



## **MILITARY JUSTICE:**

A comparative study of parliamentary oversight in Euro-Atlantic countries



## About DCAF

DCAF – the Geneva Centre for Security Sector Governance is dedicated to improving the security of states and their people within a framework of democratic governance, the rule of law, respect for human rights, and gender equality. Since its founding in 2000, DCAF has contributed to making peace and development more sustainable by assisting partner states, and international actors supporting these states, to improve the governance of their security sector through inclusive and participatory reforms. It creates innovative knowledge-based products, promotes norms and good practices, provides legal and policy advice and supports capacity-building for both state and non-state security sector stakeholders. DCAF's Foundation Council members represent over 50 countries and the Canton of Geneva. Active in more than 70 countries, DCAF is internationally recognized as one of the world's leading centres of excellence for security sector governance (SSG) and security sector reform (SSR). DCAF is guided by the principles of neutrality, impartiality, local ownership, inclusive participation, and gender equality.

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Since its creation in 1955, the NATO Parliamentary Assembly has provided a unique specialised forum for members of parliament from across the Atlantic Alliance to discuss and influence decisions on Alliance security. Through its work and activities, the Assembly facilitates parliamentary awareness and understanding of the key issues affecting the security of the EuroAtlantic area, and supports national parliamentary oversight over defence and security. Crucially, it helps to strengthen the transatlantic relationship and the values which underpin the Alliance. The Assembly is institutionally separate from NATO, but serves as an essential link between NATO and the parliaments of the NATO nations. It provides greater transparency of NATO policies, and fosters better understanding of the Alliance's objectives and missions among legislators and citizens of the Alliance. Since the end of the Cold War, the Assembly has assumed a new role by integrating into its work parliamentarians from countries seeking a closer association with NATO. Through this form of parliamentary diplomacy, the Assembly contributes to mutual understanding and to the strengthening of parliamentary democracy throughout the Euro-Atlantic region and beyond, thereby complementing and reinforcing NATO's own programme of partnership and cooperation.

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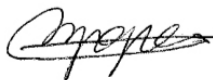
# FOREWORD

I am particularly pleased with this joint publication on ‘Parliamentary Oversight and Military Justice,’ which is based in part on a survey of delegations of the NATO Parliamentary Assembly (NATO PA), and I want to thank everyone who has contributed.

For one, the publication is another important collaborative effort on strengthening parliamentary oversight between the NATO PA, the Swiss government and the Geneva Centre for Security Sector Governance (DCAF) – a cooperation that began more than two decades ago. The study will make a significant contribution in a critically understudied field. I am certain it will serve as an outstanding resource for parliamentary committees, individual parliamentarians and supporting staff from NATO and partner countries.

More importantly, however, it is a direct contribution to efforts to support Ukraine in the face of Russia’s brutal war of aggression and help the Verkhovna Rada strengthen Ukraine’s democracy. As Ukraine aspires to join NATO, a goal the NATO Parliamentary Assembly wholeheartedly supports, it must continue building on the already significant progress on its democratic reform path. Aligning its military justice system with best democratic practices is thus important.

NATO is an alliance of democracies defined not by what it stands against but by what it stands for – the defence of democracy, individual liberty and the rule of law. Parliamentary oversight of the defence and security sector is an essential part of these values and principles. The NATO PA looks forward to continuing the fruitful cooperation with the Swiss government and DCAF, a cooperation which helps bolster democratic governance of defence and security.



**Ruxandra Popa**

Secretary General

NATO Parliamentary Assembly

# PREFACE

We are pleased to present 'Parliamentary Oversight and Military Justice,' a substantive practice-based guidances prepared jointly by the Geneva Centre for Security Sector Governance (DCAF) and the NATO Parliamentary Assembly. This study represents a significant stride in the implementation of military justice.

The importance of effective military justice institutions cannot be overstated. They are crucial for maintaining discipline within armed forces, ensuring the rule of law, and protecting human rights. This publication aims to fill the existing knowledge gap, providing comprehensive legal and policy guidance to countries striving to enhance or establish their military justice frameworks.

Furthermore, this study comes at a critical time. It is a direct response to Ukraine's expressed intention to reintroduce a military justice system, underscoring the timeliness and relevance of the issues addressed. We believe this work will serve as an invaluable resource for policymakers, legal professionals, and military officials worldwide, offering insights and recommendations that will contribute to more robust and just military legal systems.

We extend our gratitude to all contributors and stakeholders involved in this project. Your expertise and dedication have made this important publication possible, and we are confident it will have a lasting impact on the advancement of military justice globally.

## **Darko Stančić**

Head of Europe and Central Asia Division

DCAF - Geneva Centre for Security Sector Governance





## EXECUTIVE SUMMARY

Parliamentary oversight is indispensable for the effective functioning of military justice systems. It ensures accountability, promotes transparency, enhances legitimacy, facilitates reform, and supports the professional development of military personnel. By performing these functions, parliamentary oversight helps create a military justice system that is fair, just, and aligned with democratic principles, thereby strengthening the overall integrity and effectiveness of the armed forces.

For over two decades, DCAF has been at the forefront of security sector governance, collaborating with the NATO Parliamentary Assembly on joint research initiatives. DCAF's 'Oversight and Guidance' updates deliver crucial information on the parliamentary control of the security sector.

Additionally, DCAF together with NATO PA have created toolkits for monitoring and overseeing international operations, the intelligence sector, and the defence industry.

This study is enriched by DCAF subject-matter experts, who have drawn upon open research, conducted extensive interviews with lawmakers, and analyzed the results of comprehensive surveys. The first chapter examines the core principles and values that form the basis of military justice systems, detailing the key institutions that make up the broader framework, such as military police, prosecutors, courts, and prisons. A significant part of the discussion focuses on the delicate balance between civilian and military jurisdictions, emphasizing the general trend towards civilianization over time. The chapter concludes that there is an increasing inclination among nations to implement civilian criminal justice procedures for military personnel. In some liberal democracies, military courts and justice systems are nearly obsolete. While these systems may still have statutory authority for reactivation during wartime, reinstating a dormant justice system amidst active conflict appears impractical. Additionally, the lack of substantial civilian oversight in military justice systems and the potential for bias against civilian defendants can undermine the credibility of these trials. It is crucial to maintain a clear distinction between military and civilian jurisdictions, with robust safeguards for due process and independent oversight.

The second chapter explores parliamentary authority to oversee military justice systems, detailing the legislative, budgetary, control, communication, and election/dismissal powers parliaments wield in security policymaking. It relies heavily on a survey conducted among NATO member state parliaments. The chapter concludes that enhanced parliamentary supervision of military justice is crucial, especially for states with specific military justice systems, to ensure accountability and efficiency. A strong military justice framework not only protects service members' rights but also promotes discipline and orderly conduct within military units while upholding the Rule of Law within the armed forces. Institutionalized legislative oversight is vital in democratic societies to maintain a given system's effectiveness, fairness, and integrity. Additionally, oversight by elected officials helps build public trust in the armed forces. The publication offers recommendations for improving the current oversight system.

This publication aims to support and guide those researching military justice and those responsible for their oversight, including parliamentarians, staffers, researchers, and civil society groups. The study's ultimate goal is to ensure that democratic states' activities, including those of military agencies, are subject to parliamentary scrutiny and fully adhere to the principles of the Rule of Law and respect for human rights. DCAF and NATO PA hope this study will be a valuable tool in enhancing oversight for military justice system and for increasing public confidence in the democratic process.

# 1. MILITARY JUSTICE PRINCIPLES, INSTITUTIONS AND CURRENT TRENDS

In this chapter, we delve into the foundational principles and values that underpin military justice systems and explore the key institutions that comprise the larger military justice framework, including the roles of military police, prosecutors, courts, and prisons. A central focus of the discussion is the delicate balance between civilian and military jurisdiction, and the overall long-term trend towards civilianization. This chapter has been enriched by responses to a survey conducted among NATO member state parliaments, which disclosed current trends in military justice in Canada, Denmark, France, Hungary, Latvia, Norway and Poland.

## 1.1 UNDERSTANDING MILITARY JUSTICE

The phrase ‘military justice’ generally refers to criminal justice for those serving in a nation’s armed forces (its military services).<sup>1</sup> The typical military justice system sets substantive standards of behavior by criminalizing particular acts and omissions. But it also establishes the process for adjudicating guilt or innocence and, in case of conviction, penalties are handed down. A fundamental characteristic of military justice is that, in democratic countries, it is ordinarily inapplicable to the civilian population (with possible exceptions for civilians who accompany the military). Military justice systems are designed to ensure that military personnel follow military laws and regulations, while also affording procedures that comport with internationally recognized norms.

As outlined in DCAF’s 2023 report on military justice,<sup>2</sup> there are substantial reasons for States to have a distinct military justice system for those who serve in the armed forces. But there are also reasons to be alert to the possible weaknesses in such systems. The special purposes of military justice – ensuring good order and discipline as well as efficiency – are served by specialized laws, regulations, and procedures. Military justice systems must accommodate the possibility of wartime conditions and deployments, as well as peacetime conditions. The need for speedy justice is particularly compelling in a military force. There the effectiveness of a unit, large or small, is a function of immediate compliance with lawful orders.

Buttressing this claimed advantage (one that has not always been empirically supported) is the

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1 DCAF, Geneva Centre for Security Sector Governance, 2023, *Military Justice*. Available at <https://www.dcaf.ch/sites/default/files/publications/documents/MilitaryJusticeFundamentals.pdf> (this background utilizes sections of this earlier publication, as drafted by same authors).

2 *Id.*

argument that specialized military justice systems best represent the military community. They are, thus, better suited to implement the critical messaging effect of criminal law within that particular community. This flows from the understanding that criminal law is society's collective condemnation of certain forms of behavior. Given that the military condemns some kinds of misconduct that the civilian community deems non-criminal – such as disobedience, disrespect, dereliction of duty, desertion, conduct prejudicial to good order and military discipline – the claim is that military judges and jurors are best place to dispense justice. If, on the other hand, a State's military criminal code extends to forms of misconduct that have no particular connection to military duty or sweeps in common-law offenses such as murder, rape, arson, or theft, this rationale loses some of its force.

Military justice systems are vulnerable to improper influence due to the hierarchical nature of armed forces. Given commanders' seniority and pervasive responsibilities, they may have both the motive and opportunity to seek by improper means to exert control over the administration of justice. Military justice should be an impartial and independent mechanism for the adjudication of guilt and innocence based on the fair application of the law to proven facts. However, there is potentially the perception (and perhaps the fact) that military justice becomes a simple tool for achieving commanders' objectives. Furthermore, military justice has been perceived as disproportionately severe, overly punitive, and arbitrary in its selection of cases for prosecution. This perception often results from a lack of vigilance with respect to unlawful command influence.

Perceptions are powerful: from punishment for minor infractions to more frequent prosecution of lower-ranking service members, perceptions of unfairness can undermine the legitimacy of and public confidence in a State's military justice system. They can degrade its ability to reinforce good order and discipline as well as its political support. Sometimes perceptions come down to a lack of understanding regarding the necessity of criminalizing military-unique crimes. Another factor is the absence of effective checks and balances regarding the exercise of prosecutorial discretion, as well as sentencing. Additionally, given that the legal principle of due process in law is inevitably contextual, due process in the military milieu may make different demands than in a civilian criminal justice system. This difference in itself may dent public confidence unless the need for the differences is properly explained. Also, in some States, military justice has failed to deliver a system that provides a fair and impartial forum for achieving accountability for service members who engage in criminal conduct. Rather it has been used to suppress dissent and to insulate the military from external criticism and civilian control.

Military justice can contribute to the national security of a State while simultaneously remaining consistent with the State's obligations to ensure fair and just legal processes.<sup>3</sup> This balance can be achieved if the reach of the system is limited both as to whom it applies to and in relation to which crimes are covered. But effective checks and balances are needed both internally and externally, including robust oversight by the State's civilian executive leadership, its parliament, and the judiciary.

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3 DCAF, Geneva Centre for Security Sector Governance, 2023, *Military Justice*. Available at <https://www.dcaf.ch/sites/default/files/publications/documents/MilitaryJusticeFundamentals.pdf>.

## 1.2 MILITARY JUSTICE PRINCIPLES

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Parliamentary oversight is central to public confidence in the administration of military justice and, of course, to civilian control of the armed forces. The following discussion outlines the role of parliaments in the design, oversight, and reform of military justice systems in democratic societies.<sup>4</sup>

Developed by an international group of experts at Yale Law School in the United States, the 2018 ‘Yale Draft’ of the 2006 Draft Principles Governing the Administration of Justice Through Military Tribunals (the Decaux Principles) provides the most up-to-date set of international principles for military courts.<sup>5</sup> The twenty Yale Draft principles reaffirm the limited authority of military courts, emphasize the need for compliance with fair trial guarantees, clarify the scope of offenses that may be subject to military jurisdiction,<sup>6</sup> and stress that the objective of military justice is to ‘contribute to the maintenance of military discipline inside the rule of law through the fair administration of justice.’<sup>7</sup>

The Yale Draft principles are instructive with regard to the relationship between legislative bodies and military justice systems.<sup>8</sup> For example, Principle 1 provides that: *Military tribunals, when they exist, may be established only by the constitution or the law, respecting the principle of the separation of powers. They must be an integral part of the general judicial system.*

Drawing on the Yale Draft, international experts who contributed to the DCAF’s 2023 *Military Justice* report highlighted seven values: **respect for human rights and International Humanitarian Law; independence; accountability; professionalism; efficiency; reasonable military secrecy; and delineation of power and jurisdiction.** Greater specificity regarding individual military justice principles is found in the Yale Draft itself; these seven norms are the foundation on which the more specific Principles rest.

The four norms that are most directly relevant to parliamentary oversight are **independence, accountability, efficiency, and delineation of power and jurisdiction:**

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4 *Id.*

5 Decaux Principles Workshop: The Yale Draft (June 2018). Available at <https://www.court-martial-ucmj.com/files/2018/06/The-Yale-Draft.pdf> hereinafter Yale Draft.

6 *Id.*, Principle 3 (noting that military courts should only try crimes that have a “direct and substantial connection with that purpose,” for example, where the “offence is committed by one member of the armed forces against another or is alleged to have been committed in a defense establishment or in relation to military property.”)

7 *Id.*, Principle 3.

8 *Id.*

## INDEPENDENCE

Military justice systems should be free from undue influence from political or higher military leadership, allowing for military justice decision-making to be transparent and based on evidence while following clear principles. This norm includes the appointment of judges who are independent from any political or military bias. It also includes preventative measures to ensure that political or higher military command interference does not occur during proceedings, including the initiation of proceedings. All military justice decisions should be made in accordance with established rules and regulations with no external or internal interference by legislators or others.

## ACCOUNTABILITY

In the security sector, accountability can take many forms. This includes legal accountability, which requires that all individuals in the security sector are held to the same standard of law and that any violations of the law are punished accordingly. This can also include financial accountability, which involves ensuring that all funds used within the security sector are properly tracked and accounted for. Furthermore, accountability may include moral and ethical accountability, which requires that those working in the security sector adhere to the highest standards of morality and ethics. Accountability is essential in government for legitimacy and good governance. It is a way to ensure that all individuals are not able to act with impunity: that any violations of the law or ethical standards are properly addressed and that those responsible are held accountable. Accountability contributes to greater public trust in the respective governmental institution, as it demonstrates that government personnel, be they military members or civilian defence ministry officials, are taking their roles seriously and that they are committed to protecting citizens from harm.

Therefore, a State's military justice system must function in a way that is accountable to the public and to the law. In general this means that all decisions should be transparent and open to scrutiny. All military justice decisions should be subject to robust civilian oversight; any potential bias or conflict of interest should be avoided. Within a healthy military justice system, military personnel should be fairly and consistently held accountable for misconduct. Furthermore, military justice actors should be held accountable for the performance of their military justice roles. Finally, military decision-making should be transparent, with changes in policy or procedure communicated in a timely and clear manner to military members and the public.

## EFFICIENCY, EVALUATION, AND TRANSPARENCY

Military justice should be conducted efficiently and effectively in compliance with fundamental fair trial guarantees. Military justice actors should strive to efficiently and effectively use public and financial resources to ensure the fairest and most equitable delivery of justice for all service members. Military justice institutions are responsible for compliance with all relevant laws and regulations, and should be tasked with developing and maintaining systems to track and measure the quality of the delivery of justice. This includes gathering data on the outcomes of cases, tracking

trends, evaluating the effectiveness of institutions' work, and making information transparent to public and oversight bodies.

## DELINEATION OF POWER AND JURISDICTION

Military justice is one of limited jurisdiction. It should be narrowly drawn to regulate the conduct of members of the armed forces (and in exceptional circumstances civilians).<sup>9</sup> That is, civilians should be prosecuted for criminal offences exclusively within ordinary civilian courts. Furthermore, ordinary civilian courts should 'maintain primary jurisdiction over all criminal offenses committed by persons subject to military jurisdiction' – service members. Given that 'the purpose of military courts is to contribute to the maintenance of military discipline inside the rule of law through the fair administration of justice... military courts should only try cases that have a direct and substantial connection with that purpose.'<sup>10</sup> However, military courts may try service members even without such a connection when compelling reasons exist to forgo civilian courts. This would include deployment overseas or otherwise during armed conflict when military necessity precludes the use of ordinary courts.

- Military justice institutions should ensure that their investigative and disciplinary competencies are clearly defined and do not unnecessarily overlap with other domestic investigative bodies and institutions such as the police, the judiciary, or other government departments; if there is overlap, clear guidelines should be established to accord logical primacy.
- Military courts should not have jurisdiction over minors under the age of eighteen (unless a voluntary member of the services between ages fifteen and eighteen, as allowed by article 38 of the Convention on the Rights of the Child); all proceedings should strictly comply with guarantees provided in the Convention on the Rights of the Child and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).
- Periodic and systematic reviews of the jurisdiction of military justice should be conducted in an impartial and open manner to ensure that the power of military tribunals only applies to essential situations and does not interfere with the jurisdiction of regular civil courts.
- With the exception of circumstances permitted by international humanitarian law, military courts should not be involved in the investigation or trial of alleged serious human rights violations, including extrajudicial executions, enforced disappearances, and torture. Instead, civilian courts should be granted jurisdiction to investigate and bring to trial those accused of such crimes.

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9 See Yale Draft, *supra* note 5, Principle 6 ("Military courts have no jurisdiction to try civilians except where there are very exceptional circumstances and compelling reasons based on a clear and foreseeable legal basis.")

10 *Id.*

## 1.3 INSTITUTIONS OF MILITARY JUSTICE

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A military justice system is a comprehensive framework of several essential components, each playing a distinct role in upholding discipline, enforcing laws, and administering justice within the armed forces. These components include military police, military prosecution, military courts, and military prisons.



### MILITARY POLICING

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The concept of military policing has emerged relatively recently. Historical military policing, up until the twentieth century, primarily revolved around two overarching and interconnected objectives, which were also mirrored in military disciplinary regulations: (a) preserving discipline within the force, often termed as ‘the maintenance of good order and military discipline,’ and (b) ensuring adherence to the laws of war. The core roles and duties of military police in the present era remain largely consistent with this and encompass: (a) force protection; (b) managing and transporting



prisoners of war; (c) regulating movement; and (d) investigating instances of misconduct by military personnel. In numerous jurisdictions, the investigative authority of military police extends beyond military personnel to encompass civilian contractors, dependents, and other civilians residing on military installations or accompanying armed forces during operations abroad. Civilian law enforcement inquiries adhere solely to international human rights standards and domestic legislation. However, military investigations operate within these legal frameworks as well as under the purview of international humanitarian law in times of armed conflict or occupation. As a result, military investigations must have the flexibility to address a wider range and magnitude of situations. While civilian law enforcement inquiries concentrate solely on criminal incidents, military investigations also encompass relatively minor (non-criminal) breaches of discipline.

