

NEW EVOLUTIONS OF MILITARY JUSTICE

Lecturer **Ovidiu-Horia MAICAN**¹

Abstract

In the last years, military justice systems have been a problem for several reforms in some European states. The push for modernisation processes stems from the reality that military justice in some states wants to increase its truthful trial guarantees inside their legal framework. Recently, the existence of many ordinary military tribunals has been put at stake. Many critics reflect on consideration on military justice is being known as into query due to the alleged non-impartiality of military courts and global law developments. Some military courts no longer exist on their own, military judicial competences have been embedded into or transferred to civilian courts. A few standing army courts have been abolished, while others nevertheless exist, albeit their roles and obligations for the duration of peacetimes are very modest. Some states permit the introduction of ad hoc tribunals to face specific conditions such as the case of a war, and this is provided for by way of their respective constitutions. Military justice and civil justice are regarded two separate systems.

Keywords: law courts, civil justice, military justice, differences, reforms.

JEL Classification: K15

1. Introduction

Military and civilian courts differ in several ways, most exceptionally regarding understanding and experience, independence, efficiency, and, finally, truthful trial guarantees. In terms of know-how and experience, military judges are nicely versed on things concerning navy military approaches and criminal law. Critically, they have an in-depth appreciation of the precise nature of army culture and life. Civilian judges, in contrast, are at a disadvantage as they do no longer possess expert understanding regarding military affairs and usually have only limited ride regarding the exercise of army criminal law. Independence wise, military courts commonly remember on the Ministry of Defence. As such, army judges are part of the army hierarchy, which ought to have doable ramifications they experience inclined to adhere to the view of the optimal on the case. Due to their independence from the executive department of government, the civilian judiciary and their judges are no longer subordinated to the army hierarchy. Therefore, the incentives to adhere to the point of view of government representatives are notably weaker. Concerning efficiency, army courts can handle the tactics for minor disciplinary infractions and offences rapidly. A comparable degree of effectivity can't be expected if such things are dealt with through a civilian court model. However, army courts can't always be relied upon to totally apply truthful trial guarantees. This is due to the dangers regarding independence.

2. General aspects

In general, army justice reforms can be split into three types.

We have a separate army justice system abolished and incorporated into the civilian judiciary, civilian and military justice systems are to a certain extent merged and a hybrid system with army and civilian participation created and the autonomy of the army justice system is largely maintained, whilst its structural elements are revised and in addition developed in order to make certain its effectiveness and compatibility with global human rights standards².

There are extensive variations between systems of army justice primarily based on frequent law (Anglo-Saxon tradition), as antagonistic to those based on civil law (continental European tradition)³.

¹ Ovidiu-Horia Maican - Faculty of Law, Bucharest University of Economic Studies, Romania, ovidium716@gmail.com.

² Mindia Vashakmadze, *Understanding Military Justice*, Geneva Centre for the Democratic Control of Armed Forces, 2010, p. 4.

³ *Ibid*, p. 5.

Common law regulation systems (USA, UK, Australia, New Zealand, South Africa) are acquainted with ad hoc military tribunals that convene on a case-by-case basis, whereas standing army courts (or civilian courts with specialised judges) function in civil law systems. However, common law international systems are more and more transferring towards a system of standing army courts. One of the most important drivers of this fashion is the belief that it improves the flexibility of the system of army justice as nicely as its compatibility with global human rights standards. One of the predominant variations between these two legal traditions relates to the role of commanders within the system of army justice. In common law nations commanders have an important, even central position to play in different ranges of a case. They might also be concerned in the discovery as properly as investigation of offences. Further competences may also consist of the referral of charges, and precise functions in trial and post-trial stages⁴.

In civil law systems, the position of the commander normally ends upon discovery of the offence and initial investigation. Military justice structures in common regulation nations are based totally on the different jurisdiction of military courts over offences dedicated by means of army personnel (sometimes, their jurisdiction extends to special classes of civilians as well). In a brilliant wide variety of continental European countries, civilian courts have jurisdiction over army offences. In Germany, no peacetime standing navy courts operate. Administrative (disciplinary) tribunals deal with service offences, whilst civilian courts pay attention on crimes⁵.

