POLITICS & SECURITY
ISSN 2815-3324 Online, ISSN 2535-0358 Print

MILITARY CRIMINAL LAW AS ONE ELEMENT OF SECURITY

Igor Zgoliński
Jan and Jędrzej Śniadecki University of Technology Bydgoszcz
Poland
https://orcid.org/0000-0002-5097-6170
igor.zgolinski@pbs.edu.pl

Abstract. *Criminal law in the armed forces is undoubtedly one of the foundations of security. Complementing it against this background is the law of military discipline. two branches of law coexist and function in parallel. However, their role is remarkably similar. Together, they are intended to support the maintenance of good order, both within each military formation and in broader, international relations. Among other things, they serve to ensure the smooth achievement of the objectives set for each army. This article is a sort of systematisation of the subject matter of the title. It is a cross-sectional analysis of the normative foundations of military criminal law in its broadest sense. The starting point is international law. The author then discusses in detail the specifics and knotty legal regulations in this area on the example of Polish law. Not forgetting the history, he also refers to the legacy of rulings by military criminal courts in the previous regime, passed against persons repressed for activity in favour of the independent existence of the State. The article concludes with a summary of the considerations.*

Keywords: armed forces, military criminal law, law of war, military justice, law of transition.

1. INTRODUCTION

Military justice preceded the organisation and operation of military justice on a peacetime basis. Military criminal trial was born as a criminal procedure of wartime. This refers both to the Roman military criminal trial and to its Polish roots, in the form of the so-called Hetman's court. Field proceedings were something natural for the military, in contrast to the so-called ordinary peacetime mode. The "special" procedure of the military criminal trial was and is the ordinary peacetime procedure, which underlines the specificity of the field in question. Military criminal legislation has undergone a separate evolution from general criminal legislation. In the case of Poland, it also retained its identity during the period when the Polish State did not exist as a sovereign subject of international law. Military formations applied their own normative acts, which were partly modelled on foreign (including partition) law and partly had a national character, corresponding to the spirit of the Polish military (Czyżak, 2012; Sieracki, 1983).

Currently, sensu largo, the penal law of the armed forces is separate and highly specific compared to the solutions in force in the common criminal law. This is a justified solution, especially given the nature of the armed forces, including their functions and the system of hierarchical subordination applicable to them. These elements dictate the recognition of the armed forces as a distinct community (Przyjemski & Kmieciak, 2014).

Despite this state of affairs, there is still a paucity of holistic studies in the literature dedicated to the current military criminal law, addressing not only the substantive law but also the procedural and executive aspects. The activities performed by the armed forces undoubtedly require strict and expected behaviour. They cannot be characterised by arbitrariness. The army also requires internal order, which entails compliance with a number of different types of regulations and with the provisions of the General Regulations of the Armed Forces. Violations of these regulations, especially in extreme situations, should be sanctioned criminally, disciplinarily or administratively. This is therefore a large domain still awaiting wider exploration than before. I would therefore like to express the hope that this panoramic study will become one of the contributions initiating a broader discourse around the issues of military law.

The fundamental premise of this work, however, is to show the totality and specificity of the regulation of military criminal law. Knowledge of these issues is crucial for understanding the essence of considerations concerning individual legal institutions in this field (Zgoliński, 2020).

2. THE INTERNATIONAL LEGAL ASPECT

Further considerations should begin with a few themes of an international nature. In general, it can be stated that at this broadest level of social relations, a certain set of norms has existed for a long time, which shape the framework of criminal responsibility before international courts and tribunals. These norms are universal in nature and are not exclusively addressed to soldiers. They apply to those who have committed serious crimes on a broader scale. The division of these most socially harmful crimes into war crimes, crimes against humanity, the crime of aggression, and genocide is undisputed in international law. Their common characteristic is that they are not subject to the statute of limitations.

Relating this aspect of the issue, it should be pointed out that the lack of statute of limitations is a clear deviation from the normative shape of the Polish statute of limitations institution, which has been elevated to the status of a constitutional principle (Article 43 of the Constitution of the Republic of Poland) in relation to these categories of acts (Zgoliński, 2020).