One contemporary advance in military policing is the establishment of robust oversight mechanisms. Typically, oversight of the armed forces, including military policing, is entrusted to the executive branch, represented by the Minister or Secretary of Defence, who wields sovereign State authority subject to supervision by the Head of State or Head of Government and legislative accountability. The extent of legislative influence over the armed forces necessarily varies from State to State. It may take the form of primary or subsidiary legislation governing military budgets, operations, recruitment and retention, as well as other aspects of personnel management. Parliaments may also conduct field visits and require or request senior civilian or uniformed defence leaders to testify or respond to questions. It is important that lawmakers ensure that investigations are thorough, effective, and compliant with relevant legal principles and parliamentary procedures. The frequent involvement of trained legal advisors at the earliest stages of legislative investigations can maximise the chances that legislative actions make sense and are, in the end, lawful.

## MILITARY PROSECUTION

National military justice systems take a variety of approaches to the prosecution function. Increasingly, democratic States have given the power to decide who shall be prosecuted for what military offences to either civilian prosecutors or legally-trained uniformed lawyers. Some countries in the British tradition (now abandoned by the UK itself) continue to leave prosecutorial discretion in the hands of non-lawyer commanders. Uniquely, the US system is hybrid, giving prosecutorial discretion over some categories of offence to commanders and over other offences to uniformed lawyers independent of the chain of command. Obviously, doing so is highly inefficient. It requires the staffing of two parallel prosecution structures. Even the partial shift of power away from commanders was highly controversial in the US, and it remains to be seen whether the country will continue with its current hybrid system in the long run.

While the primary roles of military prosecutors are deciding who should be prosecuted and then conducting the prosecution in the name of the State, the earlier stage of investigation is also critical. This function is particularly significant within the military sphere, given the distinct nature of military missions. In the civilian context, professionalised investigative expertise is readily available. But military operations frequently occur within dynamic and challenging environments, such as

peacekeeping or combat zones, where this is not the case. In situations like this, prosecutors must devise strategies to collect evidence under unique and often hazardous conditions. Access to witnesses may be constrained or entirely absent, while routine investigative tasks become arduous due to the complexities inherent in combat. The military prosecutor's assistance with criminal investigations also means guarding against the spoliation and suppression of evidence by interested parties and their confederates.<sup>11</sup>

Underlying the investigative, discretionary, and litigative functions is a need for the professional independence of military prosecutors; as with civilian prosecutors, independence (as well as impartiality and accountability) are essential for justice.<sup>12</sup> This includes independence from commanders, but also independence from political influences. Criminal justice is always vulnerable to politicisation even in States with longstanding commitments to the Rule of Law and little or no tolerance for corruption. Sensational cases can easily become flashpoints for larger, highly-politicised debates.<sup>13</sup> This may be true of military cases, where the politics of war potentially overshadow what an individual defendant may or may not have done, and why.<sup>14</sup> Structural protections for the independence of military prosecutors are, therefore, crucial.

Oversight of military prosecution is ensured through clear lines of authority, sanctions for interference, and strict standards of professional responsibility and procedures of bar discipline for legally-trained prosecutors. A pivotal aspect in upholding both effective oversight and the autonomy of prosecutors is their placement within the broader organizational framework of the nation's civilian ministry or defence department. In numerous Western militaries, prosecutors are accountable to a chief prosecutor who functions independently from the chain of command. It is advisable that military prosecutors have structural autonomy separate from the operational military hierarchy. Legislative oversight remains limited. Lawmakers' oversight in the investigative, prosecutorial, and litigation aspects requires expertise but also self-restraint. Norway's survey response is representative: 'in Norway there are no laws, regulations or rules, but a very strong tradition, that members of Parliament (and members of government) should avoid commenting on any prosecutions due to the principle of the separation of powers.'

The Canadian survey response noted that:

[i]n the exercise of their functions, members of Parliament have certain rights and immunities,

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11 "Prosecutorial Discretion Under the Uniform Code of Military Justice". *National Institute of Military Justice*. 12 May 2021. Available at [https://www.caaflog.org/uploads/1/3/2/3/132385649/nimj\\_dispositional\\_authority\\_position\\_statement\\_12\\_may\\_2021.pdf](https://www.caaflog.org/uploads/1/3/2/3/132385649/nimj_dispositional_authority_position_statement_12_may_2021.pdf).

12 "Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors". *International Association of Prosecutors*. 23 April 1999. Available at [https://www.iap-association.org/getattachment/Resources-Dokumentation/IAP-Standards-\(1\)/IAP\\_Standards\\_Oktober-2018\\_FINAL\\_20180210.pdf.aspx](https://www.iap-association.org/getattachment/Resources-Dokumentation/IAP-Standards-(1)/IAP_Standards_Oktober-2018_FINAL_20180210.pdf.aspx); see also UN Office on Drugs and Crime. "Crime Prevention and Criminal Justice". *United Nations*. Available at <https://www.unodc.org/unodc/justice-and-prison-reform/index.html>.

13 Simon, Jonathan. *Governing Through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear*. Oxford University Press. 2007.

14 *United States v. Bergdahl*, 80 M.J. 230, 239 (C.A.A.F. 2020); see also, *Canada (Prime Minister) v. Khadr*, 2010 SCC 3, [2010] 1 S.C.R. 44.

including freedom of speech. It is protected by the Constitution Act, 1867 and the Parliament of Canada Act. According to the Procedures of the House of Commons, freedom of speech allows Members to freely make any observations during the work of Parliament, for example in the House or in committee, while enjoying complete immunity from criminal or civil prosecution.’ Like any privilege, freedom of speech is limited to what is necessary for the House of Commons and its Members to carry out their functions of deliberating, legislating and holding the government to account, without interference from outside Parliament. This privilege also does not allow a member of Parliament the right to become personally involved in ongoing military or criminal proceedings.

The Latvian response went into greater detail by explaining that:

[a]ccording to the Office of the Prosecutor Law: Section 6. Independence of a Prosecutor

- In his or her activities a prosecutor shall be independent of the influence of other authorities or officials exercising State authority and administration and shall observe only the rule of law.
- The Saeima, the Cabinet, State and local government authorities, State and local government civil servants, all types of undertakings and organizations, and also persons are prohibited from interfering in the work of the Office of the Prosecutor during the investigation of cases or during the performance of other functions of the Office of the Prosecutor.

Denmark, seemingly an outlier in having explicit laws on this issue, explained that, ‘[t]here are regulations in the general Administration of Justice Act prohibiting statements that are likely to irresponsibly influence the courts with regard to the decision of a case.’ Furthermore, in the United Kingdom, a formal rule prohibits discussion within Parliament of ongoing criminal cases, with no exception for military cases: ‘The *sub judice* rule prevents MPs or Lords from referring to a current or impending court case. Although the House is entitled under parliamentary privilege to discuss any subject, *sub judice* applies to avoid the House from debating a subject and possibly influencing the legal outcome of a case.’<sup>15</sup> New Zealand has a similar rule.<sup>16</sup> In Australia, the *sub judice principle* is a convention in both houses of Parliament,<sup>17</sup> but it is scrupulously honored. The US Congress, in contrast, has no comparable rule or norm, and congressional efforts to interfere with the administration of justice in the armed forces are a persistent threat in high-profile cases.<sup>18</sup>

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15 UK Parliament, Sub Judice Rule of the House of Commons. Available at <https://www.parliament.uk/site-information/glossary/sub-judice/#:-:text=The%20sub%20judice%20rule%20prevents,legal%20outcome%20of%20a%20case>.

16 NZ Parl. Standing Order 112.

17 See generally [https://www.aph.gov.au/About\\_Parliament/Senate/Powers\\_practice\\_n\\_procedures/Odgers\\_Australian\\_Senate\\_Practice/Chapter\\_10](https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Odgers_Australian_Senate_Practice/Chapter_10).

18 See generally Max Jesse Goldberg, *Congressional Influence on Military Justice*, 130 Yale L.J. 2110 (2021).

Military prisons are correctional facilities operated by the military for the detention and confinement of military personnel who are accused of committing crimes under military law or who have already been convicted of such offences. These facilities serve similar functions to civilian prisons but are specifically designed to handle the unique circumstances and requirements of the military justice system. Military prisons have a long and often harsh history, reflecting the evolution of the military justice system and the changing nature of warfare over the centuries. But they have received surprisingly little systematic attention. Literary sources confirm the existence of the *carcer castrensis* in the Roman Empire.<sup>19</sup> However, in general, dedicated military prisons seem not to have been widespread in ancient times. Only in the eighteenth and nineteenth centuries was there a rise in permanent military establishments and formalised military codes. Dedicated military prisons became more common in this period. Famous examples include Spandau Prison in Prussia<sup>20</sup>, Terezin Fortress in the Austro-Hungarian Empire,<sup>21</sup> and Alcatraz Prison in the US.<sup>22</sup> In the twentieth century, there were military detention barracks in the UK.<sup>23</sup> With the continuing civilianisation of the military justice system, there should be no surprise that today there are only a few countries in the world that still have military prisons: the US<sup>24</sup>, Canada,<sup>25</sup> Italy,<sup>26</sup> and Israel<sup>27</sup>; in the UK there is a Military Corrective Training Centre – not considered as a prison – an establishment that provides corrective training for servicemen and women sentenced to periods of detention.<sup>28</sup> The US Naval Station at Guantanamo Bay, Cuba has a detention camp. It is technically not a military prison,

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- 19 Mark Letteney & Matthew Larsen, *A Roman Military Prison at Lambaesis*, *Studies in Late Antiquity* 5 (1): 65-102, (2021). Available at [https://www.academia.edu/44250165/A\\_Roman\\_Military\\_Prison\\_at\\_Lambaesis](https://www.academia.edu/44250165/A_Roman_Military_Prison_at_Lambaesis).
- 20 “134 Cells, One Inmate: The Closure of Spandau Prison”. *Association for Diplomatic Studies & Training*. Available at <https://adst.org/2016/06/134-cells-one-inmate-closure-spandau-prison/>.
- 21 Terezín Museum – “fortress town” and tours of underground corridors. *Central Bohemian Uplands*. Available at <https://stredohori.cz/en/detail/terezin-museum-fortress-town-and-tours-of-underground-corridors>
- 22 Alcatraz. Federal Bureau of Prisons. Available at <https://www.bop.gov/about/history/alcatraz.jsp>.
- 23 “British Army Military Detention Barracks 1914”. *The Long, Long Trail*. Available at <https://www.longlongtrail.co.uk/soldiers/a-soldiers-life-1914-1918/military-crimes-1914-1918-british-army/british-army-military-prisons-detention-barracks-1914/>.
- 24 “Military Prisons in America”. *Empire Resume*. 26 December 2022. Available at <https://empireresume.com/military-prisons-in-america/>.
- 25 “Canada’s Last Military Prison Costs \$2M a Year. About Half the Time, It Has No Prisons”. *Global News*. 23 May 2018. Available at <https://globalnews.ca/news/4097208/military-prison-edmonton-empty/>.
- 26 “La Storia”. *Esercito Italiano*. Available at <https://www.esercito.difesa.it/organizzazione/capo-di-sme/COMFOTER/opm/pagine/la-storia.aspx>.
- 27 Judah Ari Gross. “About 1 in 15 IDF Soldiers Were Jailed Last Year and That’s an Improvement”. *The Times of Israel*. 13 June 2019. Available at <https://www.timesofisrael.com/with-1-in-15-soldiers-jailed-last-year-idf-rethinks-its-rules-of-incarceration/>.
- 28 Military Corrective Training Centre. The British Army. Available at <https://www.army.mod.uk/who-we-are/corps-regiments-and-units/adjutant-generals-corps/provost/military-provost-staff/mctc/>.

but operates under military jurisdiction and has been highly controversial due to concerns about indefinite detention without trial and substantial allegations of torture and other human rights abuses.<sup>29</sup>

The Council of Europe emphasizes that ‘prisons shall be the responsibility of public authorities separate from military, police, or criminal investigation services. The administration of prisons should not be directly in the hands of the army or any other military power.’<sup>30</sup> Military prisons have been the subject of controversies throughout history, with concerns raised over transparency, treatment of prisoners, and adherence to human rights standards (among other issues). Consequently, parliamentary oversight is of tremendous importance and oversight activities should deal with the following issues:

**Lack of transparency and oversight:** Military prisons are often less transparent than civilian facilities. Limited access for independent observers, classified information, and national security concerns can make it difficult to identify potential problems and to hold prison authorities accountable for misconduct.

**Conditions of confinement:** Like civilian prisons, military prisons can face overcrowding, understaffing, and inadequate infrastructure. These can result in violations of basic human rights. However, due to the peculiarities of military service, at times service members who are incarcerated in military detention facilities may find it difficult to seek legal redress through civil lawsuits for mistreatment or negligence. For example, the *Feres* doctrine is a legal principle in the US articulated by the US Supreme Court in *Feres v. United States* (1950) that prevents active-duty service members from suing the government for injuries, except in very limited situations.<sup>31</sup> The *Feres* decision’s failure to provide a clear definition of ‘incident to military service’, has resulted in the doctrine’s broad application and a denial of remedial compensation to numerous soldiers injured by the military.<sup>32</sup> Experts and even justices of the Supreme Court have criticized the doctrine. Opponents have argued that it should be statutorily limited in order to provide service members with a greater opportunity for recovery, and thus force the US military to improve conditions in prisons, set out how sexual harassment is dealt with, and so forth. Another issue to be considered is the growing number of women in the military. Military prisons must have adequate facilities and programs specific to their needs, including access to appropriate healthcare and

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29 UN Human Rights Special Procedures, Technical Visit to the United States and Guantánamo Detention Facility by the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, 14 June 2023. Available at <https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/2023-06-26-SR-terrorism-technical-visit-US-guantanamo-detention-facility.pdf>.

30 Council of Europe, European Prison Rules, June 2006. Available at <https://rm.coe.int/european-prison-rules-978-92-871-5982-3/16806ab9ae>.

31 *Feres Doctrine*. *Legal Information Institute, Cornell Law School*. (in 2020, a limited exception for medical malpractice claims by service members was passed into law by the U.S. Congress) Available at [https://www.law.cornell.edu/wex/feres\\_doctrine](https://www.law.cornell.edu/wex/feres_doctrine).

32 Price, Kaitlan. “Feres: The “Double-edged Sword””. *Dickinson Law Review*, vol. 125, 3. 2021. Available at <https://ideas.dickinson-law.psu.edu/cgi/viewcontent.cgi?article=1121&context=dlr>.

counseling services.

**Fairness and impartiality:** The hierarchical structure of the military fosters an environment where soldiers are expected to obey orders from their superiors. The potential for a commanding officer's influence to affect disciplinary decisions and treatment within the prison raises concerns about fairness and impartiality. When soldiers perceive the military justice system as being susceptible to command influence, it can erode trust in the entire system and discourage reporting of wrongdoing.

In the DCAF-NATO PA survey, most respondents shared that their States do not operate separate military prisons. For example, '[t]here are no military prisons in Latvia. However, the Saeima plays a role in overseeing the administration of prisons, and this oversight is conducted through various mechanisms. The aim of parliamentary oversight is to ensure transparency, accountability, and compliance with legal standards within the prison system.' Poland's survey response was similar: 'there are no military prisons, only military arrests exist. The overseeing of prisons is carried out within the scope of a general Sejm's oversight function.' Norway and Denmark similarly do not operate prisons; in France, 'deputies and senators have free access to premises used for detention.' It does not appear that France operates military prisons.

Canada was the sole survey respondent that operates military prisons; its survey explained that military judges can sentence a military convict to serve their prison sentence in either a military or civilian prison, and that, 'sentences of less than two years can be served at the Canadian Forces Service Prison and Detention Barracks in Edmonton, Alberta, or in a provincial prison. Prison sentences of two years or more must be served in a federal penitentiary.' Furthermore, under the 1867 Constitution Act, Parliament has 'responsibility for the establishment, maintenance, and administration of penitentiaries (for sentences of two years or more)' and this act also grants Parliament 'jurisdiction over everything that includes military service.'

The UK uses its Military Corrective Training Centre (MCTC) to provide corrective training for servicemembers sentenced to periods of detention. As noted above it is not considered a prison. It is run by the Ministry of Defence. In the US, Congress exercises its oversight of the military prison system as part of its general oversight of the military justice system. While Congress rarely pays attention to regular military prisons, however, given its notoriety, various Congressional members periodically conduct in-person visits to the military prison at Guantanamo Bay.

## MILITARY COURTS

Military courts serve several important functions. These functions are tailored to address the unique circumstances and needs of armed forces personnel. One of the primary functions of military courts is to adjudicate cases involving military offences, which may include violations of military regulations, disciplinary infractions, and other breaches of military law. By holding service members accountable through fair and impartial trials, military courts can contribute to the overall discipline, cohesion, and effectiveness of the force. It is worth noting that military courts enforce military law by interpreting and applying relevant statutes, regulations, and codes of conduct and serve as forums for resolving disputes and conflicts that arise within the military context. Depending on the courts'

jurisdiction, these disputes may involve such matters as contract disputes, grievances, or disputes related to benefits and entitlements; however, their primary role is as a forum for the adjudication of criminal cases.

Recently, the existence of many traditional military tribunals has been questioned. It has been argued that there is a lack of independence and impartiality, as demanded by pertinent human rights instruments and decisions of treaty bodies. Many military courts no longer exist in isolation: their military judicial competences have been embedded in or transferred to civilian courts.<sup>33</sup> Indeed, even liberal democracies have had to defend their systems against challenges based on human rights jurisprudence or rights guaranteed by national constitutions. Some have retained military courts within their judicial systems. The reasons for doing so include the ability to deploy military courts to areas of operations. (Still, most major military felony prosecutions for offences committed on deployment are tried back in the sending State.) The focus of most States in this respect is, ostensibly to facilitate the administration of justice for deployed forces. This is said to have the twin advantage of conducting the trial where witnesses and evidence will be close at hand, while demonstrating to the local populace that justice is being done. Combat zone cases are almost never prosecuted where troops are deployed, a fact that undermines the argument that military courts are needed for good order and military discipline among deployed personnel.

Of note, parliamentary oversight of military courts, is quite limited even when it exists. Respondents to the survey replied ‘no’ to this question, some again citing the separation of powers. Some, such as Latvia, noted the non-parliamentary mechanisms that do provide such oversight: ‘[o]versight mechanisms over the judges realizes Judicial Disciplinary Committee, Judicial Ethics Commission and Judicial Qualification Committee.’ The Danish authorities advised that, ‘Danish judges are under the oversight by the Special Court of Revision.’

