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CONSIDERATIONS REGARDING THE OPERATION OF MILITARY POLICE, AS AN INTEGRAL PART OF THE JUDICIARY

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Abstract

Judicial safeguards are particularly important and regulated in detail as fundamental human rights, in proceedings brought before domestic, as well as international criminal courts, with pertinent provisions being established as to the legality of the crime and of punishments.

At present, in the series of specialized conferences with a role in highlighting the importance of implementing the concept of “need for high social capital”, it is emphasized that the application of the principles of criminal proceedings provides the foundation for citizen protection as an integral part of public safety, the entire edifice of criminal procedure rules being built on these principles.

Basically, the need for social security offered through the activity of forensic investigation of criminal offences cannot be dispersed among disciplines auxiliary to forensic science without the major contribution of criminal law.

Keywords: *military police, judiciary, safety, social capital*

INTRODUCTION

The fundamental principles of criminal law must be guidelines for both those who are called upon to prepare rules in criminal matters and those who are required to enforce such rules¹. Therefore, in the field of cooperation between civilians and the military (Civil-Military Cooperation/CIMIC)², having good knowledge of these rules is an essential condition for the development of a coherent criminal procedure system, updated so as to respond to the predictable social need of generating a state of safety for the citizen. I consider the new regulatory act “the draft of the Military Police Law” (http://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?cam=2&idp=18515), which is currently undergoing the procedure of parliamentary debates, as a benefit

¹ www.mpublic.ro/ncpp.pdf, accessed on 03rd January 2016.

² https://en.wikipedia.org/wiki/Civil-military_co-operation, accessed on 16th October 2021.

offered to society, in a context where the unusual challenges raised by the social environment have major influences, and the need for safety is felt ever more acutely even at a personal level.

The adoption of a minimum set of provisions of the special criminal procedure applicable to the military is meant to remove dangerous manifestations which undermine the social relations specific to the military activity, especially institutional ones. (Iancu, Lăzău Păcuraru, 2019, pp. 205-218).

I. BRIEF HISTORY OF REGULATIONS

The history of the Military Police is closely related to the history of the Romanian Gendarmerie, from which it is originated, the first attestations of the “*troop police*” activity being found in the deeds of establishment of the “Gendarmerie” of 3rd April 1850, issued by the ruling prince Grigore Alexandru Ghica³.

The reference periods for the emergence and dynamics of the military police, as well as the regulatory acts on which was based the specific activity, especially the judicial one, are presented as follows.

1.1. The first code of military justice

The so-called “code of military justice”, which appeared rather late, almost seven years after the Constitution of 1866 which foreshadowed its appearance, consisted of the *Military Criminal Codex with Its Procedure of 1852 (Condica penală ostășască cu procedura ei din anul 1852)*. The said *Codex* was to become, as of 24th February 1860 (through a decree of Alexandru Ioan Cuza, it was subsequently enforced in both Principalities), the only law on the organization of military justice in the young Romanian state, a law that was enforced until 1873, when it was replaced by the *Military Justice Codex (Codicele de justiție militară)* as promulgated by Decree no. 828 of 5th April 1873 (Siserman, 2004, p. 127).

Over the course of time, the code was found to be out of sync with reality (as the law did not take into account the historical needs and judicious principles resulting from the development of the military body) and resulted in consequences that were emphasized during the War of Independence of 1877 and after the proclamation of the country as a kingdom in 1881. Therefore, only eight years after its promulgation, it was necessary for a large number of provisions of the code to be amended and supplemented in order to adjust them to the military structures created and operational at the time.

1.2. Criminal procedure carried out by the military judicial authorities in the interwar period

In terms of procedure, the joint judicial authority had at hand two methods of investigating the facts, one being of an *administrative* nature, and the other, of a *judicial* one.

Unlike the administrative police, whose duty was to ensure public order and tranquility, to take measures in order to prevent various crimes against persons

³ www.forter.ro. The term Military Police dates back to 1893, when the legislator Lascăr Catargiu promulgated the “Law on Rural Gendarmerie”, with the approval of King Carol I (Charles I).

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and property, therefore, to fulfill a preventive role, the judicial police had the mission of ascertaining the crimes committed, of discovering the culprits, of collecting evidence of guilt and of the cooperating with the justice system in order to repress crimes.