A fairly comparable state of affairs exists in many Eastern and Central European international locations and the international locations of the former Soviet Union. However, tendencies in Eastern Europe and the post-Soviet space are a long way from uniform. Some Eastern and Central European international locations abolished standing navy courts in peacetime after the dissolution of the Soviet Union, however their constitutions nonetheless enable for the advent of navy tribunals in wartime (Georgia). However, a quantity of international countries that inherited a Soviet form of civil-military system members and legal machine maintain a separate, noticeably autonomous and specialised system of army justice with a broader scope of jurisdiction over offences committed by means of individuals of the armed forces and quite a number of militarised agencies. These systems of military justice are subordinated to the authority of the Ministry of Defence⁶.

The number of countries where civilian judges are responsible for military offences has increased in latest years. In many navy justice systems, rules establish civil appellate courts and occasionally defers to the civil Supreme Court as its perfect appellate authority⁷.

In Canada, the civilian Supreme Court is the remaining instance after the Court Martial Appeal Court. In Hungary, military judges in the Supreme Court operate at the first occasion and appellate level. One of the Chambers of the Polish Supreme Court is specialised in military offences. According to Article 183 paragraph 1 of the Polish Constitution, “[t]he Supreme Court shall workout supervision over common and navy courts concerning judgments.” In many nations in Eastern and Central Europe⁷ and the Former Soviet Union (for instance, Czech Republic, Georgia and Lithuania), there are no specialised military courts. For this reason, civilian judges (and prosecutors) are accountable for dealing with army (service) offences⁸.

3. France

Over the years, the French Military Justice System has steadily led to a system in which army justice is blended with that of ordinary justice. The authorities have sought to deal with army personnel in the equal manner as regular civilians with regard to offenses committed whilst on duty. The administration of justice does, however, differ depending on whether the provider member committed an offense on French territory or on overseas soil. Another predominant big difference

⁴ Ibid, p. 5.

⁵ Ibid, p. 5.

⁶ Ibid, p. 5.

⁷ Ibid, p. 6.

⁸ Ibid, p. 6.

that stays between the military system and the civilian system is that of the competent jurisdiction to cope with the administration of justice during times of peace and throughout times of war⁹.

The Law of 21 July 1982 withdrew the jurisdiction of military courts on French soil in the course of instances of peace for both army and civilian offenses committed by military personnel whilst on duty and gave this jurisdiction to civilian courts specialised in army matters.

The Law of 10 November 1999 created the Tribunal aux armées de Paris, a special courtroom equipped to hear matters involving offenses dedicated by military personnel while on foreign soil¹⁰.

According to French legislation, armed forces working or stationed in a foreign land (teritory) are regarded to be performing in a time of peace even if they are engaged in an armed conflict or in a peacekeeping mission.

In 2011, the French Senate adopted the Law Relative to the Allocation of Litigation Proceedings and the Reduction of Certain Jurisdictional Procedures. The object of the regulation used to be to further allow a rapprochement between the civilian criminal law system and the army criminal law system as properly as to integrate the navy justice into civil regulation justice in the course of instances of peace. The regulation also aimed at aligning the administrative scenario of army personnel with that of different public servants in regard to their administrative situation after a criminal conviction¹¹.

Section 32 also modified the Code of Military Justice by means of completely assigning the jurisdiction to hear trials on felonies and misdemeanors dedicated by army personnel while on responsibility to civilian courts. The Minister of Defense did, however, are seeking to continue to take into account the realities of army activities in foreign operations through retaining unique policies for armed battle in an international context.

In contrast to civilians, individuals of the Armed Forces are concern to both military disciplinary regulation and civil criminal law. Disciplinary law is awesome from criminal law. One motion can represent each a criminal offense and disciplinary misconduct. A service member may additionally consequently be disciplined beneath the army hierarchy and additionally be subject to a court judicial decision¹².

However, a provider member who has taken his retirement, deserted, or is acting out of his rank does not fall within the definition of a provider member for functions of the Military Code and is consequently only difficulty to civilian proceedings.

Every court of appeal has a specialized section of the TGI (tribunal de grande instance) charged with judging felonies and misdemeanors committed by using on-duty military personnel on French soil for the duration of instances of peace. The criminal trial courts (Cour d'assises) of the TGI have jurisdiction over felonies¹³.