## 1.4 CIVILIANIZATION OF MILITARY JUSTICE

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A significant historical trend, increasingly evident in the past century, is the civilianization of military justice. In certain jurisdictions, authority over military justice has been transferred from military to civilian courts. And in many systems, civilian influence over military legal matters has grown.<sup>34</sup> Eugene Fidell notes that ‘especially since World War II, military justice has increasingly approximated civilian criminal justice.’<sup>35</sup> While there are widespread global patterns, military justice systems remain highly variable even among countries that have common legal traditions. Indeed, the structure and functioning of military justice systems are influenced by the values, politics, and historical context of each country. A fundamental division is that between systems

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35 Eugene R. Fidell, *Military Justice: A Very Short Introduction* 22 (2016).

based on common law and those based on civil law.<sup>36</sup> Military justice systems rooted in common law principles frequently vest military courts with exclusive jurisdiction over crimes perpetrated by military personnel. In certain civil law-based European jurisdictions, however, civilian courts have jurisdiction over military cases.<sup>37</sup>

The survey results (plus additional US and UK findings) suggest two conclusions: 1) the diversity of methods employed by States to dispose of military member criminality, and 2) confirmation that the civilianization of military justice,<sup>38</sup> historically a unique set of processes operated nearly entirely by and within the military organizational hierarchy, is accelerating, leading to a declining number of peacetime military court systems. The results indicate a growing trend by States to utilize the same processes for both civilian and military criminality. This trend away from military courts – away from what is classically referred to as ‘military justice’ – is leaving military courts and justice systems as relics of the past, albeit with permanent statutory provision for their revival in future wars (the feasibility of starting up a disused justice system during armed conflict seems unrealistic).<sup>39</sup> This trend is even evident in the US, which maintains one of the most militarized military justice systems within NATO; the number of courts-martial, as well as non-judicial punishment, within its Armed Forces has drastically declined since the 1970s.<sup>40</sup> Indeed, the decline has been so dramatic that a recent Secretary of Defence urged senior commanders to send more cases to courts-martial.

The heterogeneity in military justice systems across NATO member States is confirmed through the existing military penal (criminal) and/or disciplinary code. While most responding States indicated that they have either a military penal code, a disciplinary code, or both, the details as to how, to whom, and when these codes apply vary greatly. Most respondent States only utilize their military penal code during war, and likewise only operate military courts in time of war; wartime jurisdiction of such courts would extend over military members, civilians accompanying the force, and prisoners of war. (Denmark’s military penal code during war further applies to ‘anybody violating certain provisions of the Military Penal Code’). Some States whose legislation dictates that they only operate military courts in time of war continue to possess a separate military penal code that is also operative in peacetime; this separate code is applicable primarily to military members as

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36 Mindia Vashakmadze, *Guidebook: Understanding Military Justice*, Geneva Centre for the Democratic Control of Armed Forces 11 (2010). Available at [https://www.dcaf.ch/sites/default/files/publications/documents/Milit.Justice\\_Guidebook\\_ENG.pdf](https://www.dcaf.ch/sites/default/files/publications/documents/Milit.Justice_Guidebook_ENG.pdf).

37 *Id* at 11.

38 The “civilianization” of military justice has been aptly referred to as a “rapprochement” of civilian and military justice practices; see, e.g., Palmer, Edith. “France: Military Justice System (2013)”. *The Law Library of Congress. Global Legal Research Center*. July 2013. Available at <https://andyreiter.com/wp-content/uploads/military-justice/fr/IO,%20NGO,%20and%20Foreign%20Government%20Reports/France%20-%202013%20-%20Law%20Library%20of%20Congress%20-%20Military%20Justice%20System.pdf>. (“The object of the law was to further enable a rapprochement between the civilian criminal law system and the military criminal law system as well as to integrate the military justice into civil law justice during times of peace.”).

39 The viability and normativity of resorting to military courts in wartime, when such courts are not employed during peacetime, is a subject in need of greater attention, particularly given the extension of civilian courts’ footprint through modern communication technology.

40 Dwight H. Sullivan, *The Military Justice Decrescendo*, 68 *Vill. L. Rev.* 849 (2024). Available at <https://digitalcommons.law.villanova.edu/vlr/vol68/iss5/5>.



well as exceptional civilians, and its offences/offenders are tried during peacetime in civilian courts. Denmark, for example, has a military penal code during peacetime, but cases are prosecuted by special military prosecutors in the ordinary civilian courts: during peacetime, the Danish survey response explains, '[g]enerally speaking, the Military Penal Code and the Military Disciplinary Act apply to military personnel in active service and discharged military personnel regarding military duties imposed on such personnel after their discharge'.<sup>41</sup>

France provides a further variant on the civilianization of military justice. It prosecutes military personnel in peacetime in civilian courts that are specialized in military matters. The French survey response explained that, '[i]n time of war, offences within the jurisdiction of the territorial courts of the armed forces and the military courts of the armies are prosecuted, investigated and judged according to the rules of the code of military justice (article L. 3 of the CJM). In peacetime, offences falling within the jurisdiction of ordinary courts specializing in military matters are prosecuted, investigated and judged according to the rules of the Code of Criminal Procedure, subject to the specific provisions of articles 698-1 to 698-9 of the same code and, when committed outside the territory of the Republic, specific provisions of the Code of Military Justice (article L. 2 of the CJM)'.<sup>42</sup> As an example of a distinct disciplinary code vesting authority in military commanders to deal with minor infractions, French '[m]ilitary discipline is the responsibility of the military authority which is competent to apply disciplinary sanctions which, when they are custodial, cannot exceed sixty days (article L. 311-13 of the Code of Military Justice.' This makes sense given that in 1982 France 'abolished the permanent courts of the armed forces. Since then, offences and crimes committed in peacetime by soldiers while performing their service have come under common law jurisdiction. The provisions of the code of military justice therefore apply in times of war.' Denmark also strongly distinguishes their military disciplinary code from their military penal code, with the responsibility for the disciplinary code resting exclusively with military commanders, and criminal offenses separately handled by special military prosecutors: according to the French survey response, 'there is a clearly defined separation between military criminal justice operated by the Military Prosecution Service and summary proceedings (disciplinary offences) operated by the chain of command.'

A minority of States responding to the survey operate distinct military courts (along with a distinct military penal code) during peacetime as well as during war (for prosecution of both military members as well as for civilian employees of the military). Take, for instance, Poland: 'Part III of the Criminal Code of 6th June 1997 titled "Military Part" refers to criminal accountability of military personnel (soldiers). Rules regarding disciplinary responsibility are included in Part 13 of the Act of 11th March 2022 on Defence of the Homeland (Polish: *ustawa o obronie Ojczyzny*).' The Polish respondent explained that '[t]here are no specific rules applicable only during war, thus the above-mentioned statutes apply both in times of peace and war...[a]s a rule provisions of the above-mentioned statutes apply both within the country and abroad.'

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41 Stevnsborg, Lars. "The Danish Military Justice System". *Defence Judge Advocate Corps*. 2020. Available at <https://www.fauk.dk/globalassets/fauk/dokumenter/2020/-the-danish-military-justice-system-2020-.pdf>.

42 Both the French and Canadian surveys were provided in French and hence this report based on translations of the same.

Likewise, Canada has not fully followed the general trend of utilizing civilian courts to prosecute military personnel during peacetime. Courts-martial (military courts) are still utilized during peacetime for certain military-related offenses as defined under the Code of Service Discipline, whereas other offenses (deemed civil) are exclusively prosecuted in peacetime in civilian courts. 'Civil offences punishable under Canadian federal laws, such as that under the Criminal Code, may also constitute military offences under section 130 of the NDA national Defence Act. However, the NDA provides certain limitations on the jurisdiction of courts martial, for example, under section 70 of the NDA it is provided that the court martial does not have jurisdiction to try persons accused of murder, manslaughter guilty of certain serious offences under the Criminal Code.'

The US utilizes a comprehensive all-services military penal code, the Uniform Code of Military Justice (UCMJ) that applies during war and peace, with no geographical jurisdictional limit. This federal law, first enacted in 1950 and repeatedly amended, includes a robust list of criminal offenses. These include both common law crimes analogous to those in civilian penal codes such as murder, sex offenses, and burglary. But this also includes military-unique crimes with no civilian analogy, such as malingering and desertion. The UCMJ also includes procedural statutory requirements (such as provisions for preliminary hearings under Article 32, UCMJ). The UK, similarly, employs a distinct military penal code that applies in war and peace – the Armed Forces Act, 2006 – and operates military courts presided over by civilian judges. This military statute incorporates all civilian crimes that apply in England and Wales, and additionally covers numerous military-unique offenses, similar to those found in the US's UCMJ.

Most responses to the survey indicated that when a State's military criminal code does apply, it applies to those serving in the military as well as to civilians employed by or otherwise accompanying the force. The UK's Armed Forces Act provides that civilians serving with the military are subject to military discipline; its standing military court has 'global jurisdiction over all Service personnel and civilians subject to Service discipline (e.g. family members, civilian contractors, teachers, administrative staff when serving abroad).'<sup>43</sup> Only a few respondents indicated that their military justice code and/or military courts extended to military retirees. The US system is unique in clearly providing military justice criminal jurisdiction over all retired military regulars (and retired reservists who are receiving military hospitalization). This is in stark contrast to the UK system: retirees are no longer regarded as members of the His Majesty's Forces and hence are not subject to 'Service law' (military criminal law). Canadian retirees are not typically subject to military jurisdiction, but 'a retired member of the military may be subject to a charge or arrest under the CSD after his release from the Canadian forces provided that he was subject to the code at the time of the alleged commission of the offence of military order.' Denmark's military criminal code 'applies to i. military personnel and to ... iii. retired military personnel on the duties they might have in retirement.'

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43 Courts and Tribunals Judiciary. Military. Available at <https://www.judiciary.uk/about-the-judiciary/our-justice-system/jurisdictions/military-jurisdiction/>

## 1.5 CIVILIANS UNDER THE JURISDICTION OF MILITARY JUSTICE

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In most countries, civilians generally do not fall under the jurisdiction of the military justice system. However, there is no universally accepted rigid approach to this question. International human rights law increasingly disfavours subjecting civilians to military jurisdiction, even in cases of emergency.<sup>44</sup> Decaux's Principles 6 and 7 stipulates that in no case should minors be placed under the jurisdiction of military courts and that conscientious objector status should be determined by the civil courts.<sup>45</sup> The Human Rights Committee argues that trials of civilians by military or special courts should be exceptional and limited to cases where the State can show that resorting to such trials is necessary and justified by objective and serious reasons, and where the regular civilian courts are unable to undertake the trials.<sup>46</sup>

Among the member States of the Council of Europe, Turkey is the only country whose Constitution explicitly provides that military courts may try civilians in peacetime. In Italy, treason or rebellion can be dealt with under the military code, and in Norway breaches by a civilian of the Geneva Conventions and the Additional Protocols are dealt with under military law.<sup>47</sup> In the UK, the Court Martial has global jurisdiction over all Service personnel and civilians subject to Service discipline (including family members, civilian contractors, teachers, administrative staff when serving abroad).<sup>48</sup> A particular group of civilians, those deployed with or accompanying the armed forces overseas, also known as 'associated civilians' falls, too, under the military justice systems in some countries.<sup>49</sup>

Such a broad application of military justice legislation raises a number of concerns, potentially affecting fairness and due process. There have been documented cases when journalists or human rights activists who criticized the government and/or the military have been prosecuted within the military justice system, where they lacked the protections available to defendants in the civilian courts. This raises concerns about freedom of speech. For example, in Egypt, several journalists have been detained on military prosecutors' orders and faced trial in the military court because of

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44 Vashakmadze, Mindia. "Understanding Military Justice". Geneva Centre for Security Sector Governance (DCAF). 2010. Available at [https://www.dcaf.ch/sites/default/files/publications/documents/Milit.Justice\\_Guidebook\\_ENG.pdf](https://www.dcaf.ch/sites/default/files/publications/documents/Milit.Justice_Guidebook_ENG.pdf).

45 UN Commission on Human Rights (Sixty-second session). "Civil and Political Rights, Including the Question of Independence of the Judiciary, Administration of Justice, Impunity. Issue of the administration of justice through military tribunals". United Nations. 13 January 2006. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/106/77/PDF/G0610677.pdf>.

46 UN Human Rights Committee. "General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial". *UN Human Rights Committee*. 23 August 2007. Available at <https://www.refworld.org/docid/478b2b2f2.html>.

47 William Edward Stubbs & James Stuart-Smith. "Military Law". *Britannica*. Available at <https://www.britannica.com/biography/Jean-Balue>.

48 Courts and Tribunals Judiciary. Military. Available at <https://www.judiciary.uk/about-the-judiciary/our-justice-system/jurisdictions/military-jurisdiction/>.

49 Liivoja, R. (2016) 'Trying civilian contractors in military courts: a necessary evil?', in A. Duxbury and M. Groves (eds.) *Military Justice in the Modern Age*. Cambridge: Cambridge University Press, pp. 81–105.

publishing allegedly false news about a foiled military coup.<sup>50</sup> In Bahrain, in 2017 the Constitution was amended in order to allow for the military trial of civilians, something that has caused harsh criticism from the international community.<sup>51</sup> In Argentina in the 1970s military courts were used to try civilians in times of public disorder or emergency.<sup>52</sup> All Palestinians, wherever they reside in the West Bank, fall under the jurisdiction of Israel's military courts if they breach certain laws: these include membership and activity in an unlawful association, public order offenses, and being in Israel illegally.<sup>53</sup>

The European Court of Human Rights (ECHR) has a number of cases related to the violation of rights of the civilians in the military courts. In *Mustafa and Chomakov v. Bulgaria*, the first applicant was a civilian and the second was a former military officer. The two were charged with smuggling goods, and with acting as part of an organized crime group together with three other persons. On grounds of the military status that the second applicant had at the time the offense was committed, their case was examined by the Military Court. The applicants were found guilty on all charges. The ECHR has ruled that Mustafa's right to a fair trial under Article 6 was violated.<sup>54</sup> In *Ergin v. Turkey*, the ECHR also found a violation of the right to a fair trial. Ahmet Ergin, a Turkish national, was a newspaper editor. Despite being a civilian, he was tried by the military court for incitement for publication of an article that allegedly encouraged his readers to evade military service. The ECHR found that the applicant's doubts about the independence and impartiality of the military court were objectively justified.<sup>55</sup>

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- 50 Bahgat, Hossa. "Egypt: Free Journalist Facing Military Prosecution". Human Rights Watch. 9 November 2015. Available at <https://www.hrw.org/news/2015/11/09/egypt-free-journalist-facing-military-prosecution>.
- 51 United Nations. "Bahrain: UN Rights Experts Condemn Military Court Convictions, Cite Torture Allegations". *Human Rights Office of the High Commissioner*. Available at <https://www.ohchr.org/en/press-releases/2018/04/bahrain-un-rights-experts-condemn-military-court-convictions-cite-torture>.
- 52 International Commission of Jurists. "Argentina: military jurisdiction and domestic legislation". 20 February 2004. Available at <https://www.icj.org/wp-content/uploads/2004/02/argentina-military-jurisdiction-analysis-brief-2004.pdf>.
- 53 Francis, Sahar. "Israel's Military Courts for Palestinians are a Stain on International Justice". *The Guardian*. 6 March 2021. Available at <https://www.theguardian.com/commentisfree/2021/mar/06/israel-military-courts-palestinians-law-uk>.
- 54 European Court of Human Rights. *Application no. 1230/17, Hyusein Ahmed MUSTAFA and Valentin Nikolov CHOMAKOV against Bulgaria*. 21 December 2016. Available at [https://hudoc.echr.coe.int/eng/#{%22itemid%22:\[%22001-173631%22\]}](https://hudoc.echr.coe.int/eng/#{%22itemid%22:[%22001-173631%22]}).
- 55 European Court of Human Rights. *Application no. 47533/99. CASE OF ERGIN v. TURKEY (No. 6)*. 4 May 2006. Available at [https://hudoc.echr.coe.int/#{%22fulltext%22:\[%22military%20court%22\],\[%22documentcollectionid%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\],\[%22itemid%22:\[%22001-75327%22\]}](https://hudoc.echr.coe.int/#{%22fulltext%22:[%22military%20court%22],[%22documentcollectionid%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],[%22itemid%22:[%22001-75327%22]}).

## CONCLUDING REMARKS

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Military justice – the general term used in reference to specialized criminal justice proceedings, rules and offenses for those serving in a nation’s armed forces – is one component of a larger military legal ecosystem, one based on the rule of law. Military justice should ensure that all members of the armed forces receive fair and just treatment under the law; when this goal is met, military justice strengthens a nation’s armed forces as well as the national democratic fabric. Limited jurisdictional reach coupled with robust oversight mechanisms are essential aspects of a healthy military justice system, one necessary for delivering justice impartially and fairly in times of peace and of war.

A robust military justice system, which ensures due process and upholds the rights to a fair trial, can bolster adherence to commands. They foster good order and discipline. The most effective military justice systems are complemented by a parallel administrative disciplinary system that includes summary proceedings for minor misconduct.<sup>56</sup> The interaction between these two systems contributes to the maintenance of a well-ordered military institution, ensuring adherence to international humanitarian law and the broader principles of the Rule of Law. The intention is to make it function as an independent and unbiased criminal justice system founded on principled decision-making rooted in facts and evidence fairly presented in a transparent process. Achieving impartiality and independence does not happen automatically. After all, a military justice system functions within a strictly hierarchical, command-driven organization that values obedience over critical thinking; indeed, military culture prizes loyalty to mission and to the unit above all else.<sup>57</sup> The inherent tension between the military justice system’s objective, impartial, and principled assessment of facts through formal procedures, on the one hand, and the command-driven culture prevalent in military organizations on the other, is there within all military justice systems. It is imperative to acknowledge this tension and fashion procedural safeguards in response.

There is a growing tendency among nations to apply civilian criminal justice processes to military personnel serving within their armed forces. Some liberal democracies have treated military courts and justice systems as all but obsolete. While these systems may retain statutory authority for reactivation during times of war, the resurrection of a disused justice system while bullets are flying seems unrealistic. While there is little support for such a change in the US, the fact remains that use of the military justice system has declined precipitously over the last half-century.

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56 See 2019 Yale Draft Principles For Military Summary Proceedings. Available at <https://drive.google.com/file/d/16T2kbTDGdVKXCjkrazns-aOLjdHoYex4/view>.

57 Samuel P. Huntington, *The Soldier and the State: The Theory and Practice of Civil-Military Relations* (Cambridge: Belknap Press, 1985), at 9. (“The military ethic is basically corporative in spirit.”)

The practice of trying civilians in military courts remains a contentious issue. States with compromised democratic traditions, such as Pakistan, Uganda, Egypt, Tunisia, and Lebanon, account for the vast majority of such cases. While military trials of civilians remain uncommon, when they do happen they raise grave concerns about fairness, due process, and potential human rights violations. This is true even in States with systems that are entirely independent and impartial. The lack of meaningful civilian oversight within military justice systems and the potential for bias against civilian defendants can undermine the legitimacy of such trials. A clear distinction between military and civilian jurisdiction, coupled with strong safeguards for due process and independent oversight, is crucial.



## 2. PARLIAMENTARY OVERSIGHT OF MILITARY JUSTICE AND ITS INSTRUMENTS

This chapter examines parliamentary authority for overseeing military justice systems. It follows the legislative, budgetary, control, communication, and election/dismissal powers exercised by parliaments in the context of security policy-making.<sup>58</sup> It relies heavily on a survey conducted among NATO member state parliaments, which was set in motion to establish good practice and to provide recommendations for reinforcing parliamentary oversight over military justice.

