Military Criminal Sanctions and the Peculiarities Related to their Execution in Hungary (1930–1948)

József Pallo *

Abstract

The goal of the author is to investigate a slightly obscure topic: the practice of interwar military justice in Hungary and its related questions, with an emphasis on matters concerning the peculiarities on how to implement them. The bill – which came into effect in 1930 – was born amidst uncommon historical conditions, since the Trianon Peace Treaty basically degraded Hungary into a quasi-numb entity. It is without a doubt that the decade-long consolidation – and its achievements – that came after can be regarded as one of the most prominently successful periods of the era's political history. The historical pressure, the necessity of being able to defend ourselves along with the importance of national security demanded that our army remained intact, despite the prohibitions that surrounded its existence. This called for ensuring that the legal environment was modernized enough to be capable of supporting this goal. The system of regulations inherited from the Austro-Hungarian monarchy was subjected to scrutiny and as a result ended up as a state-of-the art framework that even surpassed the European standards it aimed to match. This paper, putting emphasis on the most important dogmatic junctions, will further review these regulations – substantive or procedural contents alike –. After a brief diversion towards taking a glimpse into the historical situation, we will introduce the system of sanctions and punishments pertaining to military personnel, and proceed with the regulations related to their implementation, which in turn will offer a glimpse into the contemporary philosophy that surrounded military justice and procedure. In accordance, further regulations containing provisions regarding infrastructure, personnel, accommodation, and institution security in general would emerge. The author of the article provides a summary of the most important current relevant legal provisions. It touches upon the military justice system and its subsystems, introduces the more substantive procedural rules, and concludes with an argument on practical implementation. It will also raise the theoretical question on a future independent regulation which would take place in accordance with the reforms of the Hungarian military and the national strategy on defense.

Keywords: *criminal law; military justice; law and enforcement; criminal philosophy; military criminal proceedings; deprivation of liberty; implementation; sentence execution; infrastructure; national security.*

1. A Short Retrospect

After the fall of the 1848-49 revolution, the sources from which domestic criminal law would draw their knowledge from completely returned to their original state. Following the introduction of the Austrian Criminal Code (Strafgesetzbuch) in 1852, significant changes occurred in the field of military justice, or military law. On 15 January 1855, Franz Joseph I ratified the "military criminal code" (Militar-Strafgesetz), which remained the foundation of several key aspects of the Hungarian military law until 1931. The public notions of the emperor's decree emanated from the following provision: *"Hereby all that belongs under the jurisdiction of His Majesty under his constitutional powers as emperor as per the army, including the army of Hungary as said army, its command, structure and hierarchy, shall be exercised by His Majesty."*[1] Act XL of 1868 systematically followed this guiding principle later as well, as show *on the Military Powers, Act XLI of 1868 on the Army or Act III on the organization of public security services, or Act XX of 1886 on the revolution.*

Regarding the enforcement of sanctions linked to military law, domestic examples can be found starting from the very beginning of the 20th century, such as regulation D-4 issued to military prisons, dated 1901. The description on how the contemporary military prison system worked is attributed to *Gyula Gábor (Graeber) (1868-1936),* a reserve judge advocate, who elaborated in detail on the concerning practices. He remarked *"the best, most perfect embodiment of all the prison systems created so far is the progressive system of Ireland, which houses the central element of"*[2] repairing" criminals and gradually preparing them for their subsequent release, achieving their social reintegration. In this system, incarceration can be divided into four periods: solitary confinement, general population, relaying institution, and finally conditional release. This system, by the way, was used by our very own Csemegi Code, Act V of 1878. There was an im-

* Jozsef Pallo, PhD. (Dr. habil.), Faculty of Law Enforcement, University of Public Service Ludovika, Budapest; Subcommittee of Prison Law, Hungarian Academy of Sciences, Budapest, Hungary, email: Pallo.Jozsef@uni-nke.hu / ORCID 0000-0002-9801-2995.