The specialized divisions on military authorities have jurisdiction to hear cases for offenses dedicated while army personnel are on duty. Trials for offenses committed by using army personnel backyard of the United States of America are heard by using a specifically trained part of the High Court of Paris (Tribunal de Grande Instance de Paris). The procedure earlier than the TGI follows the Code of Criminal Procedure. The accusation is delivered by using the territorially competent Attorney General and civil judges are assigned to hear the case. For the Criminal Trial Courts, there is one president of the court and six assessor judges however no jury. Decisions made by means of the courts do now not need to be confirmed via a foremost officer (Commanding Officer, CO) of the navy and the armed forces do not, under any circumstance, have jurisdiction to execute sentences.²⁸ Appeals observe the ordinary attraction manner as determined through the Code of Criminal Procedure. Appeals introduced earlier than the Court of Appeal are assigned to the specialised military section¹⁴.

⁹ Edith Palmer, *France: Military Justice System*, The Law Library of Congress, Global Legal Research Center, 2013, p. 2.

¹⁰ *Ibid*, p. 2.

¹¹ *Ibid*, p. 3.

¹² *Ibid*, p. 5.

¹³ *Ibid*, p. 5.

¹⁴ *Ibid*, p. 5.

Military offenses differ from Criminal Code offenses and are described in the Military Code of Justice. This Code outlines 4 classes of offenses (offenses tending to exempt their perpetrator from his army tasks, offenses in opposition to honor or duty, offenses towards self-discipline and offenses towards orders).

Military offenses are relevant during times of conflict and times of peace. However, there can also be different punishments or incriminating prerequisites depending on whether or not the offense was once dedicated at some stage in a time of combat or a time of peace. Courts that have jurisdiction to decide professional militaries do not have jurisdiction to decide disciplinary matters¹⁵.

Military personnel are subject to a particular disciplinary regime that is based totally on two quintessential principles: efficiency of the military hierarchy and a guaranty towards arbitrariness.

Chapter 7 of the Code of Defense outlines three exceptional classes of sanctions relevant to army personnel for breach of the Code: (first group - warning, reprimand, censure, work stoppage and censure by way of the minister, second group - transient suspension of characteristic besides pay for a most of 5 days, brief relegation in step, and elimination from the merchandising board, third group - dismissal, termination of employment, cancellation of contract) When disciplinary offenses also constitute infractions beneath the Criminal Code, military personnel can also be concern to prison proceedings. The Minister of Defense has the disciplinary authority over all navy personnel, which consists of the right to impose sanctions. All superiors do, however, have the proper to request that a soldier be sanctioned. Disciplinary measures can be appealed according to the administrative process¹⁶.

During instances of peace, the Department of Defense or navy authority can convey to the lawyer general's expertise any offense that was committed with the aid of capacity of a denunciation.

4. Great Britain

Service personnel are subject to a single disciplinary code that applies wherever they are serving. The disciplinary systems of the three services – the Army, the Royal Navy and the Royal Air Force were put together under a common system by the Armed Forces Act 2006¹⁷.

Previously all three Services had their own separate legal structures.

The Commanding Officer remains central person of the system and determine upon much less serious offences summarily. More serious offences are heard by Court Martial, a standing court which is headed by a civilian Judge Advocate. All defendants can also go with trial through Court Martial as an alternative than a Summary Hearing through the Commanding Officer. Serious instances should be referred to the Service Police and surpassed to the Director of Service Prosecutions, who heads the Service Prosecutions Authority. The Act got here into force in 2009¹⁸.

When in the United Kingdom, Service personnel are situation to both military and civilian criminal jurisdiction. Allegations of incorrect behaviour can also be said to either carrier or civilian police and whether Service or civilian police inspect an alleged crime relies upon on the circumstances and the reputation of these involved. When overseas, Service Police would typically take the lead.¹⁹

Every member of the Regular forces is subject to Service law at all times. Each of the three Services has its own police which is headed with the aid of a Provost Marshal who is separate to the chain of command. Collectively, they are recognized as the Service Police. In the Army, for example, the provost Marshal oversees three organisations: The Royal Military Police, who are accountable for investigations and policing and include a Special Investigation Branch; the Military Provost Staff,

¹⁵ Ibid, p. 6.

¹⁶ Ibid, p. 7.

¹⁷ Louisa Brooke-Holland, *The Military Justice System: an introduction. Standard Note*. House of Commons Library Research Papers, 2014, p. 2.