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<sup>58</sup> S. Dieterich, H. Hummel, S. Marschall. "Strengthening Parliamentary 'War Powers' in Europe: Lessons from 25 National Parliaments". *Geneva Centre for DCAF*. Policy Paper 27 (2008). Available at <https://www.dcaf.ch/sites/default/files/publications/documents/PP27.pdf> (accessed 4 Apr 2024).

## 2.1 RELEVANCE OF PARLIAMENTARY OVERSIGHT

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The Canadian Airborne Regiment (CAR) was sent to Somalia, a hot and dusty nation wracked by famine, civil war and bloodshed, on 15 December, 1992, as part of a UN humanitarian mission.<sup>59</sup> Sixteen-year-old Shidane Arone broke into the Canadian compound and was captured. He was tied up, blindfolded then punched and he was dead by morning. Soldiers involved in the torture of Arone took ‘trophy’ photos of the abuse, a horrific series of pictures similar to those that led to the American military scandal at Abu Ghraib in Iraq a decade later<sup>60</sup>. In May, 1993, the first charges were laid against soldiers in the CAR. On 23 January, 1995, then-defence minister David Collenette announced he was disbanding the Airborne regiment.<sup>61</sup> The Canadian government initiated several investigations into the conduct of its soldiers in Somalia. The most notable of these inquiries was the Somalia Inquiry, also known as the Deschênes Commission, which was established in 1995 to investigate the events surrounding the Somali peacekeeping mission. The Somalia Commission of Inquiry, headed by Justice Gilles Létourneau, held that ‘the military justice system in place during the Somalia deployment, and largely still in place today, exhibited serious deficiencies.’<sup>62</sup> The Somalia experience served as a wake-up call for the Canadian Parliament, prompting a fundamental re-evaluation of the country’s approach to military justice and accountability. The reforms introduced represented a significant step forward in ensuring that the Canadian Armed Forces uphold the highest standards of conduct and ethics in their operations, both at home and abroad. Combined with the increasing influence of the Charter as well as former Chief Justice Brian Dickson’s separate but comprehensive report on the state of Canadian military justice, the Somalia affair led Parliament to enact a raft of military reforms. These started in the late 1990s but extended well into this century.<sup>63</sup> From 1998 to 2015, Parliament would pass some twelve bills that implemented military justice reform<sup>64</sup>. It reduced, among other things, the types of courts martial from four to two, introduced reforms to the composition of courts-martial panels and improved security of tenure for military judges.<sup>65</sup> At the same time, however, many MPs, while pushing for increased reform, also defended the need for a separate military justice system. Mario Laframboise,

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59 Postmedia News. “Look Back: 25 Years since Somalia Affair Stained Canada’s Reputation”. 19 January 2020. Available at <https://torontosun.com/news/national/look-back-25-years-since-scandal-led-to-airborne-regiment-being-disbanded>

60 Ibid.

61 Lim, Preston Jordan. “Parliamentary Debates as a Driver of Military Justice Reform in Canada”. *Canadian Journal of Law and Society / Revue Canadienne Droit et Société*, 2020, pp. 1–18. Available at <https://www.cambridge.org/core/journals/canadian-journal-of-law-and-society-la-revue-canadienne-droit-et-societe/article/parliamentary-debate-as-a-driver-of-military-justice-reform-in-canada/AB5F88837E52FB91AE13087AABEEF161>.

62 Ibid.

63 Ibid.

64 Ibid.

65 Ibid.



a BQ MP, argued that ‘military justice must become more like civilian justice,’ but stressed that the Canadian Armed Forces still had to have ‘its own justice system.’<sup>66</sup>

This case demonstrates that parliaments can serve as a driving force for democratic debate, reform and dialogue on matters pertaining to military justice. The oversight of military justice institutions by parliamentary bodies is a fundamental aspect of democratic governance and a key element in ensuring the rule of law within a nation. The military, as an essential component of the state, operates under its own legal framework, and it is imperative that there be a robust system of checks and balances to prevent any abuse of power. Parliaments should have the power to pass military justice legislation and to approve the related budget<sup>67</sup>. Parliamentary bodies are responsible for enacting legislation that defines the scope and limits of military justice. This includes laws related to military discipline, court-martial procedures, and the rights of military personnel. Regular reviews and updates of these laws are essential to address emerging challenges and to align military justice practices with evolving societal norms. Financial oversight is a powerful tool for parliamentary bodies to influence military justice institutions. Through the allocation of budgets and appropriations, parliaments can ensure that military courts have the necessary resources to function effectively. Simultaneously, this control mechanism allows parliaments to demand transparency in financial management and to scrutinize expenditure to prevent misuse of funds. Protection of human rights within the military justice system is another critical aspect of parliamentary oversight. Legislators must ensure that military personnel enjoy the same fundamental rights and protections as civilians. Parliamentary committees on defence and security are well-placed to receive regular reports from military justice institutions. These reports can cover a range of issues, including the number of court-martial cases, disciplinary actions, and adherence to legal standards. Through questioning and inquiry, legislators can hold military justice officials accountable for their decisions and actions. Finally, while parliamentary involvement in appointing representatives of the military justice system remains restricted, this function holds significant potential as a crucial check and balance mechanism. Through parliamentary approval, candidates can be thoroughly vetted to ensure they meet the required qualifications, possess the essential expertise, and exhibit the ethical standards necessary for upholding principles of fairness and impartiality in their respective roles.

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66 Ibid.

67 Vashakmadze, Mindia. “Understanding Military Justice: A Practice Note”. DCAF. 2018. Available at [https://www.dcaf.ch/sites/default/files/publications/documents/Military-Justice\\_Practice-Note\\_eng.pdf](https://www.dcaf.ch/sites/default/files/publications/documents/Military-Justice_Practice-Note_eng.pdf).

## 2.2 CHALLENGES OF MILITARY JUSTICE OVERSIGHT

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The effective oversight of military justice is essential for upholding the principles of transparency, accountability, and the rule of law. However, this task has many challenges, including secrecy, institutional resistance, limited access to military premises, resource constraints, and rapid technological advancements. Addressing these challenges requires concerted efforts from policymakers, oversight bodies, and relevant stakeholders to strengthen transparency, promote accountability, and ensure that military justice systems operate in accordance with democratic principles and human rights standards.

### CONCURRENT JURISDICTION

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The coexistence of civilian and military jurisdictions over certain offenses can lead to unintended consequences. Instead of bolstering discipline, efficiency, and morale, it sometimes has the opposite effect, particularly in high-profile cases involving senior military figures. This arrangement erodes public and armed forces confidence rather than instilling trust. Concurrent jurisdiction presents a challenge for parliamentary oversight, which is essential but difficult to achieve during such circumstances. For instance, in cases where civilian and military courts both have jurisdiction, the question arises as to which authority should have precedence, leading to potential conflicts and delays in justice.

### SECRECY

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Military justice proceedings and decisions may involve classified or sensitive information related to national security. This limited access to information can hinder parliamentary oversight efforts, as lawmakers may not have full visibility into military court cases or disciplinary actions. This lack of transparency hampers lawmakers' ability to fully scrutinize military court cases or disciplinary actions. Without adequate access to information, parliamentary committees tasked with oversight will struggle to assess the fairness and legality of military justice decisions.

### RESTRICTED ACCESS TO MILITARY PREMISES

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Limited access to military facilities, covert operations, and discretionary judgments, particularly in times of armed conflict, poses significant obstacles to the effective oversight of military justice operations. To overcome these hurdles, independent oversight bodies with explicit mandates to access military installations and even battlefields can play a crucial role in providing external scrutiny of military justice proceedings.

## INSTITUTIONAL RESISTANCE

Military leadership and legal authorities may resist external scrutiny of military justice processes, viewing it as an encroachment on their authority. Military fellowship and adherence to the chain of command may prioritize loyalty over transparency and accountability, making it difficult for external bodies to scrutinize internal processes effectively. This resistance creates obstacles to establishing meaningful parliamentary oversight and accountability mechanisms. Overcoming institutional resistance requires efforts to enhance transparency, promote civilian-military dialogue, and strengthen legal literacy among parliamentarians.

## RESOURCE LIMITATIONS

Parliamentary committees tasked with overseeing the military justice system often face resource constraints, including limited staffing, budgetary allocations, and time constraints. These limitations can impede the thoroughness and effectiveness of oversight activities, undermining the ability of lawmakers to fulfill their oversight responsibilities adequately.

## POLITICAL INCENTIVES

Due to the sensitivity surrounding military justice matters, parliamentary oversight may not always attract public attention or electoral support. Elected representatives may lack the political will to invest time and resources in oversight activities that do not yield immediate political dividends.

## NATIONAL SECURITY THREATS

Perceptions of escalated national security threats often serve as justification for actions that disproportionately impede democratic governance, infringe upon human rights, and disregard the rule of law. Robust oversight mechanisms are essential to safeguard against such tendencies, ensuring that intelligence evaluations remain grounded in reality and that they do not result in unwarranted limitations on civil liberties.

## TECHNOLOGICAL ADVANCEMENTS

Rapid advancements in military technologies outpace the capacity of oversight bodies to adapt their legal mandates and expertise. To bridge this gap, technical experts are essential in providing oversight authorities with key information on emerging technologies. Additionally, parliaments must ensure that legal frameworks keep pace with technological developments to maintain effective oversight of military activities.

## 2.3 PARLIAMENTARY LEGISLATIVE POWERS, PERIODIC REVIEWS AND REPORTS

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### LEGISLATIVE POWERS

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Parliaments play a significant legislative role in shaping military justice systems, ensuring that they uphold the Rule of Law, protect human rights, and at the same time maintain discipline within the armed forces. The legislative function of parliaments in relation to military justice encompasses enacting laws, revising legislation, and providing oversight to ensure compliance with legal norms and standards. These laws establish the legal framework within which military personnel are held accountable and ensure that justice is administered fairly and impartially within the armed forces. Also, parliaments have the power to amend existing laws related to military justice in response to changing societal norms, legal developments, or operational requirements. Amendments may be made to address shortcomings in the legal framework, enhance protections for service members' rights, or improve the effectiveness of disciplinary procedures. In addition, parliaments may ratify international treaties and conventions related to military justice, incorporating their provisions into domestic law and ensuring compliance with international legal obligations.

Parliaments in Euro-Atlantic countries enact laws and address deficiencies of military justice system. In the survey, Latvia noted that it had a military penal code and that its 'current Criminal Law has been in force since April 1, 1999 and is being amended relatively regularly.' Latvia's 'State Defence Service Law came into effect on April 19, 2023 and it grants the military police the competence over administrative violations derived from this law (e.g. avoiding the draft).' France reported: 'Article 1 of Law No. 2007-289 of March 5, 2007 amending the Code of Military Justice and the Defence Code ratified Ordinance No. 2006-637 of June 1, 2006 amending the Code of Military Justice' and noted that further amendments were made in 2013. Canada provided that, 'the Code of Service Discipline, CSD, appears under Part III of the NDA and was adopted in 1985. There is no other military penal code.'<sup>68</sup> Norway noted that its last military penal code was enacted in 1902, and military courts were abolished in 1994; Denmark's military penal code was enacted in 1973; Poland's in 1997, when both the current criminal code and a 'Law on the System of Military Courts' were enacted.

The UK overhauled its military justice system with the Armed Forces Act 2006, effective in 2009. Before that time, all three Services had their own separate system of law. The AFA must be renewed every five years, with the latest renewal being made in 2021. In the US, the UCMJ was enacted in 1950 and took effect in 1951, replacing the Articles of War, the Articles for the Government of the Navy, and the Disciplinary Laws of the Coast Guard. The UCMJ was amended in 1968 to provide for military judges, and subsequently amended at infrequent intervals. The

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<sup>68</sup> The authors of this report note that the Canadian Code of Service Discipline dates back to the first version of the "modern" National Defence Act, which was enacted in 1950. The reference to 1985 in the survey response is to the last time that the Government of Canada issued Revised Statutes of Canada.

last major statutory reform occurred in 2022, when Congress transferred commanders' power to dispose of a number of important offences (notably sex offenses) to uniformed lawyers outside the chain of command.<sup>69</sup>

Denmark explained: 'In 2005 a reform of the Danish Military Justice System – comprising the Military Penal Code, the Military Criminal Procedural Act and the Military Disciplinary Act – was passed through Parliament and came into force on 1 January 2006. Since 2005 some amendments to the Military Penal Code have been passed by Parliament pertaining: enhanced sanctions for torture (2008), personal jurisdiction issues (2017) and military assistance to the Police (2018).'

The Danish survey response added:

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.

Further, the military justice system was divided in two parts: criminal proceedings and summary proceedings (disciplinary offenses in the Military Disciplinary Act).

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 Military Prosecution Service 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.

## Periodic reviews

Most of the participating NATO States do not have statutorily required periodic reviews of their military justice systems. Most likely due to the fact that the majority of respondents do not utilize a separate criminal justice system for those serving in the military, at least during peacetime. Any such periodic reviews relevant to prosecutions of those in the military are those generally conducted within the State's civilian criminal justice processes. For example, the Latvian respondent advised:

[N]ot specifically. Such reviews are decentralized and the relevant information could be found in the annual reviews of the respective competent government institutions. For example,

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<sup>69</sup> National Defense Authorization Act for Fiscal Year 2022, Pub. L. No. 117-81, 135 Stat. 1541 (2021).

Section 23 of the Office of the Prosecutor Law, the Prosecutor General shall, by March 1 each year, submit a report to the Saeima on the previous year's work. This would normally also include information on criminal cases related to the military.

This was supplemented with the comment that, '[t]here is no public review of disciplinary proceedings. Regarding criminal proceedings, the results present in the annual reviews normally take the form of statistics – the number of cases initiated, based on which article of the Criminal Law, and by which institution.' Norway noted, meanwhile, that, '[p]eriodic reports on these issues are not required, but the status of military justice is mentioned in the annual reports of the Armed Forces, the Judge Advocate General and the Ombudsperson for the Armed Forces.'

Canada, which continues to operate separate military courts during peacetime for the prosecution of military personnel under a distinct military criminal code, does have periodic review requirements that are mandated by statute. Specifically 'The NDA (National Defence Act) provides for an independent and periodic review of the military justice system by reviewing or, mandating a review of specific provisions of the NDA and their application.' The Canadian respondent explained that '[t]he NDA does not specify who must carry out the independent examination, but it is up to the Minister of National Defence to appoint' a qualified person to carry out this review; the respondent also highlighted that the last three independent reviews were carried out by retired judges. Furthermore, Canadian federal legislation requires the independent reviews every seven years. That review 'covers legislative and regulatory provisions as well as administrative policies and practices related to the military justice system in the broadest sense.' The resulting report 'must be tabled by the Minister of National Defence before each house of Parliament (House of Commons and Senate). The latest Report from the Third Independent Review Authority to the Minister of National Defence has been available since April 2021 and includes a total of 107 recommendations.'

Poland, the other respondent that operates military courts during peacetime, in contrast, does not have legislatively required periodic reviews of its military justice system. 'Until 2015 such periodic reports have been published by the National Military Prosecution, which have been merged with the State Prosecution in 2016.' The implication seems to be that some type of internal reports are carried out.

In the UK, the Armed Forces Act 2006 must be renewed every five years; this allows for amendments to the military justice provisions included in that Act, among others. In the US, Congress has mandated regular comprehensive reviews of the military justice system. These are to be conducted every eight years by a statutory Military Justice Review Panel (MJRP) composed of experts appointed by the Secretary of Defense.

## Reports to parliaments

Survey responses to this question were varied. For example, Norway's submission notes that, '[p]eriodic reports on these issues are not required, but the status of military justice is mentioned in the annual reports of the Armed Forces, the Judge Advocate General and the Ombudsperson for the Armed Forces.' As noted above, Poland's response referred to periodic reports published by their National Military Prosecution office. These are apparently no longer produced. Similarly, Denmark, following the trend that annual reports are not required by law, helpfully advises that, 'Although not required by law, the Military Prosecutor General issues an annual report to the MOD containing the status of military justice with statistics on military criminal cases as well as references to recent case law. The report is sent to the Defence Command and other interested parties as well and is published on the Military Prosecution Services website ([www.fauk.dk](http://www.fauk.dk)).'

Latvia has periodic reports that are not required but are regularly issued by the Military Police:

within the National Criminal Intelligence Model, provides periodic reports on crimes committed by military members to the Council for Prevention of Crime...which is a collegial institution whose aim is to strengthen the rule of law, coordinate and improve the activities of state institutions to prevent and combat crime, especially corruption and organized crime, which threaten national security and economic stability, as well as to promote united and effective cooperation between the executive and the judiciary to strengthen the rule of law. These reports are not made public. Criminal cases against members of the armed forces are handled by public prosecutors that are not part of the armed forces. The information on such cases is normally included in the yearly report of the Prosecution Office of Latvia, even though there is no explicit requirement to do so specifically regarding military justice.

In Norway, '[p]eriodic reports on these issues are not required, but the status of military justice is mentioned in the annual reports of the Armed Forces, the Judge Advocate General and the Ombudsperson for the Armed Forces.'

Canada was one of the two respondents that continue to regularly operate separate military courts in peacetime. Its system experiences robust parliamentary oversight:

According to sections 9.2 and 9.3 of the NDA, the JAG must conduct a periodic review of the administration of military justice and must report this exercise to the Minister of National Defence in an annual report. Each JAG Annual Report contains a retrospective review of the administration of military justice, including summaries and statistics on the charges and legal proceedings that were executed during the periodic review. According to section 9.3 of the NDA, the JAG must submit an annual report on the administration of military justice within the Canadian Forces. The last report covered the session from April 1, 2021 to March 31, 2022 (see: Annual Report of the Judge Advocate General 2021-2022). According to section 9.3 of the NDA, the Minister of National Defence must table the report before each house of Parliament (the House of Commons and the Senate) within the first 15 sitting days following receipt of the report. No further action is legislatively required by Parliament.

As for the UK, the Judge Advocate General annually submits a report to the Secretary of State for Defence outlining the state of military justice for the previous year. In addition, the Ministry of Defence publishes official statistics on Murder, Manslaughter, and Sexual Offences in the Service Justice System annually in March. In the US, reports on military justice are submitted to Congress each fiscal year by the services' top uniformed military lawyers and the US Court of Appeals for the Armed Forces. The reports are required by statute.<sup>70</sup>

## 2.4 PARLIAMENTARY BUDGETARY POWERS

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A foundational principle of representative democracy is 'no taxation without representation', and as a result the executive must seek legislative approval for annual budgets that include resources for the security sector.<sup>71</sup> The power to accept, reject, amend, influence or set new budget priorities gives parliaments direct influence over security provision, management and oversight. Parliaments' roles in overseeing the allocation and utilization of national resources within the security sector is indispensable, serving as a critical mechanism to enhance performance and uphold public trust. Parliaments hold the power to significantly influence the performance of the security sector by exercising its authority to scrutinize, question, and modify budget allocations. Through parliamentary oversight, lawmakers can challenge the allocation of resources to security initiatives, ensuring that funds are directed towards pressing public security needs. Additionally, legislators have the authority to summon ministers and security officials to account for specific expenditures, fostering transparency and accountability in spending decisions.