As it were, a relatively comprehensive humanitarian law (the law of armed conflict) operates in parallel in international law. These norms relate to the parties involved in an armed conflict and are intended to regulate their interaction with each other. It has numerous coherences with international law norms on the use of force, human rights, and international criminal law. The circle of humanitarian law provides perhaps the largest number of criminal acts, which generally boil down to various types of violations related to the conduct of hostilities and torts against protected persons and objects (war crimes).

For the sake of illustration, it can be pointed out that these include cases of attacking real estate and other objects that are not military targets, the use of unauthorised types of weapons or methods of warfare, the murder of civilians, the use of torture or the rape and robbery of civilians. These acts must be in connection with an armed conflict. As a general rule, in armed conflicts, targets should be persons who take part in the armed action. The catalogue of targets, as well as the permissibility of attacking them, varies depending on the rank of the conflict and the status of the person concerned.

If the perpetrators of this behaviour are soldiers, then their commanders should also be held responsible. However, this refers not only to situations in which they gave the order to carry out such acts, but also to situations in which they were aware of such actions and did not react to them. War crimes are generally tried by military tribunals, which are international in nature. One of the first such jurisprudential bodies was the Nuremberg Tribunal. Later, war crimes were also adjudicated by criminal tribunals set up on an ad hoc basis by the UN Security Council. They concerned tort crimes in Yugoslavia and Rwanda. The International Criminal Court was established in 1998, alongside minor hybrid tribunals. They deal with the trial of persons guilty of crimes committed during armed conflicts taking place in different countries (Przyjemski & Kmieciak, 2014).

Crimes against humanity, according to Article 7 of the Rome Statute of the International Criminal Court, constitute conduct such as murder, extermination, slavery, deportation, apartheid, torture, and various persecutions. The subjects of the execution of these crimes are civilians. They are characterised by their wide scale and thus have an extremely high degree of social harm. In addition, the 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide recognises that genocide is any act committed with intent to destroy the whole or a substantial part of a national, ethnical, racial or religious group through murder, causing serious bodily or mental harm to members of the group, the creation for the members of the group of conditions of life calculated to bring about their physical destruction in whole or in part, the use of measures intended to prevent births within the group, or the forced transfer of children (Przyjemski & Kmieciak, 2014).

A separate conceptual category is the crime of aggression. These are acts that are violations of the UN Charter. They therefore have a much broader dimension and are related to political aspects. More specifically, they involve any type of influence on state policy resulting in this type of behaviour. The term crime of aggression has its normative anchorage in an amendment to the Statute of the International Criminal Court. By aggression is meant the planning, preparation, initiation, or commission by a person

exercising effective direction or control over the actions of a State of an act of aggression which by its nature, gravity, or scale constituted a violation of the Charter of the United Nations.

The term act of aggression, in turn, is understood to mean the use of armed force by a State which has harmed the sovereignty, territorial integrity, or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations. It can therefore be an attack by armed forces (including informal units, so-called “green men”) against another State, or an agreement to use one's own territory to commit an act of aggression by another State against a third State.

It is worth adding further that there is a general prohibition in international law on the recourse to force by states. It is established by the UN Charter. Members of the United Nations have an obligation to refrain from using force against the independence of any state. Exceptions to this prohibition are provided for: (a) the right of self-defence in the face of armed aggression; (b) coercive action by the UN Security Council to maintain or restore peace and security (Przyjemski & Kmieciak, 2014).

3. SPECIFICITY OF MILITARY CRIMINAL LAW ON THE EXAMPLE OF POLISH LAW

With this international framework in place, it is appropriate to move on to a more detailed analysis related to the selected national norms on substantive criminal law in the military. It is immanently linked to the freedom of individual countries to shape their legislation. However, the specificity of the armed forces is such that it is possible to identify certain elements and common, parallel institutions among specific national regulations. These will be presented below, using the example of Polish law.

The integration of the principles of criminal responsibility of soldiers and civilians is observable in the Polish Criminal Code (Majewski, 2024). Its consequence is the lack of a separate military penal code. In the past, on the other hand, provisions in this area were sometimes normalized in separate legal acts, such as the Military Penal Code of 1928. It is worth noting that the Penal Code does not know the term "military offence". As rightly pointed out by Sieracki (1983), such a distinction would derive the meaning of the term from purely formal considerations in the form of the codal location of the act in question, and ignore substantive considerations standing in opposition to such an approach.