¹⁸ Ibid, p. 3.

¹⁹ Ibid, p. 4.

who focal point on custody and detention; and the Military Provost Guard Service, who are responsible for guarding military bases.

In addition, the Ministry of Defence Police Act 1987 mounted a country civil police force, the MOD Police. Its main characteristic is to provide civil policing and armed safety for the MOD's nuclear sites and other key defence assets²⁰.

The most sentence that can be imposed with the aid of a Commanding Officer is 28 days' detention. An accused might also attraction the finding or sentence to a Summary Appeal Court. This is headed via a Judge Advocate and two military officers. An accused may also additionally decide on for a trial earlier than the Court Martial instead than a Summary Hearing. It is at the Commanding Officer's discretion as to how the majority of cases are handled, without for offences listed in the Armed Forces Act. The Service Police will then refer a case to the Director of Service Prosecutions if there is proof of a Service offence²¹.

The Director of Service Prosecutions heads the Service Prosecuting Authority (SPA) which is unbiased of the chain of command and is akin to the Crown Prosecution Service. The Director of Service Prosecutions and the SPA act below the frequent superintendence of the Attorney General of England and Wales and stays totally unbiased of the Military Chain of Command. The Director of Service Prosecutions is not answerable to the Secretary of State for Defence in respect of his selection making referring to to prosecutions. The Service Prosecuting Authority determines whether to prosecute an individual by trial at Court Martial and prosecutes that case.

The Court Martial is a standing, permanent courtroom mounted via the Armed Forces Act 2006. It is similar in its sentencing powers and technique to the civilian Crown Court.

A CO who holds the rank of rear admiral, major-general, or air vice marshal routinely has prolonged powers under area 133 of the Armed Forces Act 2006 and can sentence up to ninety days detention²².

A Court Martial is presided by a Judge Advocate and between three to seven lay or board contributors who act as e jury. The lay members also help the Judge Advocate to determine on any sentence if the accused is determined guilty. Whether lay individuals are service personnel (commissioned or warrant officers) or civilians relies upon on the repute of the defendant. The Court Martial has the same sentencing powers in relation to imprisonment as a Crown Court, including life imprisonment. Those found responsible might also enchantment to the Court Martial Appeal Court, which has equivalent powers to the Criminal Appeal Court. Judge Advocates are civilians. They are appointed by way of the Lord Chancellor like different District and Circuit Judges²³.

5. United States of America

The Supreme Court established the army justice system as separate from the system existing in the civilian courts. Members of the Armed Forces are subject to other rules, orders, proceedings, and penalties from the rights and obligations of their civilian counterparts.

Accordingly, it may be said that discipline is as important as liberties in the military justice system.²⁴

The Constitution specially exempts militaries accused of a crime from the Fifth Amendment right to a grand jury indictment, from which the Supreme Court has inferred there is no right to a civil jury in courts-martial.

However, in part because of the distinct requirements provided in courts-martial, their jurisdiction is constrained to these men and women and offenses the military has a legitimate pastime in regulating²⁵.

²⁰ Ibid, p. 4.

²¹ Ibid, p. 5.

²² Ibid, p. 6.

²³ Ibid, p. 6.

²⁴ Jennifer Elsea, Jonathan Gaffney, *Military Courts-Martial Under the Military Justice Act of 2016*, Congressional Research Service, 2020, p. 3.

²⁵ Ibid, p. 3.

Congress enacted the Uniform Code of Military Justice (UCMJ) below its constitutional authority to furnish for disciplining the armed forces. Presidents have applied the UCMJ thru the Manual for Courts-Martial (MCM). The MCM includes the Rules for Courts-Martial (R.C.M.), the Military Rules of Evidence (Mil. R. Evid.), and the punitive articles of the UCMJ, with commentary. The MCM covers almost all factors of military law. The UCMJ gives courts-martial jurisdiction over servicemembers as well as a number of different categories of humans related to the uniformed services²⁶.

There are three kinds of courts-martial: summary court-martial (for minor offenses), special court-martial (for misdemeanors), and general court-martial (for felonies). While the R.C.M. and the Mil. R. Evid. follow to all courts-martial, the jurisdiction and approved punishments differ among the specific types.

