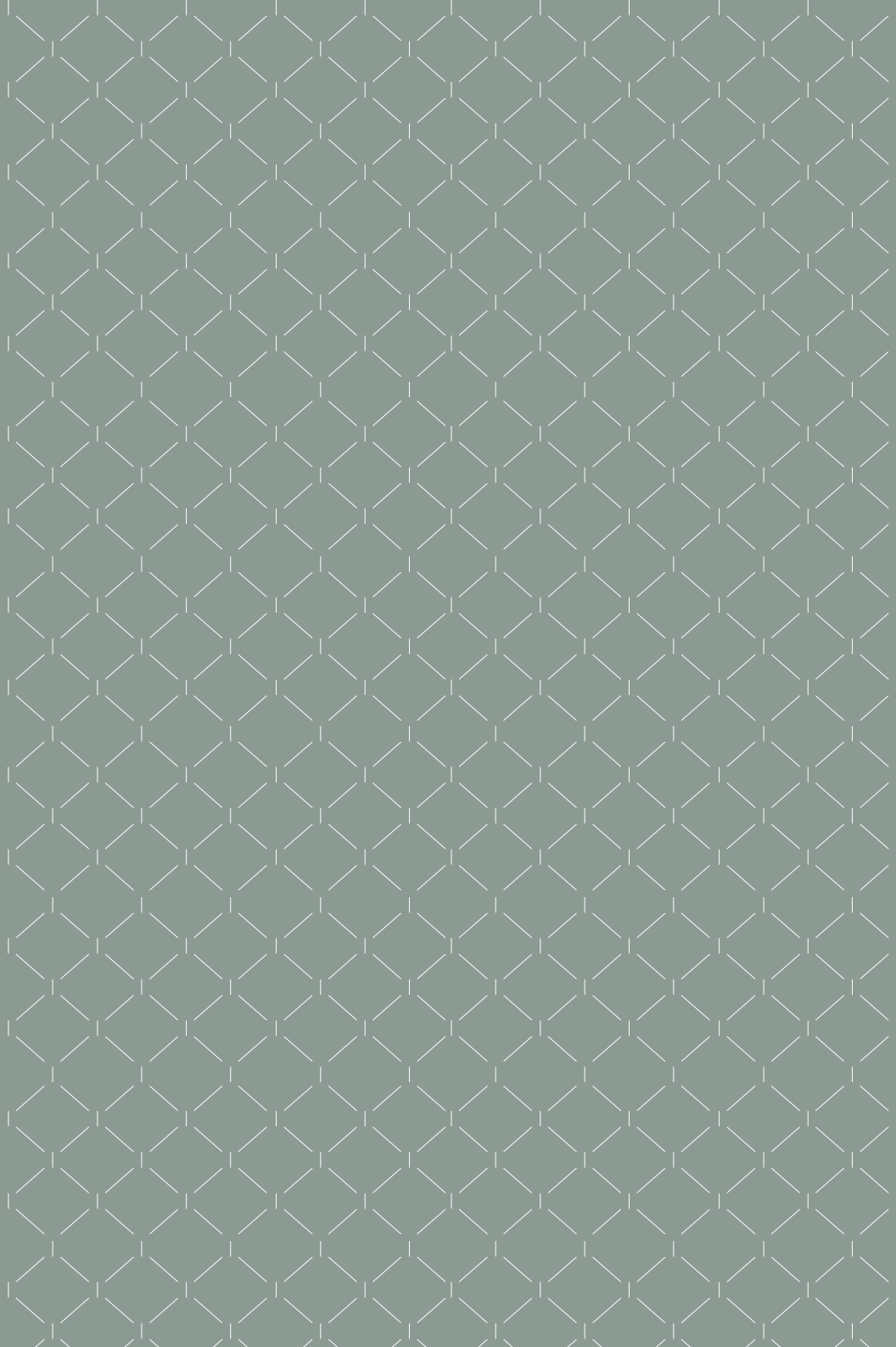


# The Danish Military Prosecution Service



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The Military Prosecutor General and the Military Prosecutors in Copenhagen resides in the old Citadel of Copenhagen

## The organization and tasks of the Danish Military Prosecution Service

### The organization

The tasks and organization of the Danish Military Prosecution Service, also referred to as the Judge Advocate General's Corps – in Danish “Forsvarets Auditørkorps” – are set out in the Military Administration of Justice Act and the (Civil) Administration of Justice Act.