The army had these two categories of police, fulfilling almost the same tasks: the first one consisted of the *borough commands / garrisons (comenduirile de piață/garnizoane)*, which also had disciplinary duties, and the second was the *military judicial police*, whose powers were exercised by specialized personnel.

In order to discover the crimes committed, the investigations were carried out for the purposes of and in accordance with the Code of Military Justice, and, to ensure the due course of justice, that legal text was corroborated with others, stating that all investigations were carried out “*under the authority of the commanding general*”, by the *bodies* indicated therein (Code of Military Justice, 1937).

Following the demobilization of the army, which was initiated on 1st July 1918, military police formations organized “checkpoints over the demobilized, posts, patrols and detachments for the surveillance thereof, so that the demobilization takes place in an orderly manner”.

After Romania entered the Second World War, on 22nd June 1941, the military police troops carried out specific missions, such as combating terrorist actions; monitoring the guardianship of buildings of economic importance; strengthening internal order measures, etc. This structure also made a significant contribution in the second stage of Romania’s participation in the Second World War. At the end of the world conflict, specialized military police formations were disbanded.

In 1947, a Military Police structure was set up, in order to coordinate the specific activity regarding the maintenance and control of military discipline, as well as operative actions for guidance of the movement of military vehicles. To this end, the following departments were established: “Order and Discipline”, “Traffic Control and Guidance”, “Special Criminal Investigations”, “Military Prisons”, etc.

1.3. Amendments to the code of military justice

In the period after 1947 (Zidaru, 2006, pp. 195-203), it is noted that the activity itself was oriented towards the abrogation of some articles of the Code of Military Justice, by reason of the obligation to reduce the number of soldiers, as a result of our country finding itself on the losing side after the Paris Peace Treaty.

First stage. After the abrogation of 98 articles, action which was specific to this stage, through various successive regulatory provisions, the “*Labour Service*” was established, as an institution of the new realities in the army, determined by the regime that was about to be put in place⁴. Members of the formations of this Service were to be considered as military, with all pertaining rights and obligations, being subject to the regulations, protection and liability provided for by the Code of Military Justice.

⁴ Labour Service, a unit established by Decree no. 2/1950, with a role in the “*performance of construction works of general interest*” by the military, as shown in Art. 1 of the Decree, consulted on the website <http://www.cdep.ro/pls/legis/legis>, on 26th October 2021.

The Directorate of Military Justice ended its activity on 31st July 1952 through Law no. 71/1952 for the organization of military courts and prosecutors' offices, published in the Official Gazette no. 31 of 19th June 1952. On the same date, the Directorate of Military Justice within the Ministry of Armed Forces became the "*Directorate of Military Courts*" within the Ministry of Defence, a name that has been retained to this day.

However, until the publication of Decree no. 216/1960, regulatory provisions derogating from the common law that no longer had any justification remained in force in the Code of Military Justice. For example, Article 100 provided that, "*civil action before military courts may be exercised in conjunction with criminal proceedings only if the compensation concerned damage to property being used by the armed forces.*" From that point on, military courts were to apply common law in order to resolve cases within their jurisdiction, to the extent that there was no special regulation.

Second stage. The abrogation of the Code of Military Justice through the entry into force of the Criminal Code of 1969, determined by the objective changes reflected in the Constitution of 21st August 1965, which stated "the liquidation of the exploiting classes, and the development of the moral and political unity of the people, forged under the leadership of the communist party", led to the criminalization of only those deeds in the new Criminal Code, as crimes against the defence capacity of the socialist regime.

It was only after the events of 1989 that a single structure was established, in line with the trends of modernization of the armies and the preparation of the NATO integration structure. After their establishment, military police forces carried out actions of public order maintenance (1990-1991) and were involved in a number of activities of the Ministry of National Defence (M.Ap.N.), such as: official visits, escorts or searches for deserters, peacekeeping actions, alongside NATO member states, in various military theatres in Angola, Albania and Somalia, Kosovo, Bosnia and Afghanistan.

II. THE MILITARY POLICE AND THE NEED FOR REGULATION AT PRESENT

Against the background of the COVID-19 pandemic management, as of 16th March 2020, following the decree imposing the state of emergency on the Romanian territory⁵, members of the Military Police gained increased visibility by participating in joint missions with forces of the Ministry of Internal Affairs in order to comply with the decisions specified in military ordinances and to implement measures for the prevention of the spread of the new coronavirus.

