the 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

The Military Prosecution Service

(in Danish "Forsvarets Auditørkorps")

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

Organization

The organization and responsibility of the Danish Military Prosecution Service is set out in the Military Administration of Justice Act.

The Service 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.

Military criminal cases are subject to the jurisdiction of the Military Prosecution Service only and the role of the commander is to manage the disciplinary cases (q.v.).

The 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 Chief Prosecutor (the Judge Advocate). Decisions taken by the Military Chief Prosecutor in criminal cases are subject to appeal to the Military Prosecutor General.

Military investigations and prosecutions

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 the investigation and prosecution of violations of the Military Penal Code as well as other (civilian) legislation with a nexus 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 Service initiates investigations of service related incidents inter alia when servicemen are seriously injured or killed in connection with the service.

Other responsibilities

The Military Prosecution Service has responsibilities outside the Criminal Justice field as well. The Service is a key player in the Legal Advisory Service of the Danish Defence.

The existing 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 relative to the protection of victims of armed conflict.

The Military Prosecutor General's Office is responsible for the training of Danish Military Legal Advisors in obligations under international humanitarian law while the Military Legal Advisors are under the command of Defence Command Denmark.

Furthermore, 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

Pursuant a recent political Defence Agreement it was decided to further strengthen the independence in the management of military criminal cases.

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, and the move from

the military bases to civilian facilities. The Military Prosecutor General remain resided in Copenhagen. The new organisation entered into force in June 2015.

The personnel of the Military Prosecution Service 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 from other sources including the Defence.

The history and symbols of the Military Prosecution Service

The Office of the Military Prosecutor General was founded by Royal Decree of 3 June 1659 and the Military Prosecutions Service was established as an organization by an Act of Parliament in 1867.

The Criminal Justice reform of 1919 detached the Military Prosecution Service from the chain of military command.

In 1951 a coat of arms was approved by the Ministry of Defence. In addition a gilt regimental badge was created a collar and cap badge for those personnel with military status.

The various elements of the regimental badge refer to the wreath of thistle and the crossed fasces which formed part of the specific uniform of military prosecutors which saw the light after the Military Justice Reform of 1919.

The fasces refer to the power and jurisdiction of the Roman magistrates, the axe being a symbol of full authority in the field (militia). The symbols were carried by the magistrates' officers (lictors).



The coat of arms of the Military Prosecution Service. Blazon: *"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".*

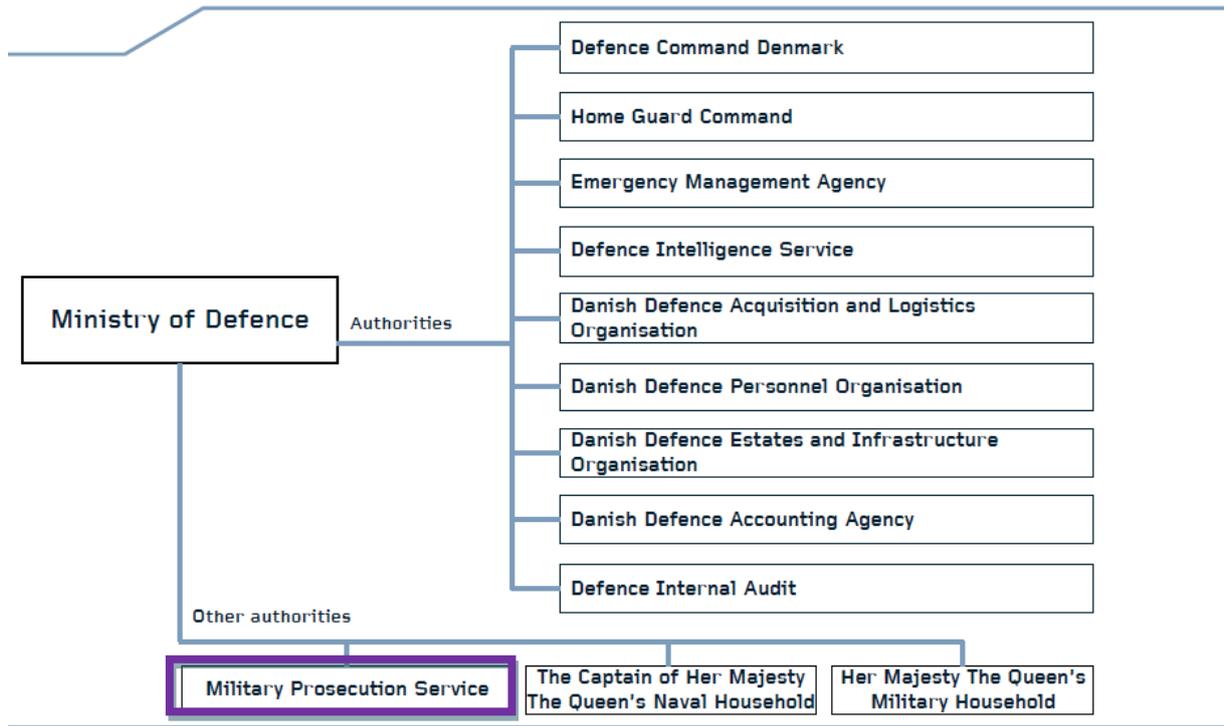
The modern Royal crown of the Military Prosecution Service was designed and approved in 2007/2008 by the National Heraldic Consultant for all bodies within the organization of the Ministry of Defence. The crown refers to State Agencies.

The purple coloured crown is unique for the Military Prosecution Service and the colour, with a reference to the Roman magistrates, is the signature colour of the Danish Prosecution Services. Since 1688 the prosecutors at the Supreme Court have worn black gowns adorned with purple and from 1920, following the Criminal Justice Reform, such gowns are worn by all prosecutors at the High Courts as well.

The secondary grey colour of the Military Prosecution Service refers to the piping of the dark blue service uniforms M/1909. The graphic design on the inside cover of Service publications symbolises coherence and balance (the Scales of Justice).

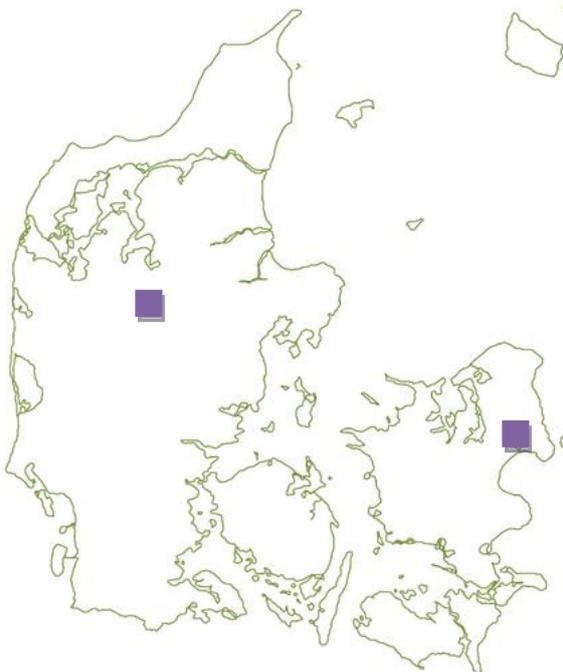


Organisation of the Ministry of Defence



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

Source: the Ministry of Defence, www.fmn.dk.



The Offices of the Military Prosecution Service.

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

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

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