#### The Military Prosecution Service

An independent authority investigating and prosecuting military criminal cases.

The Military Prosecution Service is structured as a hierarchy of two levels headed by the Military Prosecutor General (the Judge Advocate General). The second level comprises the Military Senior Prosecutors (Judge Advocates). Decisions taken by the Military Senior Prosecutors in criminal cases may be appealed to the Military Prosecutor General.

The Military Prosecution Service is an independent service and does not form part of the military chain of command. The service is subordinate to the Minister of Defence.

### The tasks

#### Law enforcement

The key task of the Military Prosecution Service is to uphold the law in pursuance with the criminal procedural rules where a breach of the law carries a criminal sanction.

The overall 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 following the nature of the case and thereby ensuring that those liable to punishment are prosecuted while the innocent are not prosecuted.

The Military Prosecution Service is inter alia responsible for investigating and prosecuting violations of the Military Penal Code and other (civilian) criminal offences committed by military personnel. Investigations are initiated when there is a reasonable supposition that a criminal act has been committed.

The service, moreover, initiates an investigation of serious incidents involving Danish military personnel in compliance with the principles in article 2 of the European Convention of Human Rights, inter alia if a Danish military serviceman has been seriously injured or killed in connection with military service.

#### Other tasks

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



Qualification badge for Military Legal Advisors

The Military Prosecutor General's Office is responsible for the legal training of Danish Military Legal Advisors in obligations under International Humanitarian Law. This service 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 Addi-

tional Protocol 1 to the Geneva Conventions of 1949 relative to the protection of victims of armed conflict.

Further more, 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 supervises the applications of volunteers applying to join the Home Guard and provides guidance to the relevant authorities if an applicant has been convicted of a criminal offence or if serving volunteer personnel commits such an offence.



## Danish Military Criminal Procedure

### Military criminal cases (in peace time)

Military criminal cases are cases, where military personnel violate the Military Criminal Code and violations of the Civil Criminal Code and other punishable civilian legislation, when the violation is related to the military service, has been committed in connection with the military service or on military grounds etc.

*Civilian employees and volunteers in the Home Guard are not subject to military criminal jurisdiction.*

### Military Criminal Jurisdiction

The jurisdiction applies to military personnel in active service and discharged military personnel regarding military duties imposed on such personnel after their discharge. During an armed conflict the jurisdiction is extended to anybody serving in the armed forces or accompanying a unit thereof.

### General procedural provisions

The Danish military criminal procedure is – with a few exceptions – based on the same provisions as the civil criminal procedure.

The Danish criminal procedure is based on the accusatorial principle. 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 to strike a fair balance between the rights of the individual and the interests of society as well as ensuring the necessary efficiency of the criminal justice systems.

The basic principles are the presumption of innocence, the burden of proof placed on the Prosecu-

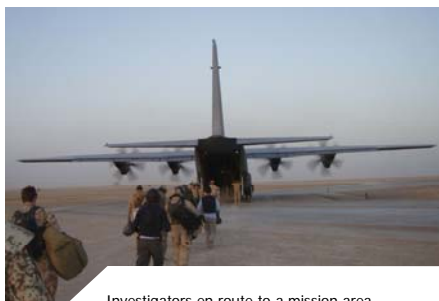
tion Service, application of the principle “in dubio pro reo”, the free assessment of evidence, the rights of the defendant to remain silent and equality of arms between prosecution and defence.

