THE MILITARY JUSTICE CODE IN ROMANIA AND THE MODIFICATIONS IT SUFFERED PRIOR TO WORLD WAR ONE

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The beginning of military justice in the Romanian Principalities regard the Organic Regulations' era, where provisions concerning military discipline of the newly formed land-militia of both historical provinces were recorded. Subsequently, military justice continued to develop during the reign of Barbu Dimitrie Stirbei and prince Alexandru Ioan Cuza's time, whose reign also concerns, among other military reforms, the unification of military criminal legislation, by adopting a single regulation in both historical provinces. The Military Justice Code was adopted in 1873, being subsequently modified and completed in the years of 1881, 1894, 1905, 1906, 1916 and 1917, in order to keep up with social, economic and legislative changes, but especially with the ever-changing battlefield reality, in the era of turmoil that hit Europe at the end of 19th and beginning of 20th century.

Keywords: military justice; council of war; royal commissioner; desertion; military discipline.

The Romanian Military Justice Code[1] was adopted in 1873 and we need to outline that it was neither an original creation of the national law school, nor a sum of experiences generated by the participation of the young Romanian army to different armed confrontations, but a copy[2] of the French Military Justice Code of 1857, in an era where discipline in the Romanian military institutions "was not as absolutely strict as it should have been"[3].

The adoption of *The Military Justice Code* was not a unique event, but part of a whole legislative package regarding the army, proving the constant endeavors towards prince Carol's military institution, he himself being a good connoisseur of the phenomenon.

In fact, among the adoption of *The Military Justice Code*, which had been deemed a step forward towards Romania's military justice[4] modernization, prince Carol's entire reign, can be identified with the transformation of the Romanian army into a modern one, in terms of military organization, legislation[5], doctrine and strategy.

The Military Justice Code entailed 269 articles, grouped in four books, which also comprised titles, chapters and sections, as it follows:

- Book I, *About organization of military courts*, comprised regulation of councils of war, also revising military praetors[6], in three titles, made of six chapters, totalizing 49 articles;
- Book II, *About the competence of military courts*, treated competence of councils of war in times of peace and when besieged, of councils of revision and military praetors, a total of 28 articles;
- Book III, *About the procedure before military courts*, treated aspects concerning the procedure before councils of war, about revision and of military praetors, comprising five titles, a total of 102 articles.
- Book IV, *About crimes, misdemeanors and punishments*, treated offences and their due punishments, comprising three titles, second of which was organized in eleven chapters, a total of 90 articles.

We need to outline the fact that although Book I referred to the organization of *military courts*, the legislator approached differently, nominating, *councils of war*, *councils of revision* and in some cases[7], *military praetors* among the institutions of military justice. A possible justification[8] could be that article wording and their content had been taken almost entirely out of the similar French code, adopted in 1857, which was also dividing its content in 4 books, namely: *organization of military courts*, *competence*, *their procedure* and *sanctions*.

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This similitude was also kept when it came to military courts where justice was being administered, which were identically named: *councils of war*, *councils of revision* and *military praetors*.

The fact that the way of organizing and functioning of the French military justice had been taken unmodified, but also other impartial requirements, caused by the modification of the Constitution of Romania, which since 1881 became kingdom, by the necessity of matching with some provisions of the *Law regarding organization of military power in Romania*[9], even by translation rectifications concerning some concepts and terms, have caused The Code Of Military Justice to be republished[10].

First amendments added in 1881

We should notice the fact that amendments brought on May 24th, 1881 were part of a coherent legislative program which began ever since 1866, whose beneficiary was the military institution. In fact, until the end of the 19th century many judicial norms directly concerning the army had been adopted.

In order to exemplify, we need to mention that due to amendments brought in 1881 to the Code of Military Justice, the functioning framework of the council of war had been also broadened to the army corps echelon, although this echelon was not part yet at that moment of the army structures, in times of peace. No later than 1882, due to another normative act of great importance, *The Law regarding the organization of military headquarters*[11], which created the judicial framework for the development and improvement of military structures, the army corps echelon had been introduced in the organizational framework, and thus, inter alia, Romania's territory was to be divided in four areas of responsibility.

Coming back to the amendments brought to *The Code of Military Justice*, let's say that out of 270 articles, 94 had been essentially modified, which caused some opinions according to which we are in fact witnessing a new[12] Code of military justice.

In fact, this opinion belongs to a remarkable collective of law practitioners[13], who by referring to the 1873 and 1881 editions of the Code of military justice, believe they are among some different judicial entities. However, they share the same content, being elaborated according to a similar system, comprising both substantive law provisions, as well as common law offences committed in terms of military service, among national procedural law provisions regarding military courts organization, competences and procedures.

In 1881, the main amendments brought to the Code were especially poised at aspects regarding organization, competence, and procedure[14]. Therefore, agreeing with the army organization law, which had been divided in the "permanent army" and the "territorial army", the expression "territorial division" had been replaced by "territorial district", in order to avoid confusion among terms.

Moreover, the framework required for the organization of several permanent councils of war had been created, therefore reducing, on one hand, the number of members in the judgment panel from 7 to 5, in order for them to be constituted more easily, and, on the other hand, they could be established also within the army corps echelon, except for division commandments where they were already functioning.