1 Act XII of 1867, § 11.

2 GÁBOR, GY., *Tanulmányok a katonai büntető jogból* (Studies in military criminal law). Budapest, 1901, p. 13-24.

portant difference, though, in how the two systems approached the question of punishment: while the Csemegi Code used tools aimed at deterrence and "reparation" in harmony, its military counterpart resorted to deterrence only, as long-term sanctions were considered a hindrance to active-duty personnel, resulting in an urge to favor shorter sentences and other forms of punishments to make them more severe should the need arise. Incidentally, the first Hungarian Penal Code was based on liberal principles of criminal law, and its provisions proved to be timeless, as the last special provisions remained in force until 1962.[3] The first part of the Austrian criminal code was titled "general provisions on offences, misdemeanors and the sanctions they bring about". This regulation divided deprivation of liberty into two parts: prison, which was to be imposed upon delinquents guilty of criminal offences, and confinement, to be used in the case of misdemeanors. Prison was further subdivided into two levels: general regime, where "strict supervision but no chains and shackles" were to be used, and strict regime, which utilized vastly harsher tools (such as fetters, shackles, fasting, uncomfortable bedding material, corporeal punishment, solitary confinement, and dark cells). On the other hand, military justice only utilized the so-called military detention houses – even in the 19th century, where the incarceration of soldiers was enforced.

In this era, a total of 7 such institutions operated in the nation – one for each regional command. The inmates were categorized into one of two groups: those with higher education, usually former officers or high-ranking bureaucrats belonged to class I, while class II was comprised of the remaining ones. The reason behind this notion was a strict requirement to differentiate among the soldiers of different ranks and positions, which allowed class I inmates to be housed "either alone or with those of equal standing". Furthermore, the jurisdiction of the military criminal code extended to sanctions imposed upon the soldiers by civilian courts as well. This did not indicate, however, that soldiers guilty of committing a crime not related to their status were to be subjected to general enforcement rules. Regardless of the nature of sanctions, a different set of rules applied to them, even though that placement was done in one of the national penitentiaries. This, on the one hand, meant another form of separation, and – on the other – the application of more stringent rules since certain benefits civilian inmates would be able access (such as parole) were out of limits for them. The Austrian military criminal code enjoyed more than six decades of influence in Hungary, until Act no. II of 1930, which did away with most of its provisions. In my opinion, the creation of this legislation is closely related to post-Trianon Hungary, which started to regain its momentum during the consolidation, characterized by count István Bethlen. Following the peace treaty, the principal and thus undisputed endeavor of our foreign policy was that of territorial revision, since the demands set by the "peace of robbers" pushed Hungary to the brink of national, economic, and moral catastrophe, something most Hungarians found impossible to accept and come to terms with. It was also obvious that a peaceful solution was likely out of the question, which resulted in the topic of army development gaining importance once again – an effort once again hindered by the Trianon provisions. On the other hand, contemporary leaders were quite aware that in the eyes of the artificially established countries that had been part of the corpus of the Austro-Hungarian Monarchy before, Hungary would become one of the most threatening entities, a situation from which direct armed conflicts could have arisen anytime. The aim of the deliberative and comprehensive military reform that took place behind closed doors was therefore to strengthen our national security[4]. This was a great deal of work that touched upon the subject of military justice as well, and opened the way for the creation a state-of-the-art, highly adaptable, and efficient law that also adhered to the principles and expectations of its unique field of application. Act no. II of 1930 (hereinafter: Act no. II) on the Military Criminal Code would become an integral part of our legal system and serve as the foundation for the governed efforts and proceeding among the military until 1948.

2. The System of Sanctions as Act II of 1930

Having a vast amount of unfavorable experience from the World War, based on its system of sanctions, the two guiding principles that substantiated the punishments were justice and discipline. At the same time, it should be noted that the first half of the 1930 s was a very productive period in the history of Hungarian criminal law. These changes in the Hungarian Criminal Code affected a large number of offences.[5]

At the same time, it allowed for certain shortcuts to be made to render it "gentler", should the need arise. For example, during peacetime, the use capital punishment was limited in scope. Military misconducts were either sanctioned by a firing squad or prison. Hanging and strict regime prison were reserved for criminals whose offence – at least from a militaristic aspect – was considered despicable, such as desertion or pillaging. It must be noted, however, that the *hanging* and the *firing squad* were considered two alternatives to enforce one sanction, not two separate ones. Hanging also meant expulsion from the army (or the gendarmerie), while the firing squad method was only to be used in the case of military offences. The sequence of people to be executed was based on the gravity of the crime: the first offence of the first person to be executed was considered to be "lesser" in nature, than the ones who came after. If hanging was not an option, due to lack of the hangman's availability, or trauma of the cervical area, it was the jurisdiction of the commander in charge to convert it into being shot.

Consequently, death remained the most severe form of punishments, and incarceration the most widely used one, which

[3] LEHOTAY, V., Strafrecht in Ungarn (1920–1944). In: *Journal on European History of Law*, vol. 14, No. 1, 2023, p. 106-122.

[4] Direct, „plain-to-see" military developments in Hungary started in 1938, in a completely different political and historical climate, with Kálmán Darányi's so-called Győr Project.