The characteristic of the summary court-martial is to “promptly adjudicate minor offenses under a simple procedure” and “thoroughly and impartially inquire into each sides of the matter,” ensuring that the “interests of both the Government and the accused are safeguarded and that justice is done.”

Special and general courts-martial adjudicate more serious offenses and can impose greater severe punishments; consequently, the processes in those tribunals are extra complex. Only general courts-martial have jurisdiction over sexual assault offenses or attempted offenses as Articles 120(a) (rape), 120(b) (sexual assault), 120b(a) (rape of a child), or 120b(b) (sexual assault of a child)²⁷.

Accused found guilty of these offenses or conspiracy to commit these offenses are situation to mandatory dismissal or dishonorable discharge.

The summary court-martial can adjudicate minor offenses allegedly dedicated by means of enlisted servicemembers. It can adjudge maximum punishments of 30 days’ confinement; challenging labor besides confinement for forty-five days; restrict to detailed limits for 45 days; forfeiture of two-thirds’ pay per month for one month; and reduction to the lowest pay grade²⁸.

In the case of enlisted members above pay grade E-4, the summary court-martial may now not adjudge confinement or hard labor barring confinement and can reduce a convicted accused solely to the next decrease pay grade. Summary courts-martial are composed of one commissioned officer who want no longer to be a lawyer. The accused should consent to the proceedings and generally is no longer entitled to a lawyer. If an accused refuses to consent to a trial by way of summary court-martial, the convening authority may additionally order trial by means of unique or widespread court-martial as can also be appropriate fifty-six. As amended by using the MJA (Military Justice Act), a finding of responsible at a summary court-martial is not a criminal conviction. The special court-martial can try any servicemember for any non-capital offense or, under presidential regulation, capital offenses²⁹.

Special courts-martial generally strive offenses that are misdemeanors. A unique court-martial can be composed of a single military judge by or a military judge and four members³⁰.

Regardless of the offenses tried, the most punishment allowed at a distinct court-martial with contributors is confinement for one year; difficult labor without confinement for up to three months; forfeiture of two-thirds’ pay per month for up to one year; discount in pay grade; and a bad-conduct discharge.

Special courts-martial might also now not sentence officers to dismissal. As amended by way of the MJA, in the case of a specific courtmartial composed of a single, it might also no longer adjudge a bad-conduct discharge, confinement of greater than six months, or forfeiture of pay for extra than six months.

The accused has the proper to select whether or not to be tried by means of a single military judge or a military and members. The choice for a trial by contributors solely was eliminated in the MJA. The MJA additionally multiplied the size of the panel from three individuals to four.

²⁶ Ibid, p. 4.

²⁷ Ibid, p. 5.

²⁸ Ibid, p. 6.

²⁹ Ibid, p. 6.

³⁰ Ibid, p. 6.

Whenever possible, individuals need to not be appointed who are junior to the accused in rank or grade. A convening authority can also appoint a magistrate judge to substitute a military judge sitting alone. In distinction to the unanimity wished in civilian criminal trials, the settlement of three-fourths of the participants of an extraordinary court-martial is necessary to locate the accused guilty. Otherwise, the accused is acquitted. There are no “hung juries” in courts-martial. The accused is entitled to an appointed military legal professional or a military tip of his or her selection, or he can appoint a civilian assistance at no expense to the government. In the case of a trial with the aid of an army judge alone, the army decide also decides the sentence sixty seven. Otherwise, if the accused chooses sentencing via members, three-fourths of the members must concur in the sentence. A general court-martial is the highest trial stage in military law and adjudicates the most serious offenses, those related to felonies. Pursuant to amendments enacted through the MJA, in noncapital cases, it is composed of a navy decide sitting alone, if the accused so requests, or eight members and an army judge³¹.