A characteristic feature of the military part of the Criminal Code is the prosecution of certain offences at the request of the unit commander. Such a solution is intended to limit criminal repression against soldiers who commit minor military offences. Furthermore, the provisions of the military part of this Code extend the catalogue of penalties provided for in the general part to include the penalty of military detention and supplement the penal measures with expulsion from professional military service and degradation (Przyjemski & Kmieciak, 2014).

Within the military part, there are separate General Provisions concerning soldiers (Chapter XXXVIII) and several categories of offences, traditionally grouped according to a common object of protection: Chapter XXXIX - Offences against the obligation to perform military service, Chapter XL - Offences against the rules of military discipline, Chapter XLI - Offences against the rules of dealing with subordinates, XLII - Offences against the rules of handling weapons and armed military equipment, Chapter XLIII - Offences against the rules of service, Chapter XLIV - Offences against military property.

Article 317 § 1 of the Criminal Code expresses the idea of maximum integration of the principles of criminal liability of soldiers and non-soldiers. It boils down to the statement that the provisions of the general and special parts of the Code of Criminal Procedure are also applicable to soldiers, with the proviso that if the provisions of the military part of the Code of Criminal Procedure provide for different solutions, then they take precedence (Szeleszczuk, 2024).

The provision of Article 317 § 2 of the Criminal Code prescribes the appropriate application of the provisions of Articles 356–363 of the Criminal Code, as well as of the general provisions concerning soldiers to military personnel. This solution broadens the subjective scope of liability. Civilians employed in the military, performing duties under an employment contract comparable to those of soldiers arising from service, who commit an offence in connection with their work, are covered by the same rules of

criminal liability as soldiers. This is to ensure that the same liability applies to offences of the same type regardless of the service status of the perpetrator.

Pursuant to Article 317 § 3 of the Code of Criminal Procedure, the provisions of the military part shall also apply mutatis mutandis to other persons if the law so provides. In general, these will be persons serving in other military formations. The command to commit an unlawful act being an order may lead to a conflict between two duties. On the one hand, there will be the soldier's duty of obedience and, from the other, the general duty to obey the law (Kutzmann, 2025a). Refusal to obey an order and failure to obey it or to obey it contrary to its content is a criminal offence (Article 343 of the Code of Criminal Procedure). Pursuant to Article 318 of the Code of Criminal Procedure, however, a soldier who commits a criminal act in the execution of an order does not commit an offence, unless, in the execution of the order, he intentionally commits an offence (Majewski, 2024). Thus, the criminal liability of a soldier who executes an order is excluded only in the case of unintentional offences. The intentional commission of an offence will lead to liability. The described solution thus indicates the rejection of the so-called "blind bayonet" concept. According to this, a soldier is obliged to carry out every order, regardless of its content. If he has fulfilled the elements of a criminal act in doing so, he will not be held criminally liable (Banasiak, 2020).

Pointing to the rudimentary solutions in Polish military criminal law, it is impossible to omit Article 319 of the Code of Criminal Procedure, which defines the prerequisites of the so-called counter-type of ultimate necessity in the army. This countertrip boils down to a situation where a soldier, by enforcing obedience to an order, violated the legal goods of another soldier and exhausted the elements of a criminal act. In such a case, he does not commit it, as his conduct is deemed to lack the characteristics of unlawfulness. It thus finds its application in the case of soldierly disobedience or resistance. Obviously, it will be applicable when, in the reality of the specific case, immediate counteraction was required and obedience to an order could not be achieved in any other way. The means used to compel obedience must be appropriate and necessary to break resistance. In other words, they must not exceed what is necessary. It is recognised that a superior officer may not use weapons to compel obedience to an order in a combat situation. Indeed, it is not possible to sacrifice one's life in order to force obedience to an order regardless of the consequences that will arise as a result of non-compliance. The counter-type set out in Article 319 of the Criminal Code is in fact a variant of a state of superior necessity. However, it does not require the soldier enforcing obedience to an order to respect the principle of the proportion of goods. Thus, under military conditions, the personal goods of a resistant soldier may be sacrificed to save discipline. If the limits of the ultimate need are exceeded, the court may apply extraordinary leniency to the soldier (Frąckowiak, 2023).