[5] MADAI, S., Some Issues Regarding Fraud in the First Hungarian Criminal Code: In: *Journal on European History of Law*, vol. 13, No. 2, 2022, p. 143-149.

was preferably enforced in a military detention facility, but civilian facilities were also available as alternatives. Act no. II provided large margins for the sanctions, giving the judges more power to utilize sentencing practices they would deem most adequate. It is, however, prominent, that it gave minimums more often than its *"civilian"* counterpart, the Csemegi-code.[6] The length of military sentences was influenced by two combating principles: one of them was the requirement to keep sentences short to avoid removing active-duty soldiers from service for too long. The other one was the exact opposite to this: short determinate sentences were believed to be harmful and detrimental to achieving the goals of the punishment in general. The explanation of the Act therefore goes as: *"shorter length sentences do not have deterring qualities and effects, which brings forward complaints not unjustified. Depriving the liberty of people who have grown accustomed to want, hardships and misery would not be punishment enough, instead: these people would welcome such conditions. As a matter of fact, those who are familiar with military holding cells know that several of our convicts actually gain weight during their short stay inside. They are also aware that subjects of lower intellect do not show signs of remorse of having to replace their military service with a few months of prison."*[7] This contradiction was addressed by rendering the generally shorter determinate sentences "worse" and more intensive by adding measures from the Austrian criminal code that further aggravated and exacerbated the severity of the punishments (such as fasting, uncomfortable bedding material, solitary confinement) based on the convict's personality. This was a cost-efficient solution that also allowed for the convicts' earlier return to duty. Disciplinary reasons also called for the introduction of these aggravating elements. However, shortened, more intensive "stays" could only be performed within military detention facilities. *Home detention* was used to protect the prestige of the officers and would be used in the less severe cases of sanctions not exceeding a month. This alternative was necessary in order to maintain "discipline and respect", to ensure that "officers would not be confronted, arrested or detained in the presence of their subordinates". This form of punishment was to be enforced in the residential apartment of the officer in question, and the residences of strangers (friends etc.), or hotels were excluded. Interaction with the immediate family the officers shared a household with was allowed. Everyone else was barred, except doctors, officials offering legal protection and soldiers on duty. Understandably, the previous regulation contained a provision that Act no. II did not adapt: *home detention* was not to be combined anymore with a guard, since it would harm the prestige and respect of officers the legislators sought to protect. This peculiar form of punishment – considering its special rules of enforcement – resembles the state detention facilities defined by the Csemegi Code.

In military justice, fines were managed by the Minister of Defense and used for the benefit of welfare institutions. Act no. II provided a special secondary penalty in the form of *demotion,* or *loss of rank.*[8] This would be used on occasions when the offence or the conditions of it were such that the behavior of the convict would critically endanger the respect and prestige of career officers, particularly so when the risk of escape or conspiration to commit escape were high. A demoted soldier would be stripped of his rank, be it brevet or full, receive the minimum stipends and lose his pension and other savings earned through service.[9]

Demotion, on the other hand, did not cause a soldier to lose his promotions. This sanction was reserved for occasions when the courts would decide to discharge the soldier from his position altogether or convicted him of a crime of more severe nature. Discharging military personnel was considered a last case scenario, to be used only in the case of extremely nefarious offences, or ones that would otherwise be sanctioned by such a punishment by the civilian Criminal Code. Granting probation for soldiers convicted by military courts was the jurisdiction of the Minister of Defense. Those who served two-thirds of a least one-year long sentence in a military institution, would be eligible for parole. Those sentenced to life would have to spend 15 years before being considered for parole. An interesting remark: the original draft for Act no. II contained corporeal punishment (an equivalent to birching), which was to be imposed by summary judgments for armies "on the march". This was erased, however, and instead, the Ministry was granted to seek other forms of punishments instead of the death penalty for "armies on the march".

Those arguing against birching during the National Assembly debate emphasized its inhuman nature, pointing out the omission of workhouses and its enhanced severity version.[10] In his legitimate counter-argument, the Minister of Justice advised that punishments of such nature are not compatible with the unique structure of the army, since the two forms their advocates called for were to be used in the case of people convicted habitual criminals and loiters, which are not conditions soldiers would be identified with. It must be noted, that enhanced severity workhouses, as institutions included in an amendment to the Csemegi Code dated 1928, did not manage to live up to the expectations.