Furthermore, parliaments' abilities to approve or amend budgetary allocations enables it to shape the priorities and direction of security provision. By granting or denying special funding requests and supplementary budgets, parliaments can exert influence over the strategic planning and management of security resources. This power allows parliaments to align security spending with officially defined purposes, ensuring that resources are allocated in accordance with national security priorities and objectives.

Parliamentary oversight serves as a crucial check on the security sector's activities, safeguarding against the misuse of public funds and promoting the efficient use of resources. Through rigorous scrutiny and intervention, parliamentarians can mitigate the risk of wasteful spending and ensure that security resources are directed towards achieving tangible outcomes that benefit society as a whole.

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70 10 US Code § 946 - Art. 146 (a). Military Justice Review Panel. *Legal Information Institute, Cornell Law School*. Available at <https://www.law.cornell.edu/uscode/text/10/946>

71 DCAF, Geneva Centre for Security Sector Governance, 2015, *Parliaments: Roles and Responsibilities in Good Security Sector Governance*. Available at [https://www.dcaf.ch/sites/default/files/publications/documents/DCAF\\_BG\\_08\\_Parliaments\\_Nov2022.pdf](https://www.dcaf.ch/sites/default/files/publications/documents/DCAF_BG_08_Parliaments_Nov2022.pdf).



Poland's response is indicative of the general tenor of replies across survey results: '[e]xpenses for military justice are made from funds for the national defense, which form a part of a general state budget, adopted annually in a form of a statute (i.e. by the Sejm).' Little to no detail was provided in the responses regarding how such funds are allocated. Similarly, in Canada, '[t]he military justice system and its budget flow from the Department of National Defence,' while Denmark noted that 'It's part of the overall defence budget which is given by parliament in the annual budget law.' In Norway, 'Parliament sets the budget for the armed forces and the judiciary, thereby implicitly also setting it for the military justice system.'

Latvia provided greater detail, noting that, 'Saeima (the Parliament of Latvia) plays a crucial role in setting the budget for the national military justice system. This budget is typically part of the broader defense budget, which encompasses various aspects of the country's defense, including the armed forces, national security, and military justice. The specific role of the Saeima in setting the budget for the military justice system involves several key responsibilities,' which the response further delineates.

Both the US and the UK set the budget through their respective legislative bodies; in the UK, Parliament helps set the Ministry of Defence budget for the year with the budget approved as an annual event and during changes in Government. The House of Commons is primarily responsible for enacting the annual defense budget in contrast to the US, in which the House of Representatives and Senate must both pass the annual authorizations and expenditures bills by a majority, and then have the President sign the legislation into law.

## 2.5 PARLIAMENTARY HEARINGS

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Parliamentary hearings regarding military justice serve as a critical mechanism for ensuring accountability, transparency, and the Rule of Law within the armed forces. These hearings provide an instrument for lawmakers to scrutinize the functioning of military justice systems, assess compliance with legal standards, and address concerns related to disciplinary procedures, human rights protections, and the administration of justice. They allow lawmakers to exercise their oversight role by reviewing the performance of military justice institutions, including courts-martial, military tribunals, and disciplinary boards. Lawmakers can question military officials, legal experts, and other stakeholders about the application of military law, the handling of disciplinary cases, and the protection of service members' rights. By holding hearings, parliaments ensure that military justice systems operate in accordance with the law and respect fundamental principles of fairness and due process. If parliamentary hearings are public, citizens can learn about the legal rights of military personnel, the procedures for investigating and prosecuting offenses, and the mechanisms for appealing court decisions. This transparency fosters public trust in the military justice system and enhances accountability to broader society.

Parliamentary hearings enable lawmakers to identify systemic issues or shortcomings within military justice systems that may require legislative or policy reforms. By hearing testimony from experts,

practitioners, and affected individuals, parliaments can uncover problems such as disparities in sentencing, delays in legal proceedings, or violations of human rights. This information empowers lawmakers to propose corrective measures and to improve the functioning of military justice institutions.

According to their survey responses, parliamentary public hearings are infrequently held on military justice in respondent States. Canada seemingly had the richest tradition of public parliamentary hearings regarding military justice. In Canada, '[t]he Standing Committee on National Defence of the House of Commons as well as the Standing Senate Committee on National Security, Defence and Veterans Affairs (Committees) hold public sessions on various subjects of interest relating to the military and sometimes to the military justice.' The Canadian response further explained that, '[f]or example, in 2021, the House of Commons Standing Committee on National Defence held a study on measures to consider regarding problems of sexual misconduct in the Canadian Armed Forces. Although a large majority of the hearings of these Committees are public hearings, they are not a forum for public consultation. The witnesses who participate do so at the invitation of the Committees.'

Seemingly representative of the responses to this question, Norway reported that,

The Standing Committee on Scrutiny and Constitutional Affairs could theoretically hold such hearings, as they may on any topic involving the Norwegian public administration. Such hearings could also be behind closed doors. However, we cannot recall that any hearing on these topics have ever occurred. And if it did, the committee's focus would be on the government's responsibility in the matter and not on the incidents per se, as our Parliament's role is to control the government and not to investigate specific incidents.

In Denmark '[f]rom time to time the Parliament's Defence Committee has held public hearings (in Danish: 'Samråd') on a variety of issues pertaining to military justice. In addition to this, the Committee has formulated questions on military justice, including specific cases, to the MOD. The Q&As are generally available for the public on the Parliament's website.' The respondent for Poland noted that, 'No such hearings have been held so far;' Latvia shared that while its 'Saeima has the authority to hold public hearings on various matters, including military justice and service member misconduct, as part of its legislative and oversight functions,' it did state that any such hearings on military justice have been conducted.

Neither the US Congress nor the UK Parliament mandate or conduct regular hearings, public or closed, on military justice matters. Such hearings, when they do occur, are seemingly only as crisis-management in response to scandals that threaten the reputation and integrity of their respective military justice systems. As explained in the survey responses detailed for the United States attached to this report, various civilian panels created by Congress to assess aspects of the US military justice system do hold regular public hearings.

## 2.6 APPOINTMENT AND REMOVAL OF MILITARY JUSTICE REPRESENTATIVES

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Parliaments' role in appointing representatives of the military justice system is very limited, though this function could serve as a critical check and balance mechanism to uphold the rule of law, protect human rights, and maintain public confidence in the administration of justice within the armed forces. Parliamentary approval could ensure that candidates meet the necessary qualifications, possess the requisite expertise, and demonstrate the ethical standards required to uphold the principles of fairness and impartiality in their roles.

Most respondents answered 'no', their parliamentary body does not approve judicial appointments. For example, Poland reported, 'no. According to Article 179 of the Constitution of the Republic of Poland judges shall be appointed for an indefinite period by the President of the Republic on the motion of the National Council of the Judiciary.' Denmark replied 'no' and Norway similarly replied, 'no, this is the prerogative of the government.' The French response indicated that military judges there – presumably in time of war when military courts are operative – are also not approved by their Parliament; they responded that 'military judges are appointed by the military authority (article L. 112-16 of the CJM) while magistrates of the judicial order are recruited by competitive examination or by qualifications (article 15 of ordinance no. 58-1270 of 22 December 1958 establishing the organic law relating to the status of the judiciary.' Canada's respondent noted that, 'the judicial appointment process is considered to be an independent process in which parliament plays only a very limited role. The process of appointing civilian judges and military judges differs, but in both cases the role of Parliament is very limited' with no approval role (translation from original French). The Canadian response also noted that, 'it is the Governor in Council who has the power to appoint candidates for civil and military judiciary, but in the case of civilian judges it is on the recommendations of the Minister of Justice while in the case of military judges it is on the recommendations of the Minister of National Defence.' (translation from French original).

In contrast, the Latvian Parliament approves judicial appointments: '[j]udges in Latvia have to be approved by the Saeima (depending on the level of the court, the request for approval is brought to the Saeima by different officials (e.g. Minister of Justice for District and Regional Courts or the President of the Supreme Court for the Supreme Court), all of the candidates are approved by the Judicial Council beforehand.' Their response clarified that there are no military judges in Latvia, as '[c]ases involving members of the armed forces are adjudicated in civil courts by civil judges.' Even in wartime when military courts may be reconstituted, there are still no 'military judges' because such Latvian military courts would be presided over by civilian judges with specialized training in military law.

In the UK, Parliament does not approve military judicial appointments. The Judge Advocates are civilians appointed through the independent Judicial Appointments Commission as of April 2006 in a process identical to civilian judicial appointments. As an example of a non-independent military judiciary, the US military justice system continues to exclusively employ regular or reserve military officers as trial judges during relatively short military assignments as judges; the military judges who

serve on the military appellate courts are also commissioned officers (either active-duty or reservist serving active-duty time) with a small exception for retired military judges who can serve as civilians on service appellate courts. Congress cannot remove a military judge; however, the Senate approves all military officer promotions. The civilians appointed to the military's highest appellate court by the President with the consent of the Senate serve for fifteen-year terms and can only be removed by the President. In theory, those judges are subject to impeachment by the House of Representatives and removal by the Senate (see specific survey answers attached to this report for greater detail).

Most respondents explained that, due to the separation of powers, their Parliaments have no authority to remove judges. The Danish and French respondents stated 'no'; Norway responded in the negative and added that 'the courts themselves have the authority to do so.' The Canadian respondent answered, 'no. According to section 165.21 of the NDA, military judges are appointed during good behavior, subject to revocation for cause by the Governor in Council on the recommendation of the Military Judges Inquiry Committee. The latter is composed of three judges appointed by the chief judge of the Court Martial Appeal Court' as provided for in the National Defence Act.

In contrast, although Latvia does not have military judges, the Saeima 'can remove a judge (including a judge appointed to a military court in time of war or state of emergency) based on the request of the same institution that is responsible for the request to appoint the judge' per specific conditions; and 'a judge of a district (city) court and a judge of a regional court shall be removed from office by the Saeima.' Latvian statutory 'reasons for removal are: their own wish to resign, appointment to another office, state of health, repeatedly negative assessment of their professional work. A judge can also be dismissed by the Saeima based on the proposal of the Judicial Disciplinary committee if the judge: has been convicted or the Judicial Disciplinary Committee has so decided based on other factors.'

In the UK, judges are not removable by Parliament; military judges (i.e., Judge Advocates), same as Circuit and District Judges, can be removed by the Lord Chancellor if the Lord Chief Justice agrees. The Judge Advocate General is only removable by the Monarch for inability or misbehavior upon a recommendation from the Lord Chancellor; the Lord Chancellor may remove the Vice Judge Advocate General, an Assistant Judge Advocate General, or a Deputy Judge Advocate for inability or misbehavior.

## 2.7 ROLE OF DEFENCE AND SECURITY COMMITTEE

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Parliamentary committees are instrumental in conducting in-depth oversight of military justice matters. Traditionally, these committees have authority to:

- Issue reports and formal opinions on draft legislation related to military justice.
- Conduct hearings, visits, and inspections in the field to assess the issues of military justice.
- Undertake inquiries, often requiring plenary approval, to investigate specific military justice related issues or citizen complaints.
- Issue oversight reports that serve as the basis for debate in plenary sessions and provide recommendations for improving oversight mechanisms.
- Provide opinions on candidates for senior positions, ensuring their suitability for roles within the defense sector.

Most participating States confirmed that parliamentary oversight of military justice matters fall either generally under that State's Parliamentary committee dedicated to matters of national defense (that is, to those committees responsible for the regulation and oversight of their nation's armed forces in general), or is shared with Parliamentary committees responsible for civilian criminal justice matters. As an example of the former, the Canadian respondent explained that its 'Standing Committee on National Defence of the House of Commons, as well as the Standing Senate Committee on National Security, Defence and Veterans Affairs (Committees), have the mandate to examine all matters relating to the Department of National Defence and the Canadian Armed Forces.' It appears that the UK follows a similar Parliamentary oversight model, with the House of Commons Defence Committee providing oversight. The US Congress, in a similar vein, strictly provides legislative oversight over the American military justice system through specific House and Senate defense committees, not those that provide oversight of the civilian federal judiciary, etc.

As an example of military justice being dealt with by committees responsible for civilian criminal justice, the Danish response explained that, 'The Danish Parliament has several committees overseeing various fields. Military Justice could fall under the auspices of both the Defense Committee (and the Legal Affairs Committee as military criminal cases are heard by the ordinary Courts).'<sup>72</sup> Denmark's response that this oversight is shared with the parliamentary committees responsible for civilian criminal justice system – since its military cases are prosecuted in civilian courts – resembles the case of other participating countries. Indeed – and is indicative of the civilianization of military justice (the trend of disposing of alleged criminality by military members through the same processes utilized for the general civilian population). Several States in addition to Denmark reported that this oversight responsibility is shared with their respective Parliamentary

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<sup>72</sup> For greater detail regarding the Danish military justice system, which no longer operates military courts but does have special military prosecutors; see *The Danish Military Justice System* (2020). Available at <https://www.fauk.dk/globalassets/fauk/dokumenter/2020/-the-danish-military-justice-system-2020-.pdf>. See also *The Danish Ministry of Defence*, the Military Prosecution Service (2023). Available at <https://www.fauk.dk/en/the-military-prosecution-service/>

committee responsible for civilian criminal justice matters. For example, in Poland, ‘the matter of military justice falls within the subject matter of activity of two standing committees of the Sejm of the Republic of Poland, i.e. the National Defence Committee and the Justice and Human Rights Committee’ (emphasis added). Similarly, ‘military justice in Latvia typically falls under the jurisdiction of the Ministry of Defence and the Ministry of Justice. The Ministry of Defence is responsible for the overall organization and functioning of the Latvian Armed Forces, including matters related to military justice. The Ministry of Justice may also play a role in ensuring that military justice is administered in accordance with the law.’

None of the responding States has a Parliamentary committee specifically dedicated to the oversight of military justice. Instead, oversight is apparently folded into the responsibilities of the general committees responsible for the oversight of the armed forces and/or for matters of national criminal justice. Along these lines of generalized responsibility, the Norwegian respondent specifically cautioned that, ‘the Standing Committee on Foreign Affairs and Defence deals with matters regarding the Norwegian Armed Forces, and the Standing Committee on Justice deals with matters regarding the justice system. However, neither committee deals with military justice on any detailed level. They only have overall, including budgetary, responsibility for the military and justice sectors – which also includes the military justice system’.



## CONCLUSION

The survey findings effectively illustrate two key points: first, they highlight the diverse array of approaches employed by states to address criminal behavior within their military ranks. Secondly, they confirm a noticeable shift towards the civilianization of military justice systems. Throughout the nineteenth and twentieth centuries, military justice systems operated primarily within the confines of the military hierarchy, with military courts playing a central role. However, this paradigm is rapidly changing, with fewer military courts functioning in peacetime. The survey took into consideration the fact that not all NATO member States operate a specialized criminal justice system for their armed forces. Indeed, while all NATO member States have 'civilianized' their military justice systems to some extent, a great deal of variety remains among member States regarding military justice processes. Some have eliminated military courts altogether, with members of their armed

forces being prosecuted in the same courts and under the same criminal laws as their civilian counterparts. Others maintain hybrid systems in which a military judge sits alongside a civilian judge to prosecute military members in civilian courts. Still others continue to operate specialized military courts that apply distinct military criminal codes. In contrast to this diversity of approaches, all NATO member State militaries provide a distinct disciplinary system within their armed forces. Those systems typically consist of administrative (non-criminal justice) processes that allow military commanders to deal with minor, non-criminal infractions committed by military members. These kinds of disciplinary systems operate separately from the criminal justice process and are outside the scope of this survey, given its focus on penal – that is, criminal justice – systems designed to address serious criminal misconduct by military personnel.

For those few States that maintain distinct military criminal justice systems (the central feature being military courts) in peacetime, parliamentary oversight runs the gamut, from relatively robust in the Canadian model to less so in the Polish model (at least as indicated by each respective State survey response). Improved parliamentary supervision of military justice is indispensable, particularly for States with dedicated military justice systems, for ensuring accountability and efficiency. A robust military justice framework not only safeguards the rights of service members but also fosters discipline and orderly behavior within military entities while upholding the Rule of Law within the armed forces. Institutionalized legislative scrutiny of such systems is crucial within democratic societies to uphold their effectiveness, fairness, and integrity. Among other benefits, oversight by politically accountable officials helps foster public confidence in the armed forces.





## RECOMMENDATIONS

1. Strengthen parliamentary committees responsible for military justice oversight, providing them with adequate resources and staff, in-house expertise, and authority to review and propose legislative changes as needed.
2. Allocate sufficient time and resources within parliamentary sessions to thoroughly review and debate the budget allocated to military justice. Implement mechanisms for parliamentary committees to scrutinize the expenditure of military justice funds, ensuring accountability and efficient use of resources. Require regular reporting from military justice authorities to parliaments regarding budget execution and any financial discrepancies or concerns.

3. Establish reporting requirements for military justice authorities to provide regular updates to parliaments on key activities, challenges, and outcomes within the military justice system.
4. Establish clear procedures for parliamentary involvement in the appointment of senior military justice representatives, including prosecutors, judges, and legal advisors. Mandate parliamentary confirmation hearings for nominees to senior military justice positions, providing an opportunity for lawmakers to assess qualifications, competence, and ethical standards. Implement safeguards to prevent undue political influence in the appointment process, ensuring that appointments are based on merit and suitability for the role.
5. Establish and maintain comprehensive policies outlining the application and enforcement of principles governing military justice. These policies should be readily accessible to all service members, ensuring they are aware of their rights and responsibilities under relevant laws and regulations.
6. Improve civilian oversight mechanisms for monitoring the military justice system. This oversight should include an independent appeals process to review certain decisions made within the military justice framework, safeguarding against potential abuses of power or procedural irregularities.
7. Ensure that military prosecutors, judges, and defence counsel operate independently from the chain of command, allowing them to exercise prosecutorial and other discretion without unlawful influence.
8. Establishing a civilian-led military justice review board tasked with monitoring the application and evolution of military justice principles and best practices. This board would serve as an additional layer of oversight, ensuring that prosecutions adhere to fair trial standards and procedural integrity.
9. Establish appropriate balance among competing values of transparency, secrecy and sharing of information on military justice issues.
10. Fashion and ensure strict compliance with detailed rules expressly forbidding legislative meddling in pending military justice prosecutions and appeals.
11. Introduce oversight of military prisons through committees or commissions responsible for scrutinizing the operations of military justice systems. Legislators may hold hearings, conduct investigations, and review reports on conditions within military prisons to ensure compliance with legal standards and promote accountability. Comprehensive whistleblower protection programs can help encourage military servicemen and women to report various issues without fear of retaliation.
12. Establish procedures to guarantee access to military facilities and personnel for authorized oversight bodies, NGOs, and journalists, subject to reasonable security restrictions.
13. Encourage cooperation and constructive dialogue between parliaments and military justice stakeholders, fostering mutual understanding and trust. It would be advisable to promote public hearings and consultations on military justice matters to solicit input from civil society organizations, legal experts, and other relevant stakeholders.

# ANNEX 1: NATO MEMBER STATES AND MILITARY JUSTICE

## ALBANIA

**Military Police:** The Albanian Military Police (MP; Albanian: Policia Ushtarake, PU) is a provost independent branch of the Albanian Armed Forces responsible for the policing of service personnel, and for providing a military police presence both in Albania and while service personnel are deployed overseas on operations and exercises. The PU is under the authority of the Ministry of Defence. Its tasks expand during wartime to include organisation of traffic control, dealing with POW and refugee control.