The council of war had removed lieutenants and second lieutenants, and also non-commissioned officers, both in order for efficiency to be attributed to the principle according to which every judgeable person was to be judged by members at least equal in rank as him, principle stated by provisions of articles 10, 13, 14, 15, and also because of a practical aspect which was hindering panel creation, more specifically the mandatory requirement of article 22, regarding the age of 25 of the active noncommissioned officers.

Other amendments concerned form changes, such as changing the name of "lordly commissioner" into "royal commissioner", in fact an adaptation to the requirements of the new Constitution, but also fundamental changes (art. 58), by broadening the competence *ratione personae*[15] (according to person quality) of the permanent council of war.

Concretely, amendment meant addition, apart from the military judgeable persons, civil clerks who were serving in military structures, called "minor civil servants", for all the crimes and misdemeanors related to service.

To the same end, it had been provided that in times of war, "army suppliers and their servants" to be judged by military courts, in order to grant army interest and to be able to punish those who could have not performed their contractual duties.

Article 58, had also been completed, in harmony with 1868 Law regarding organization of military power provisions, by attributing to permanent councils of war, apart from members of the permanent army, territorial army (light infantry and light cavalry) and militia, of town (civic) guard members which were organized at town level, as well as those belonging to armed bands, which were formed from villages, when the latter were to be put under military authority.

One of the most important amendments of the Code of military justice was the addition of the provision that, in times of war, the right of appeal could be suspended, concerning ways of attacking decisions adopted by *the permanent councils of war*, measure imposed by circumstances of army supreme interest. Such being the conditions, maintaining military discipline could have required promptness when it comes to measure implementation, followed by a thorough repression[16].

The measure shall be subsequently practiced, once Romania joins WW1, due to the disadvantageous politic-military situation the country was going through. Suspension of right to recourse had been made by the High Royal Decree[17] no. 2390 of September 16th/29th 1916, one of the most important and, definitely, one of the most controversial measures, consisting of the fact that once the sentence had been given by the council of war, or since January 1917 by the court martial, it became mandatory to be performed, also in case of death penalty.

Having the amendments republished on May 24th 1881, the Code of military justice had been into force until 1894, time when army organization suffered significant changes, which triggered, once more, its revision.

Completions added in 1884

The following amendments of *The Code of Military Justice* materialized once with Law[18] no. 2795 of December 23rd 1883, regarding *The Special Justice Code for Navy Corps*.

The crucial factor that implemented these amendments was the attainment of Dobruja after the Treaty of San Stefano, enshrined by the Berlin Peace Congress (1878), and its integration within the Romanian state through legal (1880) and constitutional (1884) frameworks.

Therefore, on March 9th 1880, the Law regarding the organization of Dobruja[19], which regulated matters of territory and rights, administration and county and communal institutions, finances, judicial and military power, a judicial instrument which was meant to provide economic development within the area and to facilitate the shift under Romanian administration.

Subsequently, on January 8th 1884, the Constitution was also revised, demanded by amendments generated once with the new configuration of Romanian territory, as well as other political factors. Art.1, of the newly revised Constitution mentioned the new territorial configuration of Romania with Dobruja being called "The Territory on the Right Side of the Danube".

The attainment of direct exit towards the sea, not only through Danube as till then, the development undergone by the fluvial commercial navy and the beginning of the creation of a new naval commercial fleet, among the enhancement of the naval and fluvial borders to over 1000 km, had naturally led to the development of the Navy[20].

Without any certainty, a possible explanation could be that back then the role of military Navy was not so important, not only because of the endowment with ships and equipment, but also because of mission complexity.

All countries which were not very industrialized and their armies comprised mostly infantry[21] were facing approximately the same situation. But starting on 1878, when its numbers couldn't overcome an infantry battalion[22], the Romanian Navy underwent perpetual development.

In 1882, The Navy School was established, new training, war and supply ships were brought into service, and in 1884 the first military harbor was arranged at Galați (Țiglina).

Maybe the best image of the military navy development, in only a matter of two decades, stands out from the letter[23] which General Nicolae Dumitrescu-Maican wrote to the King Carol I in 1892:

"When I returned from studying abroad (in 1865), the squadron had a single warship which did not work and a 200-men crew.

In 1888, when I left the Corps, The Flotilla had a School for marine training which also allowed the training of officers. The Flotilla had 80 officers, 60 mechanics and pilots of whom many were trained and instructed within the Corps, a 1500

men crew instructed for different specializations: topmen, steersmen, cannoneers, torpedo-launchers, heaters… etc., the squadron had an arsenal for all the required reparations for ships, in order for the reparations not to be done abroad as before; the squadron had a shelter spot, 18 warships and 17 barges, of which many had been built within the arsenal; the squadron had an organizational law and corresponding regulations which allowed a smooth function of service".

Therefore, because it had been previously adopted, *The Code of Military Justice* did not contain any provision adapted to military Navy, to which only the same general provisions as to land troops could apply.

On these grounds, at the end of 1883, strictly related to the political-administrative measures mentioned, with the progress which Romanian navy, both civilian and military, had made, but also respecting the same legal conduct guideline, the similar French Code of 1858 had been translated, named "Code de justice militaire pur l'armee de mer" and the "Special Code of Justice for Navy Corps"[24] had been enacted.

This code comprised 40 articles, grouped in two titles. First 24 articles, grouped under Title I concerned organization (art. 1-16), competence (art. 12-14) and procedure (art. 15-24), and the other articles, grouped under Title II concerned crimes (offences) and misdemeanors in the navy and their punishments (art. 25-39), while art. 40 concerned authority abuse.