At present, the military police force operates in a restrictive organizational framework intended mainly for the execution of guarding missions by the military

⁵ DECREE no. 195 of 16th March 2020 on the establishment of the state of emergency on the territory of Romania, published in the Official Journal no. 212 of 16th March 2020.

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units in the organizational structure, missions of guidance and control of the movement of military vehicles⁶.

Thus, important missions that are incumbent on the military police at NATO level, having to be regulated and transposed into specific national legislation, such as specialized assistance per fields of activity for the entire personnel of the Ministry of National Defence, the enforcement of law, order and military discipline, special criminal investigations, sorting, control, guarding and escort of prisoners of war in theatres of operations, are not included among the missions of the Romanian military police.

It would be especially important to regulate a refinement of the duties of military police personnel in the field of special criminal investigation.

Therefore, according to the law, the Public Ministry exercises, through (military and/or civilian) prosecutors the following duties: “...b) *leads and supervises the criminal investigation activity of the judicial police, leads and controls the activity of other criminal investigation bodies*”⁷.

Judicial activity is constantly regulated in the criminal law, as well as in the law of organization and operation of the judicial system (judiciary) in our country, but in reality it is non-existent, this activity being carried out by the military criminal prosecution bodies, for the Ministry of Internal Affairs (M.A.I.), with the support of its own judicial police, an aspect that is somewhat controversial (the military function being a statutory one, regulated separately from that of the judicial police as public servants); however, in the structures of the Ministry of Defence this aspect is not regulated by law⁸.

An explanation provided by the military prosecutors for this state of facts is that the special criminal investigation bodies of military origin do not have specific training for the criminal investigation activity, although, as noted, such a regulation does exist, but it has not been put into practice, and this is precisely the reason for the current initiative of making public the need to “activate” these structures that are perfectly regulated by law.

⁶ ORDER no. 1428 of 12th September 2006 for the approval of “P.M. - 2, Rules regarding the conditions in which special combat vehicles can travel on public roads, the control of motor vehicles belonging to the Ministry of Defence and the accompaniment of military columns”.

⁷ Art. 63 of LAW no. 304 of 28th June 2004 on judicial organization, Art. 100 - (3) Military prosecutor’s offices **have special investigation bodies put in their service**, in relation to which they exercise the duties provided for in Art. 63 letter b). <https://www.mpublic.ro/ro/content/spm-serviciul-de-urmarire-penala-si-judiciar>.

⁸ Order of the Minister of Internal Affairs no. 216/2009 regarding the criminal investigation of the personnel in the structures of the Ministry of Internal Affairs published in the Official Journal of Romania no. 631 of 23rd September 2009. The institutions in the National System of Public Order and National Security, except the Ministry of National Defence, have developed their own specific regulatory acts establishing the competences and responsibilities of these special criminal investigation bodies in accordance with the legal rules provided in the Criminal Code and the Criminal Procedure Code.

My opinion in this respect is that military structures include personnel with legal training, even military approved according to the law⁹, who, through minimum specialization in the criminal field, can successfully carry out the duties of special criminal investigation bodies, regardless of the structure they are part of (military police and/or separate structures within military judicial bodies).

Although most NATO member countries, such as the USA, Germany, Bulgaria, etc., have clear procedures regarding the investigation of their own personnel in the military structures who commit criminal acts, this power being assigned to the military police, there is still a need to draft such legal rules at the level of the military structures of Romania.

In this context, the adjustment of *Law no. 346/2006 on the organization and operation of the Ministry of National Defence* created the legislative framework for a new conceptual approach to the use of military police in the Romanian Army, by including the duties, organization and operation of the military police and of special criminal investigation bodies in a special law, which is being debated in the legislative forum¹⁰.

Thus, the draft law proposes the assignment of the field of competence to the military police, as a special judicial body with duties regarding investigation only for the criminal offences committed by the military, in order to¹¹:

- carry out the criminal prosecution acts under the conditions provided by the Criminal Procedure Code;
- coordinate and enforce bench warrants regarding the military;
- participate together with other structures of the military police, as the case may be, in missions of pursuit, capture and escort of deserters.

Other fields assigned to military police structures are:

- a) the field of ensuring the security of army personnel and of military objectives;
- b) the field of observance, maintenance, restoration of internal order and of

⁹ Internal regulations of the prosecutor's offices / Text updated on the basis of the amending regulatory acts, published in the Official Journal of Romania, Part I, until 5th June 2020. Published in the Official Journal, Part I no. 1004 bis of 13th December 2019.