The nature of this paper calls for mentioning soldiers who are on remand (pre-trial detention) and the provisions pertaining to the enforcement of investigative detention. I must add, that since these special measures involved a degree of liberty deprivation, usage was based on special regulations. The fundamental specifics were governed by Act no. XXXIII of 1912 on the *on military criminal procedure* (hereinafter: Act no. XXXIII). The right to put remand military personnel in custody was shared among certain officials. The commanding officer (the command in charge) was the first person in line who had this jurisdiction. If the risk of delays was high, then the prosecutors

[6] HAUTZINGER, Z., *A katonai büntetőjog rendszertana,* (Systematics of military criminal law) And Ann Kiadó, Pécs, 2010, pp. 12-33.
[7] Explanation of Act no. II. p. 12.
[8] Act no. II §. 11.
[9] Act no. II §. 21.
[10] SCHULTHEISZ, E., *A katonai büntetőtörvénykönyv zsebkönyve* (Pocketbook of the Military Penal Code). Budapest, 1943, p. 20.

would be able to decide on the matter. In the case of offenders not in custody, the judge in charge of the investigation could call for the enforcement of the measure. Investigative detention was different from classic remand in that its use was limited to cases where charges would be pressed against an accused, and one of the conditions for ordering remand were met (e. g. risk of escape). Using investigative detention was the discretionary right of the commanding officer in charge. Just as today, both measures were expected to be as brief as possible. While contemporary regulations purposefully addressed the peculiar "genant" position of the soldiers, modern principles point toward the anachronism that lies in today's detention. Detention, which is imposed upon the accused before the actual court verdict, against the principles of the presumption of innocence. Remand and investigative detention were thus utilized with a will to "protect their dignity", and efforts were to be made to reduce their length.

Out of the several key conceptual dissonances of the governing law, some – not all – worth further emphasis. The field itself was made to be much more pragmatic, since besides general adherence to the notions of justice and discipline, practical and interwar experiences served as complementary addition. This did not mean that the draft was deaf to the requirements dictated by benevolence and the humane: it clearly defined certain values and elements that would count as a lot less harsh than its counterpart, and strictly limited the use of the death penalty during peacetime [11]. An overly strict regulation would certainly no improve discipline – something the legislators recognized. In military justice, losing promotions and insignia was equivale to discharge from office. Offences, however, that would not be sanctioned this way by the Csemegi Code or Act No. II or would not serve as grounds for stripping promotions earned for meritorious conduct, had to be addressed. Regarding punishments involving detention, it is apparent that the legislator did not set a sole maximum length, but a gradual one, first up to 6 months, and would then proceed from there if the severity of the offence called for a harsher measure. This created a way for milder offences to be handled – if the conditions would allow – via disciplinary proceedings based on Act no. XXXIII.

3. The Normative and Infrastructural Background of Procedural Issues: Regulation D-4 for the Use of Detention Houses

After Act no. II came into effect on 1 February 1931, several lower-level regulations called for an amendment. The decree on the implementation and the new rules for detention facilities enjoyed were prioritized as the more important ones. Jurisdiction over issues related to military prisons and the legal work over military justice was exercised by Department XIII (Legal Issues) of the Ministry of Defense. By 1929, a plan was put in motion to proceed with the legislative actions, involving military judges. Kornél Karkis did drafting, while the task of compiling the relevant regulations was relegated to Róbert Totth. A commission headed by János Schlichtherle was responsible for editing the draft, with members including Frigyes Kormann and Emil Schultheisz. After a taxing period, the first draft that made it to the desk of Miklós Horthy via Minister Gyula Gömbös was titled 10.991/eln.13.-1930 (hereinafter: Reg. no. D4) was the one that regulated military detention facilities. The minister pointed out that *"the system on how we utilized punishments involving deprivation liberty is undergoing a fundamental change. Incarceration, so far known as comprising of strict prison, prison and detention, would be composed of strict regime prisons, medium regime prisons, state detention prisons, light regime facilities and non-criminal detention, while the current military detention houses would be converted to military detention facilities. As a result of these changes, a new concept, a new regulation had to be created, the one titled D-4, the draft of which I have the honor to submit to you, for further review and approval"* [12]. The governor signed the new book on 17 November 1930, which came into effect along with Act no. II, concluding the chapter of the 1901 regulations. Enforcement of sentences involving deprivation of liberty could take place in one of the following locations: military detention facilities, camp detention houses, military or civilian hospitals or civilian prisons. After the Trianon Peace Treaty, in November 1921, Act no. XLIX of 1921 on the Army of Hungary came into effect, which established the new standing army of Hungary, to be assembled starting 4 January 1922. The new hierarchy was approved by the Minister of Defense in his