Art. 1 of this code mentioned the courts through which military justice was served, squadron personnel being also stated: councils of war, belonging to the territorial district in which the squadron commander resides, respectively, to the *councils of justice on warship*[25].

According to art. 3, the judgment panel had to be made of at least two navy officers, the principle of correspondence between the military rank of the council members, which had to be at least equal to the rank of the impeached one, was still in force, according to art. 10 of the Codex of military justice.

The other judicial institution belonging to navy, the council of justice which could be organized on every warship, was only temporary, the judgment panel comprising only the ship commander (or his second in charge), the president, and two of the squadron officers, as well as a registrar, who could be any member of the crew, all Romanian or naturalized citizens.

We need to outline the fact that in the chemistry of the council of justice on warships, there is no record regarding any position to fulfill the role of prosecutor and public ministry representative, the act of prosecuting being attributed within procedure to one of the council members, who, usually, had to be part of the warship on which the accused embarked.

As art. 12 mentioned, the institution of councils of justice on warships justified their role due to the fact that a judgement court had to exist in order to maintain discipline on military ships, when they were outside national territory, marching or abroad.

If military ships were stationed inside the country, the judgment of the cause was attributed to the council of war, and regarding the competence of judging individuals, it manifested upon lower ranks, more exactly upon those who had embarked without being a commissioned officer, or having received any order that could have placed them among the officers on the ship.

In respect to the competence regarding incriminated deeds, the provisions of *The Special Code of Justice for Navy Corps* reflects the specific of the branch, a field in which mistakes, deliberated or not, could cause grave consequences, both affecting ships and crew.

Therefore, out of the 18 articles of Title II, *About Crimes, misdemeanors and punishments*, four articles apply capital punishment, and eleven of them, whether apply a sentence longer than one year imprisonment, or refer to another personnel category, such as warship commanders or cart officers, outside the competence of councils of discipline on warships.

The provisions of *The Special Code of Justice for Navy Corps* came into force since 1884 until 1937, when a new *Code of military justice* was adopted, all provisions regarding this special justice for Navy being included within the new regulation.

Amendments and Completions added in 1894

When applying the provisions of the 1873 *Code*, military justice was institutionally exercised

exclusively among *the permanent councils of war*, and territorially, only within the four existing Infantry Divisions, in the garrisons of Bucharest, Craiova, Galați and Iași.

Only in exceptional cases, if "the service had been required", other such judicial institution could have been established by royal decree.

General Jacob Lahovary, as ministry of war in the conservatory government, submitted in Parliament in 1894, the project regarding the amendment of the Code of military justice, according to which, courts administering justice within military institution, had been provided with a German[26] inspirational institution, the council of discipline, for which there was no correspondent in the French model.

Approved by Law[27] no. 1304 of March 25th 1894, Additional Title II which comprises 23 articles has been added to the code of military justice, 32 articles grouped in six chapters being modified at the same time.

We need to outline that amendment was a practical measure, related to procedural celerity of minor causes concerning regiments, and which sought to relieve permanent councils of war, organized, as previously mentioned, in large echelons, from judging misdemeanors which were less dangerous, but many and sometimes belatedly[28] solved.

Apart from this situation, the accused were kept in custody for a period deducted from their military service term, which was jeopardizing combat training and in the meantime, was negatively influencing their comrades' morale and discipline, who all this time were enduring military service toughness.

Therefore, we appreciate that the apparition of councils of discipline was imposed as practical necessity, seeking to provide the regiment commander with a simple and quick organizational instrument, the characteristics of this institution being given by competences granted by the law.

First, the competence to judge only a few less significant misdemeanors, secondly, the competence to judge only those deeds for which the Codex of military justice provided a maximum 6 month imprisonment, and thirdly the competence to judge only deeds committed by militaries lower in rank.

Misdemeanors, under the competence of councils of discipline were regulated by art. 10 of Additional Title, which enumerated provisions from Chapter V of the Codex of military justice, respectively art. 224, regarding *non-obedience when called*, art. 224 bis, regarding *preparation of mobilization*, respectively art. 226, par. 1, regarding *first desertion in country in times of peace*.

In the first situation, *nonobedience when called*, could have been any soldier *called by the law*, or anyone employed by free will, that didn't show up to his destination (unit), within 10 days after the day established by his order of leaving, case when he could be punished by imprisonment between fifteen days and six months.

The second situation regarded "preparation of mobilization" and concerned the garrison commanders who hadn't fulfilled the duties they had according to the regulation on army mobilization and due instructions. On the other hand, speaking of the current competences of discipline councils, art. 224 bis aimed at any lower rank, on leave, in reserve or militia, who was not showing up in front of competent military authorities in order to endorse the military record, for the yearly update of his status, or for specifying any residence change that occurred more than two months ago, under the punishment from fifteen days to two months.

It's obvious that the main aim of this article is to assure military authorities about the observation of rules and duties imposed by the mobilization regulation in order to keep an updated track and to register every move made by reservists.

The situation has been under military jurisdiction until the April 6th 1913 Law[29] no. 353 which modified the *Law for recruitment of army*, establishing the attributions of the recruiting council, councils of recruitment revision and bureaus of recruitment and mobilization, the deed of the reservist of not notifying changes of residence, being transferred from military jurisdiction to the competence of common[30] civil law, and also adding to the punishment decreed by the Codex of military justice a fine from 10 to 200 lei.