A specific institution in military criminal law is also the possibility to apply extraordinary mitigation of punishment or to waive its infliction in a situation where the soldier, at the time of committing the act, was incapable of performing military service (Article 320 of the Code of Criminal Procedure). The foundation of this solution is the assumption that the incapacity of a soldier, who is the perpetrator of a military offence, to perform military service is a momentous circumstance that affects the assessment of the degree of social harmfulness of the act. On the other hand, mere unfitness for military service does not deprive the soldier of the qualifications required of a perpetrator of a military offence. What is important in determining the extent of unlawfulness is the correct assessment of that characteristic of the perpetrator which makes him a fit subject to commit such an offence. There is no doubt that "...Despite the separation of the provisions concerning the criminal liability of soldiers – Polish criminal law still remains uniform, as the provisions of the general and special parts of the Code apply to soldiers, unless the provisions of the military part provide otherwise" (Majewski, 2024, p. 213).

The regulation contained in Article 321 of the Code of Criminal Procedure is applicable to perpetrators who committed the offence after the age of 17 and before the age of 18, and are soldiers at the time of the court's decision. It makes it possible to transfer the perpetrator to the competent commander, in order to impose the punishment provided for in the military disciplinary regulations (Czyżak, 2012). The regulation assumes that the disciplinary measures applied to soldiers are more adequate in this case than the upbringing and correctional measures applied to minors based on the Act of 9 June 2022 on the support and re-socialisation of minors (i.e. Journal of Laws of 2024, item 978). As a rule,

the need to use this institution is supported by the causal circumstances of the case and, moreover, by the degree of development of the offender, his/her personal characteristics and conditions (Dunaj, 2015).

The penalties in the military part of the Penal Code are not fully identical with respect to civilians. The catalogue of punishments has been extended here with the punishment of military detention (Article 322 of the Penal Code). It has a specific character, as it is a kind of conglomerate of imprisonment and elements of military training. In the case of its pronouncement, its execution takes place in open-type establishments. The conditions of its execution are specific, as military regulations, discipline and uniforms apply. In other respects, the provisions on imprisonment apply accordingly. The sentence of military detention should not be imposed on persons who are permanently or temporarily incapable of performing active military service. It lasts for a minimum of one month and has a maximum duration of two years. Article 329 of the Penal Code extends the possibility of imposing this punishment. In fact, it may also be imposed in cases of offences punishable by imprisonment not exceeding five years, if, in the court's assessment, the imprisonment would not be more severe than two years. The court should bear in mind here that a sentence of military detention has a greater potential for rehabilitation, which outweighs the repressive and retributive aspects (Majewski, 2023; Kutzmann, 2025). However, the modification of a custodial sentence to a sentence of military detention is possible only in relation to a person who is a soldier at the time of the court's decision and only in a situation where the act he or she has committed is characterised by a relatively low degree of social harmfulness, which is supported by the statutory size of the sanction. In these situations, however, it becomes advisable and at the same time necessary to consider particularly carefully whether greater emphasis should not be placed, however, on issues of re-socialisation, which are immanently connected with the sentence of military detention (Frąckowiak, 2023). The penalty of restriction of liberty (Article 323 § 1–5 of the Penal Code) is also slightly different from the provisions of the general part of the Penal Code. The possibility of applying Article 34 § 1a (1) of the Penal Code has been excluded here. Thus, an obligation to perform unpaid controlled work for social purposes cannot be imposed on a soldier (Majewski, 2024). At the same time, other additional sanctions in the form of prohibitions were imposed. While serving a sentence of restriction of liberty, a soldier may not, inter alia, be appointed to a higher military rank, appointed to a higher official position, nor may he participate in ceremonies and parades organised in the military unit or with the participation of the unit. The ban on taking part in ceremonies is linked to the issue of a soldier's dignity. It can be assumed that this is a so-called punishment on honour. These prohibitions burden the convict for the entire duration of the sentence of restriction of liberty (Szeleszczuk, 2024). Soldiers of basic military service serve their sentence of restriction of liberty in a separate military unit according to the rules set out in the Executive Penal Code. Other soldiers, on the other hand, are required to remain at the supervisor's disposal in a specified place for four hours two days a week from the end of their service. This is a restriction that is an essential element of this punishment. The court is also entitled to order a salary deduction, of between 5 and 15 per cent of monthly emoluments, for a designated social purpose. In the event of loss of status as a soldier or military employee, this is changed to a restriction of liberty imposed on civilians (Przyjemski & Kmieciak, 2014).

