

德國軍事勤務法院懲戒處分程序之簡介

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目 次

壹、前言	二、啟動程序機關之處理
貳、德國軍人懲戒處分之對象及雙軌制	三、防衛紀律調查官向法院提出指控
參、德國軍事勤務法院體系	四、法院懲戒審判程序之進行
一、德國軍事勤務法院之兩審級法院	五、法院懲戒處分之救濟與執行
二、德國軍事勤務法院之法院組織（軍人參審制）	伍、結語
三、類似檢察官之防衛紀律調查官	
肆、德國軍事勤務法院懲戒處分程序	
一、法院懲戒處分程序前之調查程序	

關鍵詞：違失行為、軍事審判、軍人懲戒處分、維護軍紀、德國防衛紀律法

Keywords：Disciplinary Offence, Military Trial, Military Disciplinary Measures, Maintenance of Military Discipline, Military Disciplinary Code of Germany

摘 要

我國 2013 年軍事審判法修正後，將平時軍人犯罪改由普通刑事法院依據刑事訴訟法追訴審判，本來普通刑事法院審判程序令人詬病之問題，包括審

* 國立清華大學科技法律研究所副教授，德國弗萊堡大學法學博士。本文承蒙匿名審查人之悉心審閱，並賜予具體修改意見，作者受益良多，銘感於心，惟本文之文責仍由作者自負。

判程序過長以及判刑結果過輕，在軍人犯罪案件中，更危及軍隊紀律維持甚而影響國家安全維護。惟迅速維護軍隊紀律之需求，恐怕難以在刑事訴訟程序中追求，參考德國法可知，維護軍隊紀律主要透過軍人懲戒處分程序來實現。德國軍事勤務法院懲戒處分程序之設計與刑事訴訟相類似，保障受審軍人之閱卷權、受辯護人協助權以及聽審權等，符合正當法律程序之要求。職司審判的軍事勤務法院法官以及負責調查追訴之防衛紀律調查官都必須具備德國法官法之法官資格，從而確保獨立、公正之要求。法院組織採職業法官與軍人共同審判之軍人參審制，能適當反應軍人之利益。整體而言，非常值得我國改革相關制度參考借鏡。

An Introduction to the Disciplinary Procedures of the German Military Courts

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Abstract

After the revision of the Military Trial Act in 2013, crimes committed by military personnel during peacetime are now prosecuted and tried by ordinary criminal courts in accordance with the Code of Criminal Procedure in Taiwan. The common criticisms of ordinary criminal court procedures, such as excessively long trial processes and overly lenient sentencing, pose greater risks in cases involving military personnel, as they jeopardize the maintenance of military discipline and may even impact national security. The need for swiftly maintaining military discipline is difficult to achieve through criminal procedure. Reference to German law shows that maintaining military discipline is primarily achieved through military disciplinary procedures.

The design of the disciplinary procedures in the German Military Courts is similar to that of criminal procedures, ensuring due process by protecting the rights of the accused military personnel, such as the right to access files, the right