Anyways, the third situation regulated by art. 226, par. 1, "desertion in country, in times of peace", punished with imprisonment between two and six months, every non commissioned officer, corporal, brigadier or soldier, who was missing unallowed from his unit for more than three days since he had been declared missing.

It's remarkable that, unlike the other two analyzed articles, regarding "nonobedience" and "offences towards mobilization regime", which were regulated by one article each, for "desertion", the lawmaker assigned 13 articles (art. 225- 237), grouped in four[31] sections, fact which could also be interpreted under the aspect of military environment offence "symptomatology" .

In order to understand the social size of the phenomenon, it is very important to settle the boundaries between desertion, the way it is perceived today, and 19th century desertion, which had an inoculated subjective etiology ever since conscription, and which changes the concerned deed, "first desertion in country", from offence into a less significant misdemeanor.

Unfortunately, citizens were still reluctant, and this was fully justified, when it came to conscription, recruitment, or military service, and saw it as painful legacy of the Organic Regulation era, when young people where "mandatorily" recruited as land militia:

"Serving militia[32] was the most dreadful tribute for the segment of population that had the duty to pay it. The man entered in the barracks was deemed erased from his kin, lost from his family (…). Otherwise, we can neither explain why young people feared hearing about militia so much, nor the many desertions of then and there is no entitlement for the fact, lastly noticed, of difficulty encountered in order to remove from the spirit of the villagers that downright repulsion towards military service".

Resentment persisted even later, in 1865, French officer Gustave Le Cler wrote[33] about the recruitment system found in the United Principalities' Army:

"Recruitment, according to the regulation elaborated in 1860, following the French law is made as arbitrarily as possible. Still, since long ago, a number of random peasants, no matter their age or family status, were taken away, were tied like some wild beasts and were led this way to the district residence".

Moreover, corruption also caused difficulty, wealthy young people often succeeding to be "exempted" also from an elementary education at the level of some state servants, about evidence within recruitment circles of fit young people, civil status, in the absence of any records[34] being out of the question: "Is it really possible to determine classes (social classes) when there are no civil status records? Except for a countryside priest's writings, if we could call that writing".

From the 13 articles which sanctioned desertion, only the first deed, *desertion in country*, was under the jurisdiction of councils of discipline and, consequently, was receiving a lighter punishment, most likely due to the system's understanding of the individual's need for adaptation from civil environment to barracks toughness.

Coming back to the provisions of art. 226 from the Codex of military justice, which regulated *the first desertion in the country*, in times of peace, we need to mention that aggrieving circumstances interfered when desertion could have been made during service or with stealing military materials or equipment or the deserter wasn't committing the deed for the first time.

These situations, which were sanctioned by *The Code of Military Justice* by imprisonment from 1 to 2 years, were beyond the expertise area of the council of discipline, according to art. 22 from Additional Title I provisions, which could pronounce only sentences with imprisonment up till six months. This is also, in fact, the second characteristic of councils of discipline, which faced to such situations, it was mandatory for them to pass the competence to councils of war.

Under the aspect of competence regarding people, the activity of councils of discipline concerned all categories of lower ranks enlisted at art. 52, 53,54 from the Codex of military justice, more specifically, soldiers and reemployed persons (par. 1), as well as militia, reservists and armed bands (par. 2). Here we need to emphasize that, when the Codex of military justice appeared, the organization of the national defence system was done under the Law for organization of combat power of June 11th 1868, followed by the law of March 21st 1872.

Therefore, the Prussian model of military organization had been taken over, thus structuring the permanent and territorial army (infantry and border guard corps), supported by militia (all young people that had served in the army and were 36 years of age at most), as well as the town guard (for towns) and armed bands for villages, both of them having men between 36 and 50 years old.

The Prussian military organization model takeover, supported by lord Carol, had been made

not only on political grounds, but also pragmatic, the mixed system of organization made of a permanent core and territorial elements (landwehr and landsturm), being deemed the most adequate for Romania, a small state, whose human and material resources, couldn't afford the upkeep of a large[35] permanent army.

Completions added in 1905

Subsequently, by April 12th 1905 Law[36] no. 2677, councils of discipline had been also expanded to light-infantry battalions[37], as well as Navy, one to each of the two divisions: Sea and Danube, without major differences.

That is why, *The Law regarding the establishment of councils of discipline within light-infantry battalions and Navy*, can be perceived as an act meant to fix two very developed military entities in terms of corps spirit, specifically distinguished among other army corps, with increasingly complex missions, the number of which had steadily increased within army composition. And personnel enhancement also implicitly meant an increase in cases of indiscipline.

The act meant to fix light-infantry battalions, deemed as elite corps, some of them even providing the security of the royal family, concerned hierarchical subordination, meaning that, although they were equally subordinated to the division commander as the regiments, the light-infantry battalions hadn't have until then, the competence to form their own councils of discipline.

The light-infantry were special units of the permanent army, which were part of the Romanian army between 1860-1920, highly skilled and trained, as well as mobile. The first battalion, garrisoned in Bucharest, was established[38] by Alexandru Ioan Cuza, having 8 companies of 100 men each.