**Military courts:** There are 29 first instance courts throughout Albania, 6 appeal courts, 1 military appeal court, 1 first instance court for the serious crimes, 1 appeal court of the serious crimes and the High Court. The military system is part of the criminal judicial system. That means that military cases are taken from the first instance courts (criminal sections). Appeal of the military cases is reviewed by the Military Appeal Court, which is located in Tirana.<sup>73</sup>

## BELGIUM

**Military Police:** The Military Police Group (MP GP) serves as the military police force of the Belgian armed forces. Established in 2003, the group operates under the jurisdiction of all branches of the armed forces, conducting policing duties within them. Led by a colonel, the unit comprises 188 members stationed in Belgium.

The primary responsibilities of the MP GP encompass enforcing military laws, controlling military road traffic, and overseeing the transportation of POWs. Moreover, they handle all police duties within Belgium, serving both military personnel and civilians. Additional tasks include VIP protection, various types of escorts (VIPs, money, and weapons), and documenting traffic accidents involving military vehicles. In exceptional cases, the Federal Police may assign civilian police duties to the MP GP.<sup>74</sup>

**Military Prosecution:** The duties of the Public Prosecutor at the Permanent Military Court are

73 Council of Europe. Answer to the Revised Scheme for Evaluating Judicial Systems. Albania. 10 September 2006. P. 11. Available at <https://rm.coe.int/answer-to-the-revised-scheme-for-evaluating-judicial-systems-2004-data/168078a77b> (last accessed 2 May 2024)

74 BOS-fahrzeuge.info. the Military Police Group. Available at [https://bos-fahrzeuge.info/wachen/36681/La\\_Defense\\_Belge\\_-\\_Composante\\_Terre\\_-\\_Military\\_Police\\_Group\\_Etat-Major\\_Evere](https://bos-fahrzeuge.info/wachen/36681/La_Defense_Belge_-_Composante_Terre_-_Military_Police_Group_Etat-Major_Evere) (last accessed 3 May 2024)

fulfilled by a military prosecutor, who operates under the supervision and direction of the Prosecutor General at the Military Court.<sup>75</sup> The military prosecutor maintains a register of judgments, wherein the names of all individuals tried by the military court are recorded, along with descriptions of the offenses, the verdicts, dates of appeals or appeals to the Supreme Court, subsequent decisions, commencement and completion dates of sentences, where sentences are served serving, and any remissions or sentence reductions granted by the King.<sup>76</sup>

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**Military courts:** Belgium abolished military courts in times of peace but retains them during wartime.<sup>77</sup> During wartime, permanent military tribunals and a Military Court shall be established, with their seat and jurisdiction determined by the King. These courts shall be installed on the date specified by Royal Decree for the mobilization of the army. The King reserves the right to alter the seat and jurisdiction of these courts if deemed necessary.<sup>78</sup> Extraordinary military courts in the field may also be instituted in situations where a place is under siege or in circumstances that constitute a state of siege according to the decree-law of October 11, 1916, pertaining to the state of war and the state of siege.<sup>79</sup>

## BULGARIA

**Military Police:** The Military Police is part of the Bulgarian Armed Forces and is organised into a Military Police Service and Military Police Formations within the Bulgarian Army. The Military Police Service consists of HQ, five Regional Services and the Centre of Logistics and Training. The Military Police Service is specialized in maintaining order and security within the Bulgarian Armed Forces, it constitutes a military structure with police functions, directly subordinated to the Minister of Defense. The Service acts independently or in co-operation with other organizations from the security sector.<sup>80</sup>

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**Military Prosecution:** There are 5 military district prosecutor's offices in Bulgaria, which are responsible for investigating crimes committed by members of the Armed Forces and employees of the Ministry of the Interior who participate in international military or police missions abroad.

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75 Ministry of Defence and Federal Public Service Justice of Belgium. Law Regulating the Abolition of Military Jurisdictions in Times of Peace and Their Maintenance in Times of War". 10 April 2003. Article 19. Available at [https://etaamb.openjustice.be/fr/loi-du-10-avril-2003\\_n2003009370](https://etaamb.openjustice.be/fr/loi-du-10-avril-2003_n2003009370) (last accessed 2 May 2024)

76 Ibid. Article 22

77 Ibid.

78 Ibid. Article 3

79 Ibid. Article 17

80 NATO Military Police Centre of Excellence. Bulgarian Military Police. Available at <https://mpcoe.org/bulgaria> (last accessed 4 May 2024)

**Military courts:** As courts of first instance, military courts hear criminal cases involving crimes committed by serving military personnel, generals, and officers, non-commissioned officers and rank-and-file personnel of other ministries and agencies, civilian staff of the Ministry of Defence, the Bulgarian army, units reporting to the Minister for Defence, the National Service for Protection and the National Intelligence Service. The Military Court of Appeal (Voenno-apelativen sad) is the court of second instance for these cases. The Code of Criminal Procedure defines the jurisdiction of military courts. These courts have the same statute as provincial courts. The Military Court of Appeal (a single court) hears appeals (including procedural appeals) against the decisions of all military courts in Bulgaria.<sup>81</sup>

## CANADA

**Military Police:** Military Police enforce laws and regulations on Canadian Armed Forces (CAF) establishments in Canada and abroad. They serve the entire CAF community, including Regular and Reserve Force members, civilian employees, cadets, and family members.

The primary responsibilities of the Military Police are to: support CAF missions by providing policing and operational support; investigate and report incidents involving military or criminal offenses; develop and apply crime prevention measures to protect military communities against criminal acts; coordinate tasks related to persons held in custody (including military detainees and POWs); provide security at selected Canadian embassies around the world; provide service to the community through conflict mediation, negotiation, dispute resolution, public relations and victim assistance; perform other policing duties, such as traffic control, traffic-accident investigation, emergency response, and liaison with Canadian, allied and other foreign police forces.<sup>82</sup>

**Military Prosecution:** The Canadian Military Prosecution Service (CMPS) is headquartered in Ottawa and comprised of several Regional Military Prosecutor (RMP) offices located across Canada.<sup>83</sup>

The Director of Military Prosecutions (DMP), is appointed under section 165.1 of the National Defence Act for a fixed term by the Minister of National Defence. The DMP is head of the Canadian Military Prosecution Service.

In the event of a court-martial appeal, an officer of the Canadian Forces Public Prosecution Service represents the interests of the Canadian Forces before the Court of Military Appeal.

81 European Justice. National Specialized Courts: Bulgaria. Available at [https://e-justice.europa.eu/content\\_specialised\\_courts-19-bg-maximizeMS-en.do?member=1#:~:text=Military%20Court%20\(Voenen%20sad\)&text=These%20courts%20have%20the%20same,all%20military%20courts%20in%20Bulgaria](https://e-justice.europa.eu/content_specialised_courts-19-bg-maximizeMS-en.do?member=1#:~:text=Military%20Court%20(Voenen%20sad)&text=These%20courts%20have%20the%20same,all%20military%20courts%20in%20Bulgaria). (last accessed 4 May 2024)

82 Government of Canada. Military Police. Available at <https://forces.ca/en/career/military-police/> (last accessed 5 May 2024)

83 Government of Canada. Director of Military Prosecutions Annual Report 2020-2021. Chapter One: The Canadian Military Prosecution Service: Ordo per Justitia. Available at <https://www.canada.ca/en/department-national-defence/corporate/reports-publications/military-law/director-military-prosecutions-annual-report-2020-2021/chapter-one.html> (last accessed 5 May 2024)

At a court martial, the prosecution is conducted by a legal officer from the office of the Director of Military Prosecutions (DMP). In accordance with s. 249.19 of the NDA and QR&O 101.20, an accused person is entitled to legal representation by or under the supervision of the Director of Defence Counsel Services (DDCS), and, as a matter of policy, this legal representation is provided to an accused person at no cost to the accused person. An accused person may also choose to retain a lawyer at his or her own expense.<sup>84</sup>

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**Military prisons:** The Canadian Forces have one military prison, the Canadian Forces Service Prison and Detention Barracks (CFSPDB) (colloquially known as Club Ed), located at Canadian Forces Base Edmonton. Canadian Forces personnel who are convicted by military courts and receive a sentence of 14 days or more are incarcerated at CFSPDB. Men, although in the same prison, are kept separate from women. The prison is maintained and controlled by the Canadian Forces Military Police, although NCOs from various branches of the Canadian Forces serve at the prison as staff. Service personnel who are convicted of less serious offences are considered to be in 'detention', and undergo a strict military routine aimed at rehabilitation for their return to regular military service, whereas personnel convicted of more serious offences are considered to be in 'prison' and upon completion of their sentence they are released from the military. Serious offenders with sentences longer than two years are transferred to the Canadian federal prison system after serving 729 days, to complete their sentence in the civilian prison system, followed by release from the Canadian Forces. Any service personnel serving a sentence of 14 days or less are held in local base Military Police Detachment cells at the various Canadian Forces Bases within Canada.<sup>85</sup>

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**Military courts:** A court martial is a formal military court presided over by a military judge. It is designed to deal with serious offences, and a military judge has powers of punishment up to and including imprisonment for life. Courts martial may take place anywhere in Canada and abroad.

Courts martial are conducted in accordance with rules and procedures similar to those followed in civilian criminal courts while maintaining the military character of the proceedings. Statutorily, courts martial have the same rights, powers and privileges as superior courts of criminal jurisdiction with respect to all 'matters necessary or proper for the due exercise of its jurisdiction,' including the attendance, swearing and examination of witnesses, the production and inspection of documents, and the enforcement of their orders.<sup>86</sup>

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84 Ibid.

85 Harris, Kathleen (January 27, 2008). "Trading a military uniform for an orange jumpsuit". Sun Media. Archived from the original on July 8, 2012. Retrieved October 3, 2009.

86 Government of Canada. The Canadian Military Justice System. Available at <https://www.canada.ca/en/department-national-defence/corporate/reports-publications/military-law/judge-advocate-general-annual-report-2022-2023/ch2-canadian-mj-system.html> (last accessed 5 May 2024)

## CROATIA

**Military Police:** In accordance with the President of the Republic of Croatia and Commander in Chief's order on 24th August 1991 Protective battalion of the CAF HQ was formed (Military Police) with the task of providing security of the MOD and CAF HQ.<sup>87</sup>

Today, CAF MP is a recognizable, trained and equipped force that is integrated into every aspect of military life and in accordance with the new division of services and branches, CAF MP constitutes Combat Support element which incorporates several military occupation specialties (MOS).<sup>88</sup>

MP Department consists of three Divisions: Crime Investigations Division, MP Doctrine Division and MP Records and Analytics Division.

The Military Police Regiment, on the other hand, is a unit of the Croatian Army established on 1 January 2008 and is the successor of all military police units and operational powers throughout the Republic of Croatia.

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**Military courts:** Military courts were abolished by the Presidential Decree of 1996.

## CZECH REPUBLIC

**Military Police:** The Military Police (MP) is headed by the Chief of the MP who reports directly to Minister of Defence.

In the scope defined by the Act No. 300/2013 Coll., on the Military Police and amending certain laws, the MP carry out tasks for the police protection of the Ministry of Defence, armed forces, military structures, military equipment and other government assets the MoD is authorised to manage. The Chief of MP is directly subordinate to the Minister of Defence. The MP consists of assigned military professionals or reservists called up for active military service with the MP.

The MP Headquarters is situated in the capital - Prague. The structure is based on a territorial principle. MP subordinated Commands are located in the city of Prague and in towns of Tabor and Olomouc.

MP officers are equipped with black accessories, including their distinctive feature - the black beret.

MP also contributes to military formations of the Czech Armed Forces on foreign deployments and

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87 NATO Military Police Centre of Excellence. Croatian Armed Forces Military Police. Available at <https://www.mpcoe.org/CROATIA> (last accessed 6 May 2024)

88 Ibid.

selected MP officers are assigned to NATO structures.<sup>89</sup>

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**Military Prosecution:** Military Prosecution's Offices were abolished in 1993. A special category of 'military crimes' is stipulated by the Czech Criminal Code.<sup>90</sup>

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**Military courts:** In the Czech Republic there are no military courts. The jurisdiction of Czech civil courts applies to any criminal offences committed by its military personnel.<sup>91</sup>

## DENMARK

**Military Police:** The military police (MP) in Denmark are police units within the armed forces branches. The Danish MP is a joint unit, consisting of members from each branch of the Danish defense forces.

The MP has five main functions: traffic control; police functions; security functions; detention functions; special police functions.<sup>92</sup>

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**Military Prosecution:** In Denmark, the Military Prosecutor's Service is an independent body within the Ministry of Defence that investigates and prosecutes military criminal cases. The military prosecutor is independent of the defence system and military command.<sup>93</sup>

The Military Prosecution Service is a two-tier organization headed by the Military Prosecutor General (the Judge Advocate General) and comprises the Office of the Military Prosecutor General and the Office of the Military Chief Prosecutor (the Judge Advocate).

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89 Ministry of Defence and Armed Forces of the Czech Republic. Military Police. Available at <https://www.army.cz/en/ministry-of-defence/struc/mp/military-police-106206/> (last accessed 7 May 2024)

90 The Permanent Mission of Czech Republic to the United Nations. Response of the Czech Republic to the Letter from the Special Rapporteur on the Independence of Judges and Lawyers. 2013. Available at [https://www.ohchr.org/sites/default/files/Documents/Issues/IJudiciary/MilitaryCourts/Czech\\_Republic.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/IJudiciary/MilitaryCourts/Czech_Republic.pdf) (last accessed 7 May 2024)

91 OHCHR. Factsheet of Czech Republic. 7 October 2016. Available at [https://peacekeeping.un.org/sites/default/files/czech\\_republic\\_december\\_2016.pdf](https://peacekeeping.un.org/sites/default/files/czech_republic_december_2016.pdf) (last accessed 7 May 2024)

92 Danish Armed Forces. Tasks of the Military Police. Available at <https://www.forsvaret.dk/da/organisation/vaernsfalles/militaerpolitiet/opgaver-og-enheder/> (last accessed 7 May 2024)

93 Danish Ministry of Defence. The Military Prosecution Service. Available at <https://www.fauk.dk/en/the-military-prosecution-service/#:~:text=The%20Military%20Prosecution%20Service%20is%20an%20independent%20service%20and%20does,to%20the%20Minister%20of%20Justice>



**Military courts:** Denmark has no military courts in peacetime.

Military Courts (Courts-Martials) were abolished in connection with the general Administration of Justice Reform in 1919.<sup>94</sup>

## ESTONIA

**Military Police:** Military police conducts investigations concerning offences relating to service in defence forces and warcrimes. Other offences are investigated by the Police and Border Guards or the Estonian Internal Security Service. The pre-trial procedure is led by the prosecutor's office.

The key tasks of the Military Police of the Estonian Defence Forces include supervising the discipline, carrying out criminal proceedings in service-related crimes, and proceeding disciplinary investigations. It also ensures the protection of the foreign ministers of defence, the management of the armed forces, and the management of the international organisations<sup>95</sup>.

**Military Prosecution:** Criminal charges against military personnel are filed by State prosecutor and it is regulated by the Criminal Procedure Act. Although certain part of the investigation may be done by the Military Police, the State Prosecutor Office will lead the investigation.

The Military Police, State Police and State's Prosecutor office have the obligation to investigate alleged violations. The same legal framework is applied to members of the military as to civilians.<sup>96</sup>

**Military courts:** There are no military courts in Estonia.<sup>97</sup> All cases concerning military personnel are handled by civilian courts.<sup>98</sup>

## FINLAND

**Military Police:** The Sotilaspoliisi is the military police of the Finnish Defence Forces. Military police

94 Danish Military Justice System. 2020. Available at <https://www.fauk.dk/globalassets/fauk/dokumenter/engelsk/-the-danish-military-justice-system-.pdf>

95 Defence Forces of the Republic of Estonia. Military Police. Available at <https://mil.ee/en/landforces/military-police/> (last accessed 8 May 2024)

96 Council of Europe. Steering Committee for Human Rights. Estonia. 2012. Available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680695e53> (last accessed 7 May 2024)

97 Ibid

98 OHCHR. Factsheet of Estonia. 3 January 2019. Available at [https://peacekeeping.un.org/sites/default/files/estonia\\_fact\\_sheet\\_20190103\\_0.pdf](https://peacekeeping.un.org/sites/default/files/estonia_fact_sheet_20190103_0.pdf) (last accessed 8 May 2024)

is responsible for monitoring the security of military targets, maintaining order and control, and directing traffic. In addition to basic combat training, military police officers receive instruction in the use of force, including the handling of pistols, batons, spray guns, and handcuffs. Moreover, they undergo training in the operation of pistols, shotguns, sniper rifles, and submachine guns.<sup>99</sup>

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**Military Prosecution:** Finland reformed its military prosecution system in 2001. Prosecution tasks were shifted from military legal advisers to public prosecutors in order to avoid criticisms about the possible influence of military authorities in court proceedings<sup>100</sup>.

The Prosecutor General (a civilian official) does appoint ‘military prosecutors’ but these are regular prosecutors who then specialize in military cases.<sup>101</sup>

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**Military courts:** Military courts in Finland are ordinary, general courts utilizing a military configuration. In this sense, they could be called a specialized branch of the judiciary. Military court cases include military offenses as well as some criminal matters where the accused is a soldier and the act is committed against the defence forces or another soldier. When considering military cases, the general courts utilize a military configuration, i.e. in addition to a legally trained judge, they have to lay judges from the military.<sup>102</sup>

## FRANCE

**Military Police:** The French *Gendarmerie nationale* is a military force in charge of law enforcement. It has full jurisdiction over civilian population, while carrying out judicial police, public safety, public order and intelligence missions, by implementing its interoperable policing and military skills both in national territory and abroad.<sup>103</sup>

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**Military Prosecution:** The public prosecution service of the Judiciary Courts is grouped together within a prosecutor’s office called ‘Parquet’ which has administrative autonomy within the court.

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99 LAITINEN, Matilda. Sotilaspoliisi – sotilas vai poliisi? Oikeushistoriallinen tutkimus Puolustusvoimien roolista yleisen järjestyksen ja turvallisuuden ylläpitämisessä itsenäisessä Suomessa. Helsingin yliopisto Oikeustieteellinen tiedekunta Oikeushistoria Pro gradu-tutkielma. 2020. Available at <https://helda.helsinki.fi/server/api/core/bitstreams/e6fbc5c3-5c51-44e7-b5c8-027fdac8e299/content> (last accessed 8 May 2024).

100 Vashakmadze, Mindia. Understanding Military Justice. Geneva Centre for Security Sector Governance (DCAF). 2010. Available at [https://www.dcaf.ch/sites/default/files/publications/documents/Milit.Justice\\_Guidebook\\_ENG.pdf](https://www.dcaf.ch/sites/default/files/publications/documents/Milit.Justice_Guidebook_ENG.pdf) (last accessed 8 May 2024)

101 Permanent Mission of Finland to the United Nations Office. Mandate of the Sepcial Rapporteur on the Independence of Judges and Lawyers. 2013. Available at <https://www.ohchr.org/sites/default/files/Documents/Issues/IJudiciary/MilitaryCourts/Finland.pdf> (last accessed 8 May 2024)

102 Ibid.

103 NATO Stability Policing Centre of Excellence. French Gendarmerie. Available at <https://www.nspcoe.org/about-us/sponsoring-nations/french-republic/french-gendarmerie/> (last accessed 8 May 2024).

