

# Human Rights of Armed Forces Personnel:

COMPENDIUM OF STANDARDS, GOOD PRACTICES AND RECOMMENDATIONS

This is an overview of rights covered in Chapter 18 of HUMAN RIGHTS OF ARMED FORCES PERSONNEL: COMPENDIUM OF STANDARDS, GOOD PRACTICES AND RECOMMENDATIONS developed by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) together with the Geneva Centre for Security Sector Governance (DCAF) to safeguard and strengthen the rights of people working in the armed forces. For more information, see: [osce.org/odihr/ArmedForcesRights](https://osce.org/odihr/ArmedForcesRights)

Civil and political rights

Equal opportunities and non-discrimination

Rights related to military life (e.g., working and living conditions)

Procedural rights (e.g., military justice and oversight mechanisms)

## Discipline and Military Justice

Armed forces personnel are subject to the same criminal laws as civilians. In many countries, they must also adhere to a separate system of military discipline. Military justice systems are usually set up in order to maintain high standards of discipline necessary for military operations. A system of military discipline separate from the civilian courts is also useful in establishing common legal systems for all personnel, including those deployed abroad.

The existence of separate military justice systems can, however, raise concerns of judicial independence and the equal treatment of service men and women. To address these concerns, many OSCE participating States are moving towards greater civilian involvement in military justice systems, such as having civilian judges preside over military courts or trying military cases in specialized chambers of civilian courts.

The judicial independence of military courts is assessed by examining the composition of members of the court, the appointment of judges, prosecutors and defence counsels, access to legal representation, and the right of appeal to a superior court.

The equal treatment principle is based on whether military personnel have rights to due process guarantees comparable to civilians.

## Jurisdiction over criminal offences

In some countries, military courts can only try disciplinary offences (e.g., dereliction of duty), while in others, they can also try criminal offences (e.g., assault) committed by armed forces personnel. Where military courts have jurisdiction over both criminal

and disciplinary offences, safeguards should be in place to prevent double punishment. In the United Kingdom, for example, legislation governing the armed forces covers all offences provided for under criminal law.

Criminal offences tried:	Pros and Cons
Only in civilian courts	<p>Pros: Equal treatment of service personnel and civilians.</p> <p>Cons: Civilian judges may be unfamiliar with military conditions and culture, which may negatively impact military effectiveness and requirements.</p>
In military chambers of civilian courts	<p>Pros: Results in the mixed (military/civilian) composition of court members. Provides greater civilian oversight of the military justice system.</p>

*Example: In the Netherlands, criminal offences by military personnel are tried in special chambers presided over by a military judge. Cases can be appealed to the military chamber of an appeals court.*

Criminal offences tried:	Pros and Cons
<b>In both civilian and military courts</b>	<p>Pros: Can help to ensure judicial independence and enhance public confidence. Distinguishes between offences according to the severity, location and victim(s) of the crime, and conditions of conflict or peace.</p>
<i>Example: In France, civilian courts try military personnel for offences committed during peacetime, while military courts handle offences committed by personnel in times of war.</i>	
<b>Only in military courts</b>	<p>Pros: Military courts have greater understanding of military life.</p> <p>Cons: Can potentially weaken judicial independence and the equal treatment of military defendants compared to civilians.</p>

## Composition of military courts

It is a good practice to include civilian judges in military courts. Where military judges preside over cases, they should be independent of the military chain of command and, ideally, should be appointed by civilian ministries of justice

or prosecutor's offices. If any court members are under the direct influence or control of the superior officers of the person charged, this can raise concerns about their independence.

## Prosecution and defence lawyers

Armed forces personnel standing trial for serious criminal offences or disciplinary violations should have access to independent legal advice and representation and, where necessary, legal aid. Some states have a separate prosecutor or prosecution services that specialize in military law. It is important to have safeguards in place to ensure that prosecutors and defence lawyers are independent of military command structures.

Example: Denmark's Military Prosecution Service does not form part of the chain of command and is subordinate only to the Minister of Defence. In many states, including Denmark, Finland, Ireland and Switzerland, defence lawyers are civilian lawyers and are therefore also separate from the chain of command.

## Right of appeal

Giving service personnel the ability to appeal their case in a civilian court is an important safeguard. It helps to ensure that the lower court is applying the law accurately, and can also correct any procedural defects.

For offences tried before military courts, it is a good practice to give a civilian court the jurisdiction to hear an appeal. In every case, final appeals should be heard within the civilian court system.

Example: In 2014, Ireland transferred the jurisdiction to hear appeals from the Court-Martial Appeal Court to the Court of Appeal. Ireland's Constitution provides for the right to appeal to the Supreme Court.

### Good Practices related to military justice include:

- » Drawing military judges and prosecutors from independent services located outside of chain of command of the unit concerned and, preferably, appointed by civilian ministries of justice or prosecutor's offices;
- » Ensuring that the process for allocating judges and prosecution lawyers to military trials should be insulated from intervention by the chain of command;
- » Establishing safeguards to prevent repeated punishment for the same act in successive criminal and disciplinary proceedings; and
- » Respecting key trial safeguards as established by international standards in all military tribunal proceedings.