Subsequently, by Decision no. 63 of 1860, in Moldavia, a well-grounded[39] battalion was formed, also organized in 8 companies, which at first was named Riflemen Battalion, and after that Hunters Battalion and which was founded upon the third battalion from 5th Line Regiment.

In 1882, the Romanian army had four light-infantry[40] battalions, each with a crew in times of peace of 24 officers and 446 corporals and soldiers, which in times of war could reach 1050 militaries, officers and army, distributed as follows: 1st Infantry Division (Craiova) comprised 1st Light-infantry Battalion, garrisoned in Drobeta Turnu Severin, 4th Infantry Division (Targoviste) comprised 2nd Light-infantry Battalion, garrisoned in Târgoviște, 6th Infantry Division (Focșani) comprised 3rd Light-infantry Battalion, garrisoned in Galați, 8th Infantry Division (Botoșani) comprised 4th Light-infantry Battalion, garrisoned in Botoșani.

Later, apart from the 4 existing battalions, others had been established[41]: in 1896, 5th and 6th Battalion, to 1st Army Corps, in 1900, 7th and 8th Battalions, to 2nd Army Corps, followed by 9th Battalion in 1904, so that, when Law no. 2667 of April 12th 1905 came into force, the Romanian army had 9 Light-infantry Battalions, one for each division.

The councils of discipline belonging to hunter battalions and military navy were not fundamentally different in terms of procedure, constitution, and competence, from the councils of discipline belonging to regiments, with some exceptions which we will mention below.

Therefore, if within Light-infantry battalions the situation of council organization was clear, namely in each of the garrisons where these units were functioning, when speaking about military Navy, not every unit, whether it was about ships (warships) or constituted groups of ships, could organize these councils of discipline, but only those two large units representative for military navy, after the organization of February 26th 1896: The Sea Division, with garrison in Constanța and the Danube Division, with garrison in Galați.

The Sea Division[42] was made of cruiser "Elisabeta", training-brig "Mircea", cannon-ship "Grivita" and two torpedo-ships "Naluca" and "Sborul", while the Danube Division was made of warship "Romania", cannon-ships "Bistrita", "Oltul" and "Siretul", respectively torpedo-cannon ships "Soimul" and "Alexandru cel Bun".

These two great representative units for military navy took over, each according to its destination, and the other services and corps creating the military navy, so that, at the beginning of the 20th century, the Sea Division, a couple of years prior to the entry in force of Law no. 2667 of April 12th 1905, the Sea Division had as subordinates defensive units from sea harbors, and the Danube Division, the defensive units of fluvial harbors and the crews equipment Warehouse[43].

It's worth mentioning that both hunter battalion commanders, as well as commanders of the two divisions of the military navy, were invested with all rights and attributions stated by the provisions of Additional Title I to the other regiment commanders, regarding councils of discipline.

Another specific characteristic is that the provisions laid down in art. 6, par. 2. of Additional Title I, which established that council of discipline judges constituted within regiments could be replaced once every six months, was not applicable to councils of discipline within hunter battalions and military navy, derogation from judicial norm being most likely imposed, by officer crews less in number that what one could usually find among these units.

Therefore, according to statistics[44] of hunter battalion crews, enacted in 1910, the 9 battalions constituted until then had together only 180 officers, compared to 4167 noncommissioned officers and army. As far the composition of the council of discipline within hunter battalions is concerned, the captain's rank was respected, as provided in art. 2. of Additional Title I when speaking about councils of discipline constituted within regiments, as well as, in case of replacement, the length of service principle.

The differences between the completion procedure of councils of discipline within regiments, with the similar situation from light-infantry battalions were also imposed by the reduced officer crews of the latter. Therefore, when "not enough" the light-infantry battalions, had to address to the upper echelon, to the division commander respectively, which disposed the completion of the council of discipline with other officers belonging to other army corps, either from the garrison where the hunter battalion was distributed, or in the closest garrison available.

As far as the composition of the council of discipline within the Sea and Danube Divisions is concerned, the president was no longer the deputy of the commander, as in the situations encountered within regiments or light-infantry battalions, but an officer greater in rank, appointed by the respective division commander from the subordinated navy officers.

The same appointing procedure applied also to those two judges, who were selected, also according to length of service, from the captains of the residence garrison of the division, or, in case of "not enough" from the closest garrison available.

The differences between the completion procedure of the council of discipline constituted within regiments, with the situation similar from the military navy were also imposed by the reduced officer crews of the latter, situation similarly encountered within hunter battalions. Therefore, if the councils of discipline constituted within the Sea Division and Danube Division couldn't have functioned due to lack of available officers, the military navy commander was in charge to order its completion with officers from the entire navy corps, located in the residence garrison of the concerned division or in the closest garrison available.

Eventually, art. 7 from *the Law regarding the establishment of councils of discipline within light-infantry battalions and Navy*, also established the competence of case judgment belonging to other corps, undivided, of the navy, such as the Arsenal of the fleet or the Warehouse of torpedoes and artillery, attributed to the jurisdiction of the Danube Division commander.

Amendments added by Law no. 1025 of March 3rd, 1906

The latest significant amendment, regarding our analysis criteria of the Code of military justice, respectively before Romania joined WW1, took place under Law[45] no. 1025 of March 3rd, 1906, entitled The Law regarding the amendment of articles: 26, 70, 99, 216, 224, 237, 241 and 256 from the codex of military law, of art. 10 of additional title of the same codex, as well as the addition of art. 224 bis in that codex.