There are 35 prosecution services specialized in military matters called ‘parquet militaire’. A civil deputy prosecutor specializing in military matters controls all criminal investigations carried out by the military police (“gendarmerie”) against a member of the military. He/she decides in complete independence on the follow-up to be given and if they decide to prosecute, they are responsible for the military public prosecution before the competent judiciary tribunal or the judge with military competence.<sup>104</sup>

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**Military courts:** The Law of 21 July 1982 withdrew the jurisdiction of military courts on French soil during times of peace for both military and civilian offenses committed by military personnel while on duty and gave this jurisdiction to civilian courts specialized in military matters.<sup>105</sup>

During times of war, military courts have primary jurisdiction to deal with offenses.

## GERMANY

**Military Police:** The German Military Police is an independent branch of the Bundeswehr Land Forces. The German Feldjägers are the Military Police of the Bundeswehr. As far as the implementation of the Bundeswehr tasks is concerned, the subtask that ‘the Bundeswehr must be enabled to perform military police functions worldwide across the entire spectrum of missions and at all levels of intensity’ defines the German Feldjäger. This requirement results in a specific mission profile consisting of three major areas:

- Feldjäger duties in Germany (routine),
- Feldjäger operations in Germany (except for routine operations, such as administrative assistance, disaster relief, etc.),
- Feldjäger operations abroad (national and international MP functions).

The 6 core capabilities of the German Feldjägers are within those areas,

which encompass Feldjäger Support with home, area and point defence, military law enforcement, inquiries and investigations, security operations, military custody duties, and military traffic control.<sup>106</sup>

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104 BRICAR, Pierre. The Role of the Military Prosecution in France. 30 May 2023. Available at <https://revista.mpm.mp.br/rmpm/article/view/146/139> (last accessed 8 May 2024)

105 PALMER, Edith. France: Military Justice System. The Law Library of Congress, Global Legal Research Center. July 2013. Available at <https://andyreiter.com/wp-content/uploads/military-justice/fr/IO,%20NGO,%20and%20Foreign%20Government%20Reports/France%20-%202013%20-%20Law%20Library%20of%20Congress%20-%20Military%20Justice%20System.pdf> (last accessed 8 May 2024).

106 NATO Military Police Centre of Excellence. German Military Police. Available at <https://mpcoe.org/GERMANY> (last accessed 8 May 2024).

**Military courts:** Germany normally does not have military tribunals during peace time. However, Article 96 of the German Constitution allows military tribunals to be established during wartime. In 2013, the Act for Venue for Armed Forces Especially Deployed Abroad was adopted. Military courts of service were established, to deal with judicial matters that occur abroad involving the German forces. This court does not only hear criminal cases, but it also has jurisdiction over disciplinary issues and can impose career sanctions.<sup>107</sup>

## GREECE

**Military Police:** The Military Police is called 'Stratonomia'. Stratonomia is the organ of the Command by which it ensures the order, security, discipline and performance of troops.<sup>108</sup>

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**Military Prosecution:** The existence of military prosecutors in Greece is provided for in a separate military criminal and procedural code. They are responsible for prosecuting war crimes and for maintaining prosecution in court.

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**Military courts:** Military courts in Greece retain an extended jurisdictional authority, covering not only special military crimes, but also most crimes included in common (civil) penal legislation (provided that they are perpetrated by military personnel). After the radical transformation of Greek military penal legislation in 1995, covering both substantial and procedural matters, the Greek military judge is now fully equipped with the constitutional guarantees which would allow him/her to adjudicate in conformity with the law in force, internationally acknowledged norms and most of all his/her conscience and perceptions of legality.<sup>109</sup>

## HUNGARY

**Military Prosecution:** In criminal cases, the Commanding Officer is authorized to refer the case to the Military Prosecutor's Office which investigates independently.<sup>110</sup>

Military prosecutors are authorised to bring criminal charges against military personnel. The military prosecutors operate within the civilian prosecutors' system under the direction of the head of the civilian prosecutor's office.<sup>111</sup>

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**Military courts:** Hungarian military justice system operates within the civil justice system, in a special organisational framework. As a result, military councils operate within the civil criminal courts.

Hungary does not have a deployable court martial system in peacetime, only in cases of declared

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<sup>111</sup> Ibid.

special legal order (e.g. state of emergency law).<sup>112</sup>

## ICELAND

**Military courts:** Iceland has no standard military and standing armed forces.<sup>113</sup>

## ITALY

**Military Police:** The Carabinieri, is the sole Military Police for the Italian army, navy, and air force.<sup>114</sup> The Carabinieri holds exclusive responsibility for security and acts as the military police for the Armed Forces. Additionally, it serves as the judicial military police for military justice bodies.<sup>115</sup>

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**Military Prosecution:** The first instance military justice authorities are 3 military prosecutors' offices and 3 tribunals in Rome, Verona and Naples. The bodies of second instance include: The Italian Military Prosecutor General's Offices at the Supreme Court of Cassation and the Military Court of Appeal, as well as the Military Court of Appeal itself. At each branch of the Military Court of Appeal, there are departments of the General Military Prosecutor's Office headed by General Military Advocates.,<sup>116</sup>

**Military prisons:** In Italy, 1 military prison exists: the Santa Maria Capua Vetere.<sup>117</sup> Under Italian law, only those in government service (Army, Navy, Air Force, Guardia di Finanza and Carabinieri) who are under investigation in front of a military court or are sentenced to the penalty of 'Reclusione Militare' by a military or civil court are held there. Those serving in the police corps (Polizia di Stato, Polizia Penitenziaria, Corpo Forestale dello Stato) are also held in military prison.

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112 Ibid.

113 While having no standing armed forces, Iceland contributes to NATO operations with financial contributions and civilian personnel. Government of Iceland. National Security. Available at <https://www.government.is/topics/foreign-affairs/national-security/> (last accessed 8 May 2024).

114 Eurogendfor. Lex Paciferat. Arma dei Carabinieri – Member State. Available at <https://eurogendfor.org/arma-dei-carabinieri-full-member/> (last accessed 6 May 2024).

115 NATO Stability Policing Centre of Excellence. Italian Republic. Available at <https://www.nspcoe.org/about-us/sponsoring-nations/italian-republic/carabinieri/> (last accessed 5 May 2024).

116 European e-Justice. Italy: Organisation of Justice-Judicial Systems. Available at [https://e-justice.europa.eu/content\\_judicial\\_systems\\_in\\_member\\_states-16-it-en.do?member=1](https://e-justice.europa.eu/content_judicial_systems_in_member_states-16-it-en.do?member=1) (last accessed 7 May 2024).

117 Europris. Santa Maria Capua Vetere "Francesco Uccella" Remand Prison. Available at <https://www.europris.org/establishment/santa-maria-capua-vetere-francesco-uccella-remand-prison/> (last accessed 7 May 2024).

**Military courts:** Italy has no peacetime court martial system.<sup>118</sup>

## LATVIA

**Military Police:** Latvian Military Police (Latvian: Militārā Policija, MP) provide military discipline and legal order for the National Armed Forces of Latvia.<sup>119</sup> They were established in 1997. After merging with the Latvian Security Service in 2009, the MP is also responsible for security of the Parliament and the President of Latvia. The MP ensures military discipline and functions with the right to perform investigations and operational activities. It also prepares MP units for their deployment to international missions. It safeguards military and strategically important sites, provides escort and security of military transport columns, military cargoes, and state and foreign officials. The MP provides for the exchange of classified materials between the state institutions of Latvia, institutions of NATO member states and other competent foreign institutions.

The main mission of the MP is to: assist in the ensuring security during military events and provide military discipline, law and order; guard objects as ordered by the NAF Commander; control military traffic, escort officials and guard military cargo.

**Military Prosecution:** All military related investigations in the country are conducted by the MP under the supervision of Public prosecutor.

**Military courts:** All cases are heard by general courts. In accordance with Military Courts Law, military courts can be established only in the event of war or a state of emergency.<sup>120</sup>

## LITHUANIA

**Military Police:** The Lithuanian military police (MP) is a law enforcement institution operating within the National Defence of the Republic of Lithuania and is part of the Lithuanian Armed Forces. The MP also known as combat support unit, provides essential operational assistance to combat units and the commander through the conduct of MP activities.

118 European Army Interoperability Center. The Role of Military Courts across Europe. A Comparative Understanding of Military Justice Systems. May 2021. P. 13. Available at <https://finabel.org/wp-content/uploads/2021/06/20.-The-role-of-Military-Courts-across-Europ.pdf> (last accessed 9 May 2024).

119 National Armed Forces of Latvia. Available at <https://www.mil.lv/en/par-mums/about-national-armed-forces/structure> (last accessed 9 May 2024).

120 United Nations Peacekeeping. Factsheet of Latvia. 28 December 2018. Available at [https://peacekeeping.un.org/sites/default/files/latvia\\_fact\\_sheet\\_20181228.pdf](https://peacekeeping.un.org/sites/default/files/latvia_fact_sheet_20181228.pdf) (last accessed 9 May 2024).

The main tasks of the MP include preventing crimes and other breaches of legal acts, investigating and disclosing offences, enforcing law and order in military territories and in the Armed Forces and ensuring the security of military traffic.<sup>121</sup>

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**Military courts:** There are no specialised military courts in Lithuania. For this reason, civilian judges (and prosecutors) deal with military (service-related) offences. In Lithuania, the military police, which operates within the Ministry of Defence, investigates service-related offences. If the military commander concludes during the investigation that there are signs of a crime, he/she must immediately notify the military police and hand over all the materials necessary for the pre-trial investigation. The military police then conducts a pre-trial investigation. The investigation process must be independent and fair.<sup>122</sup>

## LUXEMBOURG

**Military courts:** A legal basis exists for the establishment of religious and military courts under special circumstances, but no such action has occurred in more than 60 years.<sup>123</sup>

## MONTENEGRO

**Military courts:** All criminal cases are brought before civil courts and all judges are appointed by the Judicial Council which is an autonomous and independent body. If the accused person is military or civilian he/she will be accused by the state prosecutor. The accused person will be brought before a civilian court and will have a civilian lawyer.<sup>124</sup>

## NETHERLANDS

**Military Police:** The Royal Netherlands Marechaussee (RNLM) stands guard over the security of the Netherlands, including the Netherlands' territories in the Caribbean.

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121 Lithuanian Armed Forces. Military Police. Available at <https://kariuomene.lt/en/structure/other-units/military-police/23590> (last accessed 9 May 2024).

122 Vashakmadze, Mindia. Understanding Military Justice: A Practice Note. Geneva Centre for Security Sector Governance (DCAF). 2018. Available at [https://www.dcaf.ch/sites/default/files/publications/documents/Military-Justice\\_Practice-Note\\_eng.pdf](https://www.dcaf.ch/sites/default/files/publications/documents/Military-Justice_Practice-Note_eng.pdf) (last accessed 9 May 2024).

123 Bureau of Democracy, Human Rights and Labor. United States Department of State. Country Reports on Human Rights Practices for 2011. Luxembourg. P. 4. Available at <https://2009-2017.state.gov/documents/organization/186586.pdf> (last accessed 9 May 2024).

124 Permanent Mission of Montenegro to the United Nations Office, WTO and Other International Organisations in Geneva. UN Special Rapporteur on the Independence of Judges and Lawyers, 31 May 2013. Available at <https://www.ohchr.org/sites/default/files/Documents/Issues/Judiciary/MilitaryCourts/Montenegro.pdf> (last accessed 9 May 2024).

The military police task of the RNLM is preventive, service-oriented and reactive. Examples of preventive activities are patrols, traffic duties, maintaining order during exercises, the escort of convoys and giving advice and information to commanders and their personnel. The reactive activities of the RNLM focus on monitoring observance of the Road Traffic Act and environmental legislation, as well as the investigation of criminal offences committed by military personnel (even if those personnel are off duty). RNLM investigators investigate these criminal offences.<sup>125</sup>

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**Military courts:** The Netherlands military justice system is embedded in the civil justice system. A special chamber for military affairs is reserved for the military in criminal matters. The prosecutors and two of the three judges are civilian. The third judge is a military member in the rank of Colonel.

By law it is possible to have deployable Court Martials, but in practice this never happens.

## NORTH MACEDONIA

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**Military Police:** The Military Police Battalion is designed to perform military-police duties on the whole territory of the Republic and in peacekeeping operations, to maintain order and discipline, regulate and control traffic, protect military personnel and military delegations, to conduct activities related to prevention, investigation and detection of offences.<sup>126</sup>

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**Military Prosecution:** If a disciplinary procedure is initiated, the disciplinary commission has the authority to investigate the offence. The commission however may include the military police or military intelligence service to help during the investigation. Aside the disciplinary procedure, the criminal procedure will be initiated. In this case, the military police and military intelligence service will be involved in investigating the offence. This investigation will be conducted in coordination with the public prosecutor's office. After the investigation is completed the prosecutor files an indictment and takes the case to the court or dismisses the charges.<sup>127</sup>

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**Military courts:** Military justice system in the Republic of North Macedonia involves only disciplinary procedure. Criminal procedure, even for military personnel is conducted in front of (civilian) criminal courts<sup>128</sup>.

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125 Royal Netherlands Marechaussee. Tasks of the Royal Netherlands Marechaussee. Available at <https://english.defensie.nl/organisation/marechaussee/tasks-of-the-royal-netherlands-marechaussee> (last accessed 9 May 2024).

126 Army of the Republic of North Macedonia. Military Police Battalion. Available at <https://mil.mk/operations-command/military-police-battalion/?lang=en> (last accessed 9 May 2024).

127 Ibid.

128 United Nations Peacekeeping. Factsheet of North Macedonia. 25 April 2019. Available at [https://peacekeeping.un.org/sites/default/files/north-macedonia-factsheet\\_20190425.pdf](https://peacekeeping.un.org/sites/default/files/north-macedonia-factsheet_20190425.pdf) (last accessed 9 May 2024).



The Republic of North Macedonia does not have military court martial.

## NORWAY

**Military Police:** The military police and military officers are authorized to investigate alleged violations of the Military Penal Act and the Military Disciplinary Act according to the nature of the offence (criminal and/or disciplinary, respectively). In operations they are also expected to investigate alleged violations of the Penal Act. In certain cases, civilian police will be involved in the investigation process.<sup>129</sup> National investigation officers (NIO) will be deployed to the area of operation when deemed appropriate. Prior to NIOs' arrival, the Senior National Representatives are responsible for ensuring that evidence is efficiently collected, recorded and secured.

Norwegian MPs do not have authority over civilians, except on military installations or under martial law. They also have authority to direct civilian traffic as part of military exercises. They do have authority over military personnel anywhere, including when such personnel are off duty. When the military police uncover serious crimes among Norwegian service members, it forwards the case to the civilian Norwegian Police Service for investigation.

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**Military courts:** Norway does not have a Military Court System and cases related to military personnel are put before Civilian Courts.

## POLAND

**Military Police:** The Military Gendarmerie (MG) is a specialized and independent service within the Polish Armed Forces. The MG cooperates with non-military structures and is responsible for national security during peace but also war times. The Military Gendarmerie Commander is subordinated directly to the Minister of Defence.

The legal basis for the daily work of the Gendarmerie are found in the Constitution, the Act on the MG dated 24 August 2001, National Security Strategy as well as various supplementary decrees.<sup>130</sup>

The MG's activities focus on ensuring compliance with military discipline, protecting public order and preventing crimes being committed on the premises of military units and in public places.

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**Military Prosecution:** The structure of the Public Prosecutor's Office of the Republic of Poland includes the Department for Military Affairs, as well as district prosecutors' offices responsible for the consideration of military cases by military courts, which are subordinated to the Deputy

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129 United Nations Peacekeeping. Factsheet of Norway. 30 June 2017. Available at <https://peacekeeping.un.org/sites/default/files/norway-fact-sheet.pdf> (last accessed 9 May 2024).

130 Nato Military Police Centre of Excellence. Polish Military Gandarmerie. Available at <https://mpcoe.org/POLAND> (last accessed 9 May 2024).

Prosecutor General for Military Affairs.

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**Military courts:** The military courts are the military unit courts and the military provincial courts. They have judiciary control within the Polish Army in criminal cases and other cases subscribed to them by relevant statutes.

The military courts are specialised criminal courts for the Polish Armed Forces and its civilian personnel, as well as foreign soldiers and their personnel during their duties if treaties allow them to be tried on Polish soil. There are 7 garrison military courts (*wojskowy sąd garnizonowy*) under the jurisdiction of 2 district military courts (*wojskowy sąd okręgowy*), which roughly correspond to the regional and district common courts, respectively. The creation of military courts and their territorial jurisdiction are regulated by the Minister of Defence, while the Minister of Justice makes internal regulations for the court.

## PORTUGAL

**Military Police:** The Army Police (Portuguese: *Polícia do Exército, PE*), usually called the *Lanceiros*, is the military police of the Portuguese Army —designated as *Polícia Militar* (Military Police) between 1953 and 1976. In the Portuguese Army the instruction and organization of the Army Police forces is of the responsibility of the *Regimento de Lanceiros Nº 2* (2nd Lancers Regiment).

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**Military courts:** With the approval of the new Portuguese Code of Military Justice, 15 November 2003, the permanent military courts were disbanded, ceasing to exist during the time of peace. In time of peace, the military crimes or the crimes committed by military personnel are now judged in the criminal sections of the common Judicial courts. For the purpose of military justice, there are four military judges (one for each branch of the Armed Forces and the other for the National Republican Guard) in each of the following courts: the Supreme Court of Justice, the *Relação* of Lisbon and the *Relação* of Oporto.

However, in times of war, separate military courts can be re-established. These can be ordinary or extraordinary. The ordinary courts are the Supreme Military Court, the military courts of 2nd instance and the military courts of 1st instance. The military ordinary courts would be composed of the military judges that usually serve in the criminal sections of the common Judicial courts. The extraordinary military courts are non-permanent courts created near military forces or installations outside the national territory or national waters, only to judge specific trials, being dissolved as soon as these are decided. Each of these courts would be composed of members of the military with a higher rank than the defendants and by a person with a degree in Law (preferably a judge, if available).

## ROMANIA

**Military Police:** The Romanian Military Police (Romanian: Poliția Militară) is the military police of the Romanian Armed Forces. It was formed in 1990.

Romanian Military Police is the corps of Romanian Armed Forces responsible for order and discipline, manoeuver and mobility support, Armed Forces personnel and property protection, and sensitive military compounds security.

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**Military Prosecution:** According to LAW No 304 of 15 November 2022:

...(2) The military prosecutors' offices shall prosecute cases concerning criminal offences committed by Romanian military personnel deployed on the territory of other States, within the framework of multinational forces, under the conditions that, according to an international convention, Romanian jurisdiction may be exercised on the territory of the receiving State.

(3) Military prosecutors' offices shall have special investigative bodies at their service

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**Military courts:** The key structure in the military justice system is the Directorate of Military Courts.

'Within the structure of the Ministry of National Defence of Romania, there is the Directorate of Military Courts, which organises activities within its competence. The Directorate of Military Courts is one of the central bodies of the Ministry of National Defence of Romania, which is directly subordinated to the Minister of Defence.'