Art. 14 The management of the Prosecutor's Office attached to the High Court of Cassation and Justice and its structures issue an assent for the appointment of the specifically designated officers as special criminal investigation bodies, at the proposal of the competent bodies, and withdraw the assent granted to specifically designated officers who have not properly performed their work-related duties; http://pcaconstanta.mpublic.ro/regulament_pca.htm, accessed on 22nd October 2021.

¹⁰ <https://www.google.ro/search?q=proiect+lege+politie+militara+camera&sxsrf=A0aemvKescmehU7PjpDIRzEg-Li6J3GXog:1634891115899&ei=a3VyYdCNom6kwXtroPwAw&start=0&sa=N&ved=2ahUKEwif5NWBzN3zAhUJ3aQKHW3XAD44FBDy0wN6BAgBEEA&biw=1588&bih=728&dpr=1>, accessed on 21st October 2021.; http://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?cam=2&idp=18515, accessed on 25th October 2021. *Draft Law on the duties, organization and operation of the military police*. Art. 5. (l) Within the Directorate there is a structure consisting of officers who are law graduates, specifically appointed by the Minister of National Defence, with the assent of the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice, who have the status of special criminal investigation bodies.

¹¹ Art. 6, Art. 9, Art. 11 of the *Draft Law on the duties, organization and operation of the military police*.

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- military discipline;
- c) the field of maneuver and mobility support, of control and guidance of the movement of motor vehicles in military columns;
 - d) the field of guidance of the evacuation of displaced persons during the unfolding of military actions;
 - e) the military police participate in guiding the evacuees or refugees out of the area of responsibility of the armed forces;
 - f) the field of collection, reporting, dissemination of data and information for the specific activity.

Romanian or foreign civilian and military personnel, as well as the civilian population have the obligation to follow the instructions of the military police officers in the exercise of their duties.

**III. THE MILITARY POLICE AND THE NEED FOR REGULATION AT PRESENT
MILITARY POLICE IN THE EUROPEAN UNION (E.U.)**

The Treaty of Lisbon introduced the concept of a European capability and armaments policy and also established a connection between the Common Security and Defence Policy (CSDP) and other Union policies, calling for cooperation with the Commission whenever necessary¹².

The E.U. participates in various forms of in-depth coordination and cooperation, in particular with the UN and the North Atlantic Treaty Organization (NATO), as well as – inter alia – with the African Union, the G5 Sahel, the Organization for Security and Cooperation in Europe, and the Association of Southeast Asian Nations¹³.

The European Union must acquire the “political will” to build its own army – a concept which reflects the E.U. officials’ flirtation with the idea of setting up their own military structure (Leyen, 2020).

A structure with military specificity in its incipient stage is the EUROGENDFOR (European Gendarmerie Force) integrated police unit¹⁴. Its staff consists of members of a *police force with military status*, and the distribution of the staff is done according to national regulations – but the staff is always selected from force units of a gendarmerie type.

The structure has operational characteristics such as the following: a) it consists of robust forces, that are quickly implementable, flexible and interoperable; b) it is a multifunctional body capable of carrying out a wide range of executive police tasks; c) it is able to act in unstable environments; d) it may be either placed under a civilian authority or made part of a military chain of command, an area of responsibility (AoR) being assigned to it, depending on the operational situations created.

¹² Art. 42 paragraph (3), Art. 45 paragraph (2) of the Treaty on the European Union - TEU.

¹³ <https://www.europarl.europa.eu/factsheets/ro/sheet/159/politica-de-securitate-si-aparare-comuna>, accessed on 23rd October 2021.

¹⁴ <https://eurogendfor-org>, accessed on 23rd October 2021.

CONCLUSIONS

The considerations above concern the duties of the military police as a judicial body, which are strictly limited to the current and future provisions established by law. Military police missions are not an instrument of “social repression”, on the contrary we can say that the citizen will understand how this structure with military specificity contributes to giving a final shape to a solid social capital in order to maintain peace and general order, which are so needed in society.

The approach of highlighting from a historical perspective and then from a judicial one the origin of the military police structures in our country has the role of diminishing, by turns, the citizens’ fears with regard to the establishment and repositioning of the competencies of this structure, which are adapted to the needs of the context in which we live, situations where measures of a military organizational nature sometimes become effective and even desirable.

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