In our opinion, significant are the amendments of articles: 26, 70, 99 and 216. Therefore, in art. 26, the first which was amended, the lawmaker had completed the composition of the council of revision, making the presence of the substitute permanent, who was the representative of the public minister, whose presence, in the old text format, was optional, being possible for him to be appointed if "service requirement" would have required, while art. 70 encountered a change of form, changing in the sentence from par. 1, the term "resbel", an archaic term for *war*, with "resboiu" a more contemporary word.

Another significant amendment could be considered the case of art. 99, through which a new

procedural act had been added, respectively the *arrest warrant*, among those already in use, and its availability had been established to a term of 30 days, calculated since the date of issue.

The arrest warrant was issued by the *rapporteur*, as representative of the Public Attorney, only when arrest was indispensable to the instruction of the cause, when it was declared by an interest of the public cause or when the committed deed could be placed in the category of crimes (offences).

The following representative amendment, of art. 216 regarding the hitting of the superior, had been generated by the modifications appeared in 1894 when, once with the addition of Additional Title II, the punishment of "public labor" as way of sanctioning crimes[46] (offences) had been abolished.

In the current case, the punishment was provided for the commitment of deed in times of peace and outside service, so simplified, unaggrieved by other circumstances.

Conclusions

The main reason why the 1873 Codex of military justice had been criticized by several authors, concerns the fact that it belongs to a foreign judicial norm, respectively, the 1857 French Code of military justice, which, according to them, had been adopted and legislated without amendments, but, most of all, without taking into account tradition, customs, cultural evolution and the state of things in Romania.

However, we mostly agree to these critics, supporting the analyzed topic, I attempted to find a couple of circumstances, precisely, a couple of counterarguments, without thinking of running out of ideas. The first is that Romanian society had encountered the adoption of modern societies' legislation of some highly-important judicial norms, and the best evidence to this end is the 1865 Civil Code, also known as Cuza's Civil Code[47], which was into force from December 1st 1865 till October 1st 2011, which had been elaborated according to the 1804 Napoleonian Civil Code.

Back then, when it was adopted, the Romanian society was being formed, when for the unification of the two principalities and implicitly, for the consolidation of the new Romanian state, legislative reforms were urgently required.

Until the 1865 Civil Code adoption, which would prove as an important instrument in the unification of the principalities, in Wallachia the Caragea Law[48] (1818) was applicable, whereas in Moldavia, the Calimah Code[49] (1817), typical to the late feudal era, on the verge of extinction.

The same can be said for the 1865 Criminal Code[50], through which the criminal legislative unification had been done and for the elaboration of which were also necessary foreign legislative documents, such as the 1810 French Criminal Code and the 1859 Prussian Criminal Code.

Secondly, the adoption of the Codex of military justice according to the French model was logic and was compatible with Romanian military regulations, if we take into account not only the Romanian society orientation towards French culture and civilization, but also the contribution of the French military mission (1860-1869), lead by LTC Eugene Lamy sent by emperor Napoleon III to provide assistance towards the organization of the Romanian army.

Members of Mission Lamy were technical counsellors in matters of administrative organization and military instruction, had contributed to the enactment of administrative and tactical-military regulations. It had a remarkable contribution regarding the modernization of the Romanian youth army, which accelerated both the unification process of the armies of the two principalities, and the assimilation by Romanian militaries of French tactical and administrative regulations, among the most modern of that time.

Moreover, the weaponry with which the United Principalities' army had been endowed, undergoing mainly French training, this being deemed as the best army in Europe, which caused the first and the most consistent endowments to have been French.

A large amount of weapons had been imported[51] from France, among which emperor Napoleon III had agreed the training in the well-known French military schools of Saint-Cyr, Metz, Saumur and Brest, of some Romanian officers specialized in engineering, cavalry and navy.

As a conclusion, in 1865 military regulations and legislation were so strongly dominated and "smeared" by the French legislative spirit, so that it had come to the imitation of even the least significant things, such as wearing a goatee, so that, if we add the uniforms, which were very similar to the French ones, someone would have believed "in full French army on the Danube banks"[52].

Other criticism[53] brought to the Code of military justice aims at the procedure, implementing method, the personnel called to perform judicial acts, aspect I haven't approached here, and last but not least, the possibility of interference from military superior bodies regarding justice distribution, precisely upon the independence between military hierarchy and the judicial attributions the militaries were entitled to.

At the heart of this criticism is the fact that, since 1873, military justice was performed according to the court of jurors' model, where judges were also acting as jurors, as well as the fact that their decisions were not motivated, aspect which could have hidden the arbitrary, removing any chance of verification.

Lack of specialized personnel in judicial matters, enabled to perform military justice, may be deemed as reasonable criticism, taking into account that many judicial errors could have been committed, even undeliberate and only because the law principles were not known or misinterpreted.

We also agree to this criticism considering that, fair and square, lack of specialized study within carrier officers, who in that era were not encouraged to fulfill their instruction with civilian studies, can be taken into account as an element able to diminish the quality of the judicial act.

No later than Romania joined WW1, authorities had attempted to modernize the Codex of military justice regarding the specialization of officers who were required in councils of war, conditioning their recruitment to an academic law training, similar to that of civilian magistrates.