Military criminal cases are conducted before the ordinary courts, i.e. the City Courts. The legal remedy consists of appeal to the High Courts and – with a special permit from the Appeals Permission Board – before the Supreme Court. Military Courts were abolished in 1919.

A reform of the military criminal procedure entered into force on 1. January 2006. The new legislation separated the competences of the Military Prosecution Service and that of the military commanders. Criminal cases are dealt with by the Military Prosecution Service only while disciplinary cases and sanctions imposed in accordance with the Military Disciplinary Code are dealt with by military commanders.

## Investigations outside Denmark

The Military Prosecution Service is a military authority subordinate to the Ministry of Defence and the military prosecutors and investigators have formal status as military personnel. From a legal point of view these formal issues are essential when conducting investigations abroad as the military status enables the Military Prosecution Service to enter mission areas in a foreign country and conduct an investigation while being covered by the Status of Forces Agreement (SOFA) for the particular mission.



Investigators en route to a mission area

## Danish Substantive Military Criminal Law

### The Military Penal Code

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

The Law Reform of 2005 introduced a substantive decriminalization of military offences. The Military Penal Code now only covers violations of a more severe nature. Further more, the violation has to be committed either intentional or by gross negligence. Lesser degrees of negligence no longer constitute a criminal offence but might be sanctioned with an administrative disciplinary sanction.

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

The specific military offences comprise inter alia articles on.

- The duties of the subordinate (i.e. disobedience, mutiny, disrespectful behaviour)
- The duties of the superior and peer, etc. (i.e. harassment, abuse of position, offensive treatment, degrading rituals etc.)
- Drugs, drunkenness
- Other types of dereliction of duty (i.e. neglect of duty as a guard, absence from service, destruction of military property, neglect of duty)
- "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. "use of war methods or procedures contrary to an international agreement", "plundering", "robbery from a corpse" etc.
- Prohibition against torture.

### Other criminal cases

Danish military criminal cases comprise violations of the (civil) Criminal Code, the Traffic Act and violations of other provisions in the specialized legislation – i.e. the Weapons Act and the Health and Safety at Work Act – as well.

Since the implementation of the new legislation in 2006 around forty percent of the sanctions have been imposed for violations of the Military Criminal Code. The rest of the sanctions have been imposed on violations of civil legislation.

### 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 it 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.

## Military Disciplinary cases

Military disciplinary cases are not dealt with by the Military Prosecution Service. From 1 January 2006 military disciplinary cases and sanctions imposed in accordance with the Military Discipline Code are dealt with by military commanders only. Such sanctions are considered as administrative sanctions, and the Public Administration Act applies unless otherwise provided.

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 a need for such a sanction, but where punishment is not warranted or needed.

The disciplinary measures comprise inter alia reprimand, work and additional exercise in part of the spare time, 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 city 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.

The decision of the Board may be brought before the ordinary courts as prescribed by Article 63 in the Constitution of the Kingdom of Denmark.

If the disciplinary commander is in doubt as to whether the case should be treated as a criminal or disciplinary case, the matter is presented to the disciplinary chief. If the disciplinary chief is in doubt, the Military Prosecutor makes the decision.



## Other issues

### Office and personnel

The Military Prosecutor General's Office is staffed with a Deputy Military Prosecutor General as well as a secretariat of lawyers and support staff. The two Military Prosecutor's Offices comprises Senior Prosecutors as well as a team of investigation officers and support staff.

The Military Prosecutor's Offices are situated in Copenhagen (East) and in Jutland (West).

The military prosecutors are all recruited from the Civil Prosecution Service while the investigators are recruited from the Police.

### Annual report

The Military Prosecution Service publishes an annual report which inter alia provides statistics on military offences and passed sentences. The annual report comprises summaries of specific cases of general interest dealt with during the year as well. The annual Report is available from the internet website of the Service [www.fauk.dk](http://www.fauk.dk).

### 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 formal seal of the Military Prosecution Service

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