The legal construction provided for in Article 330 of the Code of Criminal Procedure is also an important distinction in terms of punishment. It extends the possibility of imposing non-isolation punishments on soldiers by imposing a sentence of restriction of liberty if the sentence of military detention imposed for the offence would not be more severe than one year. This includes, of course, the military form of the sentence of restriction of liberty. The modification of a sentence of military detention to a sentence of restriction of liberty is, after all, only possible for a soldier holding this status at the time of the court's decision. Such a modification, however, cannot be ruled against civilian employees of the military, as the court does not have the competence to rule on the sentence of military custody with respect to these persons. The provision of Article 330 of the Code of Criminal Procedure excludes in its entirety the application of the general provisions, set out in Article 58 § 3 and 4 of the Code of Criminal Procedure, to the sentence of military detention (Zgoliński, 2020).

Staying with the issue of sanctions in military criminal law, it is worth adding that Article 324 § 1 of the Code of Criminal Procedure is an addition to the general catalogue of criminal measures. De lege lata it already provides for only one, specific, criminal measure in the form of expulsion from professional military service. However, all criminal measures provided for in Article 39 of the Code of Criminal

Procedure may be adjudicated against soldiers, with the limitation set out in Article 324 § 2 of the Code of Criminal Procedure. This provision prohibits the adjudication against soldiers in basic service of a penal measure in the form of a pecuniary benefit specified in Article 39(7) of the Code of Criminal Procedure. This solution is rational insofar as soldiers of this category were deprived of other regular income in addition to their pay (Hoc, 2016; Majewski, 2024).

Another punitive measure, in the form of expulsion from military service (Article 326 of the Criminal Code), covers all types of soldiers. The consequence of its pronouncement is the removal of the soldier from military service after the judgment becomes final and the loss of badges and distinctions. Thus, it is also a sanction related to the soldier's dignity. The loss of badges and distinctions applies only to those awarded to the soldier by the command. It does not therefore include any others, for example those conferred by state or local government bodies. The directive for the pronouncement of this measure is the gross abuse of powers or the demonstration that the continuation of service in the army endangers important goods protected by law (Article 326 § 2 of the Code of Criminal Procedure) (Kutzmann, 2025; Przyjemski & Kmieciak, 2014).

A specific solution, provided only for the military, is the institution contained in Article 331 of the Code of Criminal Procedure. It allows the court to request the competent commander to impose the disciplinary punishment provided for in the military disciplinary regulations, in the event that the punishment is waived. However, it is not a punitive measure, as it does not fall within the catalogue set out in Articles 39 and 324 § 1 of the Code of Criminal Procedure. Requesting a disciplinary punishment may be done by both a general court and a military court. The catalogue of military disciplinary punishments is set out in the Act of 11 March 2022 on Defence of the Homeland (Dz. U. 2024, item 248). It should be noted that the disciplinary responsibility of soldiers is characterised by considerable severity. Within the framework of a disciplinary sanction, it is possible to dismiss from an occupied official position, to remove from military service, to impose a restrictive punishment in the form of solitary confinement in the situation of suspension from compulsory military service (Gensikowski, 2007; Dunaj, 2015). Both the solutions regulating substantive and procedural disciplinary law were modelled on criminal law norms in the common law. This is, inter alia, directly reflected in the appropriate application of separate parts of the Criminal Code to issues not regulated by the Defence of the Fatherland Act. There are many similarities especially in the function of the disciplinary tort. This makes it possible to consider the disciplinary punishment as a kind of substitute for the criminal punishment and the criminal measure.

The difference in military criminal law is dictated by a construction related to the consequences of a real concurrence of offences for which certain penal measures have been imposed. It is contained in Article 332 of the Criminal Code. Where deprivation of public rights and degradation or expulsion from professional military service are adjudged for concurrent offences, the court shall adjudge only deprivation of public rights. However, in the case of an adjudication for concurrent offences degradation and expulsion from professional military service, the court shall adjudicate only degradation. If a deprivation of public rights is pronounced against a soldier, it is pointless to pronounce a criminal measure of degradation against him/her, as deprivation of public rights includes, inter alia, the loss of the military rank held and return to the rank of private, and thus has the same effects (Kutzmann, 2025; Ziółkowska, 2023).