On the other hand, it requires mentioning that this current of using front officers in order to perform military justice, was present within all modern armies of that era; in the French army, where the code had been translated, in the Prussian army, from where the council of discipline institution within regiments had been imported, even in the British army, which was also appointing active officers[54] in courts martial organized within every regiment of His Royal Majesty.

With all these shortcomings of *The Code of Military Justice*, adopted in 1873, with the amendments and completions subsequently encountered, had led to the opinion[55] with which we also agree, that it had accomplished its repressive role of maintaining military discipline, granting military commanders an instrument with a preponderantly administrative function, fundamentally distinguished by the judicial one.

NOTES:

1 *Monitorul Oastei* no. 13, from 12 May1873, pp. 289-334.

2 Petrache Zidaru, *Tribunalele militare, un secol și jumătate de jurisprudență (1852-2000)*, Univers Juridic Publishing House, Bucharest, 2006, p. 34.

3 Viorel Siserman, *Justiția militară în România. Tradiție și actualitate,* Military Publishing House, Bucharest, 2004, p. 59.

4 Petrache Zidaru, *op.cit.,* p. 34.

5 In the same period of time were published *The Law regarding the organization of the armed power in Romania* (1872), which gave an additional importance to the military institution, *The Law regarding the organization of the military headquarters* (1882), *The Law regarding the duties of the General Staff* (1883), which stated the main missions of the General Staff having as a model the similar law in force since 1880 in France, the most modern of it's time.

6 *Pretor, pretori, s.m.* roman magistrate with high judicial responsibilities (often he governed a roman province). From *lat. praetor, -oris.*

7 Established on art. 48 for the situation when the Army would have been outside the national territory.

8 Viorel Siserman, *op.cit.*, p. 98.

9 *Monitorul Oastei* no. 21/22, from June 1868, pp. 258-271.

10 *Law no. 1256*, from 14 May 1881, *Monitorul Oficial* no. 40/24 May 1881.

11 *Law no. 1677*, from 8 June 1882, *Monitorul Oastei* no. 19/1882, pp. 475-486; *Monitorul Oficial* no. 50/11, June 1882, pp. 1458-1461.

12 Viorel Siserman, *op.cit.*, p. 99.

13 Vintilă Dongoroz, coordonator, *Explicații teoretice ale codului penal român, partea specială*, 2nd edition, Romanian Academy, vol. IV, Bucharest, 2003, p. 681.

14 *Dumitru C. Popescu*, *Privire istorică asupra Justiției Militare din România,* Military Publishing House, 1977, p. 68.

15 RATIONE PERSONAE, expression used in the criminal procedural law in order to designate that competence determined by the infringer, required by law in the moment of committing the offence or when he is prosecuted.

16 Dumitru C. Popescu, *op.cit.,* p. 70.

17 *Monitorul Oficial* no. 135/17 September 1916, p. 6266.

18 *Monitorul Oficial* no. 218/6 January 1884.

19 *Monitorul Oficial* no. 57/10 March 1880.

20 *** *Istoria militară a poporului român*, Military Publishing House, Bucharest, 1988, vol. V, p. 97.

21 *** *Istoria infanteriei române*, Stientific and Pedagogical Publishing House, Bucharest, 1985, vol. II, p. 24.

22 Within the Flotilla there were 20 officers, 20 civil employees and 246 sailors, spread to different boats and services. https://www.navy.ro/despre/istoric/istoric_03.php, accessed on 26.01.2021.

23 https://www.navy.ro/despre/comandanti/comandanti_06.php, accessed on 26.01.2021.

24 Decree no. 2795/23 December 1883, *Monitorul Oficial* no. 218/6 January 1884.

25 The original term used to describe large-sized warships was *bastiment*. From *it*. *Bastimento.*

26 Petrache Zidaru, *op.cit.,* p. 35.

27 *Monitorul Oficial* no. 290/25 December 1894.

28 Dumitru C. Popescu, *op.cit.,* p. 72.

29 *Monitorul Oficial* no. 16/21 April 1913.

30 Nicolae Homoriceanu, *Codul Justiției Militare adnotat*, p. 170. From jurisprudence of the Court of Caasation, 2nd Section, Decizia penală no. 1475, from 25 may 1915.

31 Book IV, *Despre crime și delicte*, Title II, *Despre crime și delicte și pedeapsa lor*, Capitol V, *Nesupunere și dezertare*, Sections II-V from *Codicele de justiție militară*, adopted through Law no. 1256/14 May 1881, *Monitorul Oficial,* no. 40/1881, with additional modifications.

32 I. Popovici, *Organizarea armatei române*, Leon Friedman Printing, Roman, 1903, vol. I, p. 141.

33 *Ibidem*, p. 255.

34 *Ibidem*, p. 250.

35 https://www.defence.ro/evolutie-smap, accesed on 26.01.2021.

36 *Monitorul Oficial* no.12/1905 and *Monitorul Oastei*, no.11/1905, regulamentary section.

37 Original term is *vânători*, similar to *chasseurs-au-pied* from French army.

38 Înaltul Ordin de Zi no. 64, from 31 August 1860.

39 I. Popovici, *op.cit.*, p. 175.

40 *** *Istoria infanteriei române*, p. 10.

41 *Ibidem*, p. 23.

42 ****Istoria poporului român*, vol. V, p. 99.

43 *Ibidem*, p. 100.