For capital cases, twelve individuals are required. Three-fourths of the contributors must concur in order to locate the accused guilty, barring in capital cases, in which case the verdict need to be unanimous. The general court-martial can adjudge, within the limits prescribed for every offense, a huge vary of punishments, including confinement; reprimand; forfeitures of up to all pay and allowances; reduction to the lowest enlisted pay grade; punitive discharge (bad conduct discharge, dishonorable discharge, or dismissal, in the case of officers); restriction; fines; and, for positive offenses, death. The accused is entitled to an appointed military attorney or a army counsel of his or her selection, or the accused can employ civilian guidance at no rate to the government. A court-martial may adjudge a penalty of demise only with the concurrence of all members, if the case was once referred to the court-martial as a capital case, and if one or extra particular worrying elements are proved past a life like doubt. Otherwise, the navy decide will sentence the accused unless the accused requests sentencing by way of members, in which case three-fourths of the contributors ought to concur in the sentence. Types of Offenses Courts-martial attempt “military offenses,” which are listed in the punitive articles of the UCMJ and codified in U.S.C. Some “military offenses” have a civilian analog, but some are exceptional to the military, such as failure to obey an order³².

The UCMJ authorizes the President to prescribe the punishments that a court-martial might also impose within the limits hooked up via Congress. As amended through the MJA, the court-martial is to “impose punishment that is sufficient, but no longer greater than necessary, to promote justice and to maintain exact order and self-discipline in the armed forces, taking into consideration [a range of factors].”³³

Review by way of these courts is discretionary. Supreme Court evaluate by means of writ of certiorari is limited to cases the place the CAAF has conducted a review, whether obligatory or discretionary, or has granted a petition for magnificent relief. The Court does now not have jurisdiction to overview a denial of discretionary evaluation by the CAAF, nor does it have jurisdiction to reflect onconsideration on denials of petitions for relief. Service members whose petitions for assessment or terrific comfort are denied by the CAAF might also be searching for additional assessment only via collateral capacity by, for example, petitioning for habeas corpus³⁴.

6. Romania

In 1873, beneath the French influence, the “Code of army justice” was once adopted, a code which, together with the exchange that came about in 1881, represented a great rules in phrases of judicial organization, being changed in 1937 by using a new code of army justice, which created the system of discipline councils, military courts, military courts of cassation and justice, in accordance with the stipulations of the Code of Criminal Procedure. In the length after the Second World War,

³¹ Ibid, p. 7.

³² Ibid, p. 7.

³³ Ibid, p. 10.

³⁴ Ibid, p. 27.

the employer of the navy courts used to be regulated by using Law no. 7/1952 on the business enterprise of military courts and prosecutors' offices, a normative act that used to be repealed via Law no. 54/1993, for the enterprise of military courts and prosecutors' offices, a first step in the reorganization of army justice in the context of the socio-political changes³⁵.

Law no. 54/1993 is the final normative supposed completely for the legislation of the military courts due to the fact the subsequent legislative adjustments would now not provide a separate regulation to the navy courts, even though they would keep for these courts the equal one-of-a-kind character.

Currently, the exercise of making justice in military criminal cases is done through the military courts and prosecutors' offices, which are prepared on the identical ideas that govern the judicial authority. In accordance with the provisions in force of the Romanian legislation, the military and civilian personnel of the Romanian army are held legally responsible beneath comparable prerequisites as all the citizens of the state, both for acts dedicated in connection with the service outside it. In criminal matters, the control of the judicial authority on army structures is exercised through military courts and prosecutors' offices, and in terms of civilian matters, the judicial control is exercised by the civil courts.

According to Law no. 304/2004 on the judicial organization, the military courts are equipped based totally on the equal guidelines as the civilian courts, these being: the navy courts in Bucharest, Cluj-Napoca, Iasi and Timisoara, the Bucharest Military Court and the Military Court of Appeal³⁶. The same regulation stipulates that the military courts every have the fame of a army unit, with their personal indicatives and have trials at their headquarters. "The army courts can additionally decide Romanian soldiers and individuals of a multinational force on the territory of different states, given that, in accordance with global conventions, on the territory of the receiving state, the Romanian jurisdiction can be exercised."

The provisions of Law no. 304/2004 on the judicial organization are supplemented by means of Law no. 303/2004 on the status of magistrates, which establishes the reputation of the military magistrates who are also active officers. The army judges and prosecutors are paid by the Ministry of National Defence and are required to comply with the army rules and orders. The disciplinary responsibility of the military magistrates can be invoked only beneath Law no. 303/2004, for deviations from official duties, as nicely as for deeds that have an effect on the status of justice, by means of the Superior Council of Magistracy³⁷.