Military criminal law also provides for a number of minor modifications with respect to common solutions. One example here may be Article 333 of the Criminal Code, which regulates the application of conditional discontinuance of proceedings to a soldier. In general, there are no major distinctions here in relation to the prerequisites of this institution set out in Articles 66 and 67 of the Criminal Code. The difference comes down to the possibility for the court to request the relevant commander to impose the punishment provided for in the military disciplinary regulations and to supplement the prerequisite for undertaking conditionally discontinued proceedings with a gross breach of the rules of military discipline (Gensikowski, 2007; Majewski, 2024).

The situation is similar in the case of Article 334 § 1 of the Code of Criminal Procedure. It modifies the general rules concerning the imposition of probationary obligations related to conditional discontinuance of criminal proceedings or conditional suspension of the execution of a sentence. It mandates taking into account the conditions of military service. The obligations that the court imposes must therefore not be in confrontation with the nature of military service and interfere with its proper

course. The supervision of a soldier on active military service is carried out at the place of service, and the relevant actions may also be carried out by a military superintendent, a superior or a soldier designated by the superior. The circle of insignificant modifications also includes the extension of the catalogue of measures that may be adjudged in the situation where a conditional suspension of the execution of a sentence is adjudged against a soldier. This catalogue has been supplemented by two measures, i.e. a ban on appointment to a higher military rank or designation to a higher official position and a ban on participation in ceremonies and parades organised in the military unit or with the participation of the unit (Czyżak, 2012; Dunaj, 2015).

Only slightly larger derogations are provided for under the last institution of the general part, in the form of erasing a conviction. The provision of Article 337 of the Penal Code is a special provision which excludes the application of the provisions of Articles 107 § 1–5 and Article 76 § 1 of the Penal Code. However, this does not include the restrictions contained in Articles 107 § 6, Article 108 and Article 76 § 2 of the Penal Code (Kutzmann, 2025; Ziółkowska, 2023). The obliteration of a conviction constitutes a kind of legal fiction, amounting to recognition of the conviction as not having occurred. In the case of a soldier who has committed military offences and has been sentenced to a non-custodial punishment or to an absolute prison sentence, but not exceeding one year, it is possible to erase the conviction after transferring him/her to the reserve, provided that the punishment or punishment measure has been executed. The application of this institution is also admissible in those situations in which the court waived the punishment (Frąckowiak, 2023). This solution, in its totality, allows for a kind of break with the past and the stigma of the convicted person in the face of starting a new stage of life, which is transfer to the reserves.

4. SYSTEMIC ISSUES ON THE EXAMPLE OF POLISH LAW

Military courts-martial are military district courts and military garrison courts. Military courts exercise criminal justice in the Armed Forces of the Republic of Poland to the extent provided for by Acts and adjudicate in other matters if they have been transferred to their jurisdiction by separate Acts. In the cases provided for by laws, military courts exercise criminal justice in relation to persons who do not belong to the Armed Forces of the Republic of Poland (Banasiak, 2020; Kutzmann, 2025). Pursuant to Article 652 of the Code of Criminal Procedure, in cases subject to the jurisdiction of military courts rule, according to the scope of jurisdiction: the military garrison court; the military district court; and the Supreme Court, which at the same time exercises supervision over the activities of military courts in the field of adjudication. The Minister of Justice, on the other hand, exercises supreme supervision over the military courts with regard to organisation and administrative activities. In turn, the Minister of National Defence supervises the active military service of soldiers serving in military courts (Sieracki, 1983; Przyjemski & Kmieciak, 2014).

In cases in which laws provide for an appeal to a military court against rulings or decisions issued by military authorities, the case shall be heard by the military garrison court covering with its jurisdiction the military unit in which the soldier is on active military service or the employee is employed, unless these laws provide otherwise. The shape of the military court system is parallel to that of the ordinary courts. However, the Law on the System of Military Courts has a smaller scope of regulation than the Law on the System of Common Courts. Hence, certain provisions of the Law on Common Courts are applicable to it (Czyżak, 2012).

Pursuant to Article 24 of the Supreme Court Act, the jurisdiction of the Criminal Chamber includes cases heard under the Act of 6 June 1997 – Code of Criminal Procedure, the Act of 10 September 1999 – Fiscal Penal Code, the Act of 24 August 2001 – Misdemeanours Code, and other cases to which the provisions of the Code of Criminal Procedure apply, as well as cases subject to the jurisdiction of military courts.