44 *Ibidem,* p. 84.

45 *Law no. 1025/3*, March 1906, *Monitorul Oficial*, no. 271/9 March 1906.

46 Nicolae Homoriceanu, *op.cit.*, p. 90.

47 *Codul Civil from 1864*, in force from 1st of July 1865, to 25th of July 1993, *Monitorul Oficial* no. 271 (art. 1-347); *Monitorul Oficial,* no. 7, 8, 9, 11 and 13, from 1865 (art. 348-1914).

48 Ioan Gheorghe Caragea, Domn al Țării Românești, *Legiuire a prea Înălțatului și prea Pravoslavnicului Domn și Oblăduitoriu a toată Ungrovlahia IoIoan Gheorghie Caragea*, Bucharest, 1818, Bucharest Metropolitan Library, Fondul Bibliotecii Nicolae Iorga.

49 *** *Codul Calimah*, critical edition, The Academy of The Popular Republic of Romania Publishing House, 1958.

50 ****Codul penal*, 30th of October 1864, *Monitorul Oficial*, no. 240/ 30 october and was in force from 1st of May 1865, until 17th of March 1936; C. Hamangiu, *Codul general al României*, Leon Alcalay Publishing House, Bucharest, 1907. Subsequently modified in 1874, 1882, 1893, 1894 and 1895.

51 Victor Gabriel Osăceanu, *Români și francezi de-a lungul istoriei,* Aius Printed, 2011, Craiova, p. 118.

52 I. Popovici, *op.cit*, p. 244.

53 Vasile D. Chiru, *Principiile, economia și inovațiile noului Cod de Justiție Militară. Note sumare,* Pandectele Militare Publishing House, 1937, p. 8.

54 *Manual of Military Law* (1914), H.M. Stationery Office, Imperial House, Kingsway, London, 1914, Chapter V – *Courts martial*, art. 7-11, *Composition of courts*, pp. 36-37.

55 Petrache Zidaru, *op.cit.,* p. 48.

REFERENCES

*** *DEX*, *Dicționarul explicativ al limbii române*, Univers Enciclopedic Publishing House, Ediția a II-a, Bucharest, 1998.

*** *Codul Calimah*, critical edition, The Academy of The Popular Republic of Romania Publishing House, 1958.

*** *Codul penal* (1864), C. Hamangiu, *Codul general al României*, Leon Alcalay Publishing House, Bucharest, 1907.

*** *Istoria militară a poporului român*, Military Publishing House, Bucharest, 1988.

*** *Istoria infanteriei române*, Scientific and Encyclopedic Publishing House, Bucharest, 1985.

*** *Manual of Military Law*, H.M. Stationery Office, Imperial House, Kingsway, London, 1914.

*** *Monitorul Oastei* (initially named, *Codice de justiție militară*) no. 13, from 12 May 1873.

*** *Monitorul Oastei* no. 21, from 22 June 1868.

*** *Monitorul Oficial* no. 16, from 21 April 1913.

*** *Monitorul Oficial* no. 40, from 24 May 1881.

*** *Monitorul Oficial* no. 50, from 11 June 1882.

*** *Monitorul Oficial* no. 57, from 10 March 1880.

*** *Monitorul Oficial* no. 135, from 17 September 1916.

*** *Monitorul Oficial* no. 218, from 6 January 1884.

*** *Monitorul Oficial* no. 290, from 25 December 1894.

*** *Legea no. 1025*, from 3 March 1906, Monitorul Oficial no. 271, from 9 March 1906.

*** *Legea no. 1256*, from 14 Mai 1881, Monitorul Oficial no. 40, from 24 May 1881.

*** *Legea no. 1677*, from 8 June 1882, Monitorul Oastei no. 19/1882.

Caragea Ioan Gheorghe, Domn al Țării Românești, *Legiuire a prea Înălțatului și prea Pravoslavnicului Domn și Oblăduitoriu a toată Ungrovlahia Io Ioan Gheorghie Caragea*, Bucharest, 1818.

Chiru Vasile D, *Principiile, economia și inovațiile noului Cod de Justiție Militară. Note sumare*, Pandectele Militare Publishing House, Bucharest, 1937.

Dongoroz Vintilă, coordonator, *Explicații teoretice ale codului penal român, partea specială*, 2nd Edition, Romanian Academy Publishing House, Bucharest, 2003.

Homoriceanu Nicolae, *Codul Justiției Militare adnotat*, Dim. C. Ionescu Printing, 1916.

Osăceanu Victor Gabriel, *Români și francezi de-a lungul istoriei,* Aius Printed, Craiova, 2011.

Popescu Dumitru C., *Privire istorică asupra Justiției Militare din România*, Military Publishing House, Bucharest, 1977.

Popovici Ioan, *Organizarea armatei române*, Leon Friedman Printing, Roman, 1903.

Săuleanu Lucian, Rădulețu Sebastian, *Dicționar de termeni și expresii juridice latine*, IInd Edition, C.H. Beck Publishing House, Bucharest, 2011.

Siserman Viorel, *Justiția Militară în România*: *tradiție și actualitate*, Military Publishing House, Bucharest, 2004.

Zidaru Petrache, *Tribunalele militare, un secol și jumătate de jurisprudență (1852-2000)*, Univers Juridic Publishing House, Bucharest, 2006.

https://www.navy.ro/