There are no constitutional provisions regarding military justice. Nevertheless, the Romanian judicial system provides for military courts. According to Art. 2 of Law no. 304/2004 on judicial organization, among the courts in Romanian judicial system there are also: '...e) military courts (...)'

LAW No 304 of 15 November 2022 on judicial organization Article 62<sup>131</sup>

- Military courts shall sit in their own courts. The court may, for good cause, order that the trial be held elsewhere.
- Military courts may also try Romanian military personnel, members of a multinational force, on the territory of other States, provided that, according to an international convention, Romanian jurisdiction may be exercised on the territory of the receiving State.

Article 63: Military judges and military prosecutors shall be required to wear military uniform at court hearings.

Article 64: Military courts shall be established in the municipalities of Bucharest, Cluj-Napoca, Iași and Timișoara.

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131 Law on the Organization of Judiciary, Portal Legislative. Parliament of Romania. 16 November 2022. Available at <https://legislatie.just.ro/Public/DetaliuDocumentAfis/261410> (last accessed 9 May 2024).

- The military courts shall try trials and applications given by law within their jurisdiction.
- The military tribunal shall be headed by a president assisted by a vice-president. The provisions of Articles 54 to 56 shall apply accordingly, the governing colleges consisting of a president and two judges, elected for a period of three years by the general assembly of judges.

Article 65: The Military Court of Appeal shall function in the municipality of Bucharest as a single court with legal personality and shall be headed by a President assisted by a Vice-President. The provisions of Articles 54 to 56 shall apply accordingly, the governing college consisting of the President and two judges elected for a period of 3 years by the general assembly of judges.

## SLOVAKIA

**Military Police:** The Military Police is a special law enforcement body authorized to operate within the Armed Forces. The MP is headed by the MP Chief, who reports directly to the Minister of Defence of the Slovak Republic. The MP also oversees observance of law including criminal proceedings.<sup>132</sup>

**Military Prosecution:** Slovak prosecutors are the ones addressing all military justice investigations.

They are the ones who can charge any military member following investigation.

**Military courts:** Slovakia currently has no military courts established by law.

## SLOVENIA

**Military Police:** The Special Military Police Unit performs special military police assignments and provides military police support to Slovenian Armed Forces (SAF) units at home and in international operations and missions. In accordance with the legal provisions, it is responsible for the prevention, detection and investigation of offences in the Slovenian Armed Forces.

**Military Prosecution:** Upon suspicion that an offence has been committed, the Military Police and/or intelligence and Security Service (in coordination with civilian authorities i.e. the prosecutor and investigating judge) conduct investigations in the field. The investigation phase is led by the military authorities (Military Police Intelligence and Security Service) in close cooperation with the civilian authorities. The disciplinary liability is processed internally by the Slovenian Armed Force.<sup>133</sup>

132 NATO Military Police Centre of Excellence. Slovakian Military Police. Available at <https://mpcoe.org/slovakia#:~:text=The%20MP%20are%20a%20special,of%20law%20including%20criminal%20proceedings>. (last accessed 9 May 2024).

133 United Nations Peacekeeping. Factsheet of Slovenia. 14 September 2016. Available at [https://peacekeeping.un.org/sites/default/files/slovenia\\_fact\\_sheet.pdf](https://peacekeeping.un.org/sites/default/files/slovenia_fact_sheet.pdf) (last accessed 10 May 2024).

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**Military courts:** Slovenia does not have military courts in peacetime, but they may be established in wartime.<sup>134</sup>

## SPAIN

**Military Police:** The Guardia Civil (Civil Guard) is the national gendarmerie force and therefore has a military status. It patrols the entire national territory (including highways and ports), except for those areas that belong to the National Police, enforces customs duties and investigates crimes therein. They operate from garrison posts that are called Casas cuartel ('home-garrisons') which are both minor residential garrisons and fully equipped Police stations. They answer to both the Ministry of Interior and the Ministry of Defence.

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**Military courts:** The organisation and operation of the military courts are based on the principle of unity of judicial power. They administer justice within the strictly military sphere and, where applicable, in matters established by the declaration of a state of siege, in accordance with the Constitution and the provisions of criminal, procedural and disciplinary military laws.

In peacetime, the jurisdiction of the military courts is confined to the strictly military sphere, namely hearing cases relating to conduct classified as an offence in the military criminal code, with this jurisdiction being extended to any kind of offence in the case of troops stationed abroad. In times of war, Organic Law 4/1987 on the Jurisdiction and Organisation of Military Courts permits a change in scope, although that decision has to be taken by Parliament (Cortes Generales) or by the Government.

In the civil system, the military courts are responsible for preparing testate or intestate succession proceedings for members of the armed forces who, in times of war, died in battle or at sea, this being limited to providing the essential assistance to enable burial of the deceased and the creation of the inventory and provisional securing of their assets, always informing the competent civil judicial authority.

The military courts are made up of professional military personnel, members of the armed forces and representatives of the Ministry of Defence.

The system of military courts consists of: the regional military courts (Juzgados Togados Territoriales), the central military courts (Juzgados Togados Centrales), the higher regional military courts (Tribunales Militares Territoriales) and the Central Military Court (Tribunal Militar Central). Nevertheless, at the top of the military court system is the Fifth Chamber of the Supreme Court.<sup>135</sup>

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<sup>134</sup> Ibid.

<sup>135</sup> European e-Justice. National Ordinary Courts: Spain. Available at [https://e-justice.europa.eu/18/EN/national\\_ordinary\\_courts?-SPAIN&member=1](https://e-justice.europa.eu/18/EN/national_ordinary_courts?-SPAIN&member=1) (last accessed 10 May 2024).

## SWEDEN

**Military Police:** The Swedish military police is the law enforcement service of the Swedish Armed Forces. The Life Guards is responsible for training military police soldiers, Royal Guards and other guards. The duties of the military police outside the military may include protection of foreign Heads of State.

The military police unit of the Armed Forces is responsible for the functional management of the military police by: 1. Providing quality-assured training for military police officers. 2. Offering follow-up and support to assist in the management of operational military police activities. 3. Identifying the development needs of the military police organization and delivering processed documents to the Swedish Armed Forces Headquarters.<sup>136</sup>

**Military Prosecution:** If a crime is suspected, the military legal advisor or the military police contacts Swedish international prosecution chamber in Stockholm. The prosecutor then takes the decision whether a criminal investigation shall be made by the military police or the civilian police. The prosecutor will decide whether he/she and the civilian police shall go to the area of deployment to investigate the suspected crime or if the investigation can be done by the military police in the mission area.<sup>137</sup>

**Military courts:** Sweden does not have a military court.<sup>138</sup>

## TURKEY

**Military Police:** The Gendarmerie of the Turkish Republic is an armed general law enforcement organization, which maintains security, safety and public order and executes the duties ascribed to it by other laws. The Gendarmerie General Command is subordinated to the Ministry of Interior

**Military Prosecution:** There are at least 2 prosecutors in each of the offices of the military prosecutor. The military prosecutor is the main authority to investigate. There are other assisting vice-prosecutors working on behalf of the prosecutor. All prosecutors and vice-prosecutors are military judge branch officers. Military prosecutors work on behalf of the Republic and the Army. They have constitutional right to work independently. Military prosecutors are the main authorities in investigating cases. They issue all indictments. They represent the Turkish Armed Forces during

136 Försvarsmakten. FÖRSVARSMAKTENS MILITÄRPOLISENHET. Available at <https://www.forsvarsmakten.se/sv/organisation/livgardet/forsvarsmaktensmilitarpolisenhet/> (last accessed 10 May 2024).

137 United Nations Peacekeeping. Factsheet of Sweden. 17 November 2016. Available at [https://peacekeeping.un.org/sites/default/files/sweden\\_december\\_2016.pdf](https://peacekeeping.un.org/sites/default/files/sweden_december_2016.pdf) (last accessed 10 May 2024).

138 Ibid.

trials. They can work with all other law enforcement authorities during investigations.<sup>139</sup>

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**Military courts:** Military justice is represented by Military Courts and Disciplinary Courts.

These courts have the jurisdiction to try military personnel for military offences, for offences committed by them against other military personnel or in military facilities, or for offences connected with military service and duties. (Article 145 of the Constitution). The offences and persons falling within the jurisdiction of Military Courts in time of war or under martial law, the organization of the Military Courts, and the appointment where necessary, of judges and public prosecutors from courts of justice to such courts are regulated by law.<sup>140</sup>

## UNITED KINGDOM

**Military Police:** In the UK, the term ‘military police’ refers to the three branches of service police, responsible for policing armed forces personnel. The Royal Military Police polices the British Army, the Royal Navy Police polices the Royal Navy, and the Royal Air Force Police polices the Royal Air Force.<sup>141</sup>

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**Military prisons:** The United Kingdom has one military correctional facility. (It has no establishments that would be considered prisons.) The Military Corrective Training Centre (colloquially known as the Glasshouse after the former military prison in Aldershot), in the town of Colchester, is where non-commissioned servicemen and -women who are convicted by military courts and sentenced to more than 28 days, but less than three years, will be incarcerated. Women, although in the same prison, are kept separate from men. The facility is maintained and controlled by the British Army’s Military Provost Staff (Adjutant General’s Corps). More serious offenders with longer sentences are transferred to HM Prison Service as part of their dishonourable discharge. There are three categories of prisoners:

Those from the Royal Navy (RN), Royal Marines (RM), British Army, and the Royal Air Force (RAF) who are to remain in the Services after sentence and will serve their detention in A Company.

Those from the RN, RM, British Army and RAF who are to be discharged after their sentence and will serve their detention in D Company.

Those held in Military custody awaiting the outcome of an investigation, or awaiting HM Prison

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139 ASLAN, Muzaffer Yasin. Military Criminal Jurisdiction Under Turkish Law. 2008. P. 4. Available at <https://dergipark.org.tr/en/download/article-file/627016> (last accessed 10 May 2024).

140 Ibid.

141 The British Army. The Adjutant General’s Corps. Available at <https://www.army.mod.uk/who-we-are/corps-regiments-and-units/adjutant-generals-corps/> (last accessed 19 May 2024).

or YOI placement.<sup>142</sup>

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**Military courts:** The Military Justice system deals with members of the armed service who commit crime or a disciplinary violation. There is a common misconception that Service Law applies only to serving members of the armed forces, who are based in the UK. However, the Service Law net is cast far and wide as military personnel are subject to it not only in the UK but wherever they are. It also includes service offences, civilian offences and extends to reservists and civilians affiliated with the armed forces.

The military courts of the United Kingdom are governed by the Armed Forces Act 2006. The system set up under the Act applies to all three armed services: the Royal Navy (RN) (including the Royal Marines), the British Army, and the Royal Air Force (RAF), and replaces the three parallel systems that were previously in existence.

The military courts have jurisdiction over all members of the armed forces of the United Kingdom, and civilians subject to service discipline.

## UNITED STATES

**Military Police:** The US Army Military Police Corps (USAMPC) is the uniformed law enforcement branch of the United States Army.<sup>143</sup> Investigations are conducted by Military Police Investigators under the Provost Marshal General's Office or Special Agents of the Department of the Army Criminal Investigation Division (CID).

Military Police are actively employed in direct combat and during peacetime.

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**Military Prosecution:** In the US Armed Forces, the system of military prosecutorial oversight corresponds to the structures of the branches of the Armed Forces. The elements of this system are independent investigative bodies. They are not part of the federal prosecutor's office but are, rather, part of the branches of the US Armed Forces.

Crimes committed on a military installation will be investigated by the Department of Defense investigative agency concerned and, when committed by a person subject to the Uniform Code of Military Justice, prosecuted by the Military Department concerned.<sup>144</sup>

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142 The British Army. Military Corrective Training Centre. Available at <https://www.army.mod.uk/who-we-are/corps-regiments-and-units/adjutant-generals-corps/provost/military-provost-staff/mctc/> (last accessed 10 May 2024).

143 Britannica. Janissary: Turkish Military. Available at <https://www.britannica.com/topic/Janissary> (last accessed 10 May 2024).

144 US Department of Justice Archives. Prosecution of Military Personnel. available at <https://www.justice.gov/archives/jm/criminal-resource-manual-669-prosecution-military-personnel> (last accessed 10 May 2024).



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**Military prisons:** Military prisons are typically used to house POWs, unlawful combatants, those who pose a risk to national security and military members who have been found guilty of serious crimes. Due to the unique nature of these facilities, they typically fall into two categories: penal, to punish or reform, and confinement-oriented, housing those who pose a security threat.

The US military's correctional system is organized into three tiers consisting of 59 prison facilities. Level One is the lowest and typically consists of pre- and post-trial inmates with sentences of no more than 1 year. Level Two, which houses the majority of prisoners, holds those with sentences of up to 7 years, while level 3 makes use of the maximum-security facility at Fort Leavenworth, Kansas to house the most dangerous criminals.<sup>145</sup>

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**Military courts:** The US military justice system has been in force since 1806 and is governed by the Uniform Code of Military Justice. There are three types of military courts: (1) a disciplinary military court - it deals with cases against privates and non-commissioned officers who have committed minor offences; (2) a special military court - it has the right to try cases of minor and serious offences, but is limited in imposing punishment (no more than 6 months in prison or 3 months of correctional labour); (3) general military court - may hear all cases of crimes committed by military personnel, as well as cases of civilians serving in the US Armed Forces or subject to military jurisdiction due to wartime conditions. This court has the power to impose any penalty under the law, including the death penalty and life imprisonment. The highest appellate court for military courts is the US Court of Military Appeals.

# ANNEX 2: MILITARY JUSTICE IN UKRAINE

## The evolving landscape of military justice in Ukraine

Since gaining independence in 1991, Ukraine's approach to military justice has been a topic of debate. Military tribunals which were later renamed as military courts, were employed until 2010. Judicial reform, implemented in 2010, led to the abolition of military courts, due to concerns about their alignment with democratic principles and judicial independence.<sup>146</sup> Military prosecutions were kept until 2012 when it was disbanded. In 2014, due to the escalation of the situation in Eastern Ukraine, it was again reintroduced, but in 2019, new reform of the prosecution service yet again abolished military prosecutions in Ukraine.

Since 2010, Ukrainian military personnel (except for minor offenses handled administratively) have faced trial in civilian courts.<sup>147</sup> This system, however, faces significant strain due to the war. The surge in military personnel (exceeding one million from a pre-war force of 250,000)<sup>148</sup> and the complexities of handling war crimes<sup>149</sup> has created backlogs and capacity issues. According to statistics as of the end of 2023, more than 35,000 military criminal offenses were registered in the Ukrainian Armed Forces (more than half of them related to the evasion of military service).<sup>150</sup> Other cases were related to the refusal to comply with the lawful order of a commander, unauthorized abandonment of a military unit or place of service, negligent destruction or damage to military property, and negligent attitude to military service.<sup>151</sup> A huge number of soldiers have been mobilized in a very short time (some of whom had no previous military experience) and this fact, added to the harsh conditions of military duty, has led to an increase in the number of internal discipline issues. Ukrainian attorneys highlight that military offenses are one of the most complex categories of cases they have today. The problem is not only their specificity, their social significance, or even the number of cases. The main issue is that there are no pre-trial military

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146 Ю.Полянський, Військова юстиція в Україні: проблемні питання, № 3 (2019): Юридичний вісник. Available at [http://yurvisnyk.in.ua/v3\\_2019/3.pdf](http://yurvisnyk.in.ua/v3_2019/3.pdf)

147 Law of Ukraine of 24 March 1999 No. 551-XIV. Available at <https://cis-legislation.com/document.fwx?rgn=17812>

148 Comparison of the military capabilities of Russia and Ukraine as of 2024. *Statista*. Available at <https://www.statista.com/statistics/1296573/russia-ukraine-military-comparison/>

149 Nuridzhanian, Gaiane. "Prosecuting War Crimes: Are Ukrainian Courts Fit to Do It?". *European Journal of Law*. 11 August 2022. Available at <https://www.ejiltalk.org/prosecuting-war-crimes-are-ukrainian-courts-fit-to-do-it/>

150 Назарчук, Ірина & Богуцький, Павло. «Чи вдасться Україні розбудувати повноцінну систему військової юстиції?» Юридична Газета. 23 January 2024. Available at [Will Ukraine be able to build a full-fledged military justice system? - Yurydychna Gazeta \(yur-gazeta.com\)](http://www.yur-gazeta.com)

151 Військова юстиція та захист прав військових. *Принцип*. 2023. Available at [Військова юстиція та захист прав військових в Україні - Принцип \(pryncyp.com\)](http://www.pryncyp.com)

investigation bodies, no military prosecutors, and no specialized courts. Another challenge is a large number of internal regulations, some of which are 'classified'; hence the attorneys have no access to them during preparation for trials. Another issue is that contrary to civil or commercial cases, where relevant experts are involved in conducting economic, construction, or any other necessary expertise, in military cases there is a clear lack of experts who can be called upon to testify in trials. A military man/woman can be asked to testify and give an assessment of certain events; however, the court will consider it as a private opinion, not an expert testimony.<sup>152</sup>

The full-scale invasion in February 2022 has reignited discussions about potentially reintroducing a military justice system in Ukraine. Proponents argue that the military police should become a separate, independent law enforcement agency, directly addressing the task of ensuring military law and order. There should be, they continue, a dedicated military prosecutor's office performing functions and tasks in the interests of the defence of the state, in particular during an armed conflict, and such a system of military justice would not be functional without military courts.<sup>153</sup>

Opponents argue that military justice bodies are undemocratic and dependent on military leadership.<sup>154</sup> The financial and logistical hurdles of establishing a new system are also sometimes voiced, particularly for a potentially temporary solution. Additionally, questions remain about the necessity of a permanent military justice system after the war concludes.<sup>155</sup>

The future of military justice in Ukraine remains uncertain. While the pressure of war pushes for reform, the feasibility and long-term implications of reintroducing military justice are actively debated. Currently, the Parliament of Ukraine has a number of draft laws on military justice, and its separate components. Reforming the military justice system in wartime is complex. Defence expenditures are putting a strain on resources, making it difficult to invest in the creation of new institutions. The immediate needs of the war, such as military operations and humanitarian assistance, might sometimes take priority over long-term reforms.

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152 Романчук, Андрій. "Як домогтися справедливого правосуддя для військових". *Українська Правда*. 19 June 2023. Available at <https://www.pravda.com.ua/columns/2023/06/19/7407455/>

153 Назарчук, Ірина & Богуцький, Павло. «Чи вдасться Україні розбудувати повноцінну систему військової юстиції?» *Юридична Газета*. 23 January 2024. Available at [Will Ukraine be able to build a full-fledged military justice system? - Yurydychna Gazeta \(yur-gazeta.com\)](https://www.yur-gazeta.com)

154 Збірник матеріалів міжнародної науково-практичної конференції. *СИСТЕМА ВІЙСЬКОВОЇ ЮСТИЦІЇ У ЗАБЕЗПЕЧЕННІ НАЦІОНАЛЬНОЇ БЕЗПЕКИ УКРАЇНИ*. 29 October 2019. Available at [https://ippi.org.ua/sites/default/files/zbirnik\\_14.11.2019.pdf](https://ippi.org.ua/sites/default/files/zbirnik_14.11.2019.pdf)

155 Kinak, Margarita. "War as a new challenge for the justice system". *Yurydychna gazeta*. 27 April 2022. Available at <https://yur-gazeta.com/golovna/viyyna-yak-noviy-viklik-dlya-sistemi-pravosuddya.html>


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