As regards military law enforcement agencies, Article 3 of the Law on the Public Prosecutor's Office stipulates that in cases subject to the jurisdiction of military courts, the tasks referred to in § 1 shall be performed by prosecutors of common organisational units of the public prosecutor's office who perform their duties in the Department for Military Affairs, in divisions of district prosecutor's offices and divisions of district prosecutor's offices with jurisdiction in military matters, hereinafter referred to as "prosecutors for military matters" (Dunaj,

2015; Zgoliński, 2020). Prosecutors for military affairs also perform tasks in cases that do not fall within the jurisdiction of military courts.

Prosecutors for military matters who are professional soldiers shall perform official tasks in the event of the use or stay of the Armed Forces of the Republic of Poland outside the borders of the country, in the event of the announcement of mobilisation, the declaration of martial law and during war under the provisions of this Act and other legal acts. If it is necessary to provide an adequate number of prosecutors for military matters to perform official tasks in the conditions referred to above, prosecutors who are reserve officers may be called up for professional military service. The order issued to a prosecutor who is a professional soldier with regard to his or her active military service shall be forwarded without delay to the Deputy Prosecutor General for Military Affairs and to the head of the organisational unit of the prosecutor's office in which the prosecutor performs his or her official duties for information.

One of the Deputy Public Prosecutors General is the Deputy Public Prosecutor General for Military Affairs. The candidate for the Deputy Public Prosecutor General for Military Affairs shall be agreed by the Public Prosecutor General with the Minister of Defence. The motion for the dismissal of the Deputy Prosecutor General for Military Affairs shall be agreed by the Prosecutor General with the Minister of Defence (Szeleszczuk, 2024).

One of the departments in the National Public Prosecutor's Office is the Department for Military Affairs, which has jurisdiction over matters subject to the jurisdiction of military courts. The basic tasks of the district prosecutor's office include ensuring the participation of the public prosecutor in proceedings conducted under the Act before ordinary courts and, in units where military affairs departments have been established, also before military courts, conducting and supervising pre-trial proceedings in cases of serious criminal offences, financial and fiscal crimes, and in units where military affairs divisions have been established, also in cases subject to the jurisprudence of military district courts, supervising proceedings conducted in district prosecutors' offices, as well as conducting visits to district prosecutors' offices (Majewski, 2023; Justification, 1997).

5. THE JURISPRUDENCE OF MILITARY CRIMINAL COURTS UNDER THE PREVIOUS REGIME

As an aside to the above considerations, it should also be mentioned that a major problem related to military justice is the legacy of military rulings from the years 1945–1989. This problem concerns basically all former socialist bloc countries. In Poland, on the basis of the Act of 23 February 1991 on the Recognition as Invalid of Judgements Issued against Persons Repressed for Activities in Favour of the Independent Being of the State Polish, judgements issued by Polish law enforcement and judicial organs or by non-judicial organs in the period from the beginning of their activities in the Polish lands, starting from 1 January 1944 until 31 December 1989, have been declared invalid (Frąckowiak, 2023; Majewski, 2023).

The condition for nullity is that the act charged or attributed is related to activities for the independent existence of the Polish State or the ruling was issued because of such activities, as well as rulings issued for resisting the collectivisation of villages and compulsory deliveries (Gensikowski, 2007; Dunaj, 2015). The invalidity of a judgement shall be declared by a district court or a military district court if, according to the legislation in force on the date of the entry into force of this Act, a military court was competent to hear a case for the act which was the subject of the judgement. The annulment of the decision shall be deemed equivalent to an acquittal. It may take place at the request of the Ombudsman, the Minister of Justice, the public prosecutor, the victimised person, the person entitled to lodge an appeal in his or her favour, and in the event of the death, absence from the country or mental illness of the victimised person, also his or her relative in a direct line, adoptee or adopted person, siblings and spouse; as well as an organisation of persons victimised for activities in favour of the independent existence of the Polish State (Czyżak, 2012; Przyjemski & Kmieciak, 2014).