Moreover, due to the particular of the activity, its control can be performed by the Superior Council of Magistracy, underneath the equal stipulations as in the case of the civilian courts. A contradictory factor to be stated is the interest of the European mechanisms for the safety of human rights, the independence of military judges being referred to as into question, due to the fact they have a twin quality: that of judges, topics to the particular regulations of magistrates, and that of military, officers of the armed forces who have to comply with the military regulations and orders³⁸.

In order to make the implementation of the new legal guidelines and the rational use of the human resources extra efficient, specialists have affirmed that the abolition of army courts and the transfer of competences to the civil courts would be an advantageous element, given the very low volume of cases pending earlier than military courts, and the huge distinction in evaluation to the civilian courts³⁹.

Another argument that is being made is related to the emphasis on the demilitarization process of certain professional categories that have acquired the status of civil servants and were no longer being tried by the military courts and this has considerably diminished their power. The above-

³⁵ Alexandru Stoian, *The role of the military courts in punishing the crimes committed by military personnel*, International Conference Knowledge-Based Organization Vol. XXII No 2, (2016), p. 380.

³⁶ Ibid, p. 381.

³⁷ Ibid, p. 381.

³⁸ Ibid, p. 381.

³⁹ Ibid, p. 382.

mentioned issue, the dual quality of military judges and prosecutors, magistrates and military, was also included in the arguments in favor of the abolition of military courts⁴⁰.

At the same time, it is obvious that the improvement of the judiciary and the complex circumstances that led to the appearance and the preserving of the army courts inside this system, has strongly individualized the role of the military courts in sanctioning the deeds regulated by way of criminal norms related to national protection and security.

Moreover, the increasing significance of international military cooperation in the geopolitical and geostrategic context of which Romania is part determines a reconsideration of the importance of the military component in achieving all the functions of the system and, implicitly, of the judicial system⁴¹.

As a solution in case of the abolition of the military courts and of the absorption of the functions of army justice through the other components of the justice system, the competence of the military courts can be transferred to civilian courts, barring violating the principle of specialization. One argument for this is supplied by means of the truth that currently, in the case of civil, administrative or labor disputes, the hearing of instances in which the subjects are military personnel is made with the aid of the civilian courts, and the sole class of competence held by the army courts is of criminal nature.

This demarche can be supported by the fact that the High Court of Cassation and Justice has not a military department, although it judges criminal instances in which navy personnel are involved. An awesome thing of the manner of reorganization of the courts and of the justice reforms in Romania, the abolition of military courts stays a controversial matter, although the trend that can be determined is in desire of eliminating them and of having their functions taken over through civilian courts⁴².

7. Conclusions

As can be seen, there is a worldwide concern for military justice to strike a balance between respect for human rights, maintaining military discipline and achieving the objectives of defense policy. At the same time, there is a tendency in democratic states to reduce the area of activity of military justice. In Romania, the most appropriate solution would be to reduce the role of prosecutors and military courts to a strict number of facts, in parallel with the demilitarization of other public structures. One thing to note is that before 1947, military magistrates were career officers, who later pursued legal studies. This system is present in Western European countries and the United States. The mistakes of the past must also be taken into account.

We must not forget that military courts have historically contributed to strengthening the authoritarian rule of King Charles II and to supporting the totalitarian regime from 1947 to 1989.

Probably the most suitable would be a model close to the french model. Although the French model is often proclaimed, our judicial system still retains some elements of the totalitarian period, including the military justice system.

The adoption of reforms is facilitated by Romania's membership in NATO and the EU.

Bibliography

1. Alexandru Stoian, *The role of the military courts in punishing the crimes committed by military personnel*, International Conference Knowledge-Based Organization Vol. XXII No 2, (2016).
2. Edith Palmer, *France: Military Justice System*, The Law Library of Congress, Global Legal Research Center, (2013).
3. Jennifer K. Elsea, Jonathan M. Gaffney, *Military Courts-Martial Under the Military Justice Act of 2016*, Congressional Research Service <https://crsreports.congress.gov/R46503>, (2020).

⁴⁰ Ibid, p. 382.

⁴¹ Ibid, p. 382.

⁴² Ibid, p. 382.

4. Louisa Brooke-Holland, *The Military Justice System: an introduction. Standard Note*. House of Commons Library Research Papers (2014).
5. Mindia Vashakmadze, *Understanding Military Justice*, Geneva Centre for the Democratic Control of Armed Forces – DCAF, (2010).