The court in this case shall decide in a session on the basis of the records of the proceedings of the authority which issued the decision and, if necessary, shall conduct further, its own, evidentiary proceedings. Unless the provisions of the Act provide otherwise, the provisions of the Code of Criminal Procedure shall apply *mutatis mutandis* in proceedings for the annulment of a decision, except that the participation of the public prosecutor in the annulment hearing is mandatory.

ISSN 2815-3324 Online, ISSN 2535-0358 Print

What is equally important, pursuant to Article 8 of the same Act, a person with respect to whom a ruling was declared invalid or a decision on internment was issued in connection with the imposition of martial law in Poland on 13 December 1981, is entitled to compensation from the State Treasury for the damage suffered and compensation for the non-material damage resulting from the issuance or execution of the ruling or decision (Szeleszczuk, 2024). In the event of that person's death, that entitlement shall pass to his spouse, children and parents.

The entitlements referred to in paragraph 1 shall also be available to persons, currently or at the time of their death in Poland, repressed by Soviet law enforcement and judicial or extrajudicial bodies, acting on the present territory of Poland in the period from 1 July 1944 to 31 December 1956, and on the territory of Poland within the borders established by the Treaty of Riga, in the period from 1 January 1944 to 31 December 1956, for activities in favour of the independent existence of the Polish State, or because of such activities. The demand for compensation and reparation shall be submitted to the district court in whose district the person making the demand resides; this court shall have jurisdiction to hear the case. The provision of Article 1(3) shall apply *mutatis mutandis* and the provisions of Articles 9 to 11 shall not apply.

A person who, in the period from 1 November 1982 to 28 February 1983, performed active military service to which he or she was conscripted for activity in favour of the independent existence of the Polish State, is also entitled to compensation from the State Treasury for the damage he or she has suffered. The Act, however, has an even broader scope of subject matter, as by virtue of the amendment it was regulated that a child of a mother deprived of liberty, against whom the decision was declared invalid, who was in prison or another place of confinement together with her mother, or whose mother was in prison or another place of confinement during her pregnancy, is entitled to compensation from the State Treasury for the damage suffered and compensation for the non-material damage (Article 8b of the February Act). The State Treasury bears the costs of proceedings in cases covered by the Act, including for the appointment of an attorney (Article 13 of the February Act) (Zgoliński, 2020; Majewski, 2024).

6. CONCLUSION

It is a truism to state that military criminal law and military justice operate differently in peacetime than in wartime. Military criminal law and military justice have evolved separately from the general norms, which is a consequence of the specificity of this branch. Detailed national solutions, however, are a matter of national discretion, hence a variety of norms can be found in this respect. However, many features specific to the military must be anchored in criminal law, which operates on the principle of ultima ratio. It comes into play where other branches of law become insufficient. Therefore, there are quite a few similarities in the individual national regulations. The most important institutions among them are characterised in this article. The jurisprudence of military courts in former socialist countries - from a historical prism - has sometimes been "tainted" by political factors influencing the outcome of criminal cases. This requires appropriate remedial measures on the part of these countries, including the introduction of appropriate compensatory measures. This is part of the so-called law of transition. Not all countries have so far adequately grappled with this issue and for this reason the main solutions in force in Polish law have been indicated above. It is not free of drawbacks in practical application, but it sufficiently, and in line with human rights, solves this pressing problem.

A completely different aspect remains that the markedly lower intensity of peacetime tasks sometimes implies discussions in the doctrine about the need for systemic changes. The most radical demands have tended towards the abolition of this type of judiciary within the structures of the judiciary. Interestingly, attempts at change have also been made with regard to military law enforcement agencies. However, this is not possible in Poland without an amendment to the Basic Law, since according to Article 175(1) of the Constitution of the Republic of Poland, the administration of justice in Poland is carried out by: the Supreme Court, common courts, administrative courts and military courts. The trend of abolishing the military division came with the beginning of the 20th century. It was not present during the People's Republic of Poland, and only reappeared at the dawn of the new millennium. This time, however, was one of calmer times internationally. Today, especially as a result of the war in Ukraine, it has become 'unpopular'. The need to maintain a military judiciary is clearly visible and, it seems, is no longer disputed. Moreover, there is also a growing need for a scientific exploration of military criminal law in order to meet

the challenges of contemporary social realities and the geopolitical situation in the world. Finally, it is to be hoped that this publication is at least partly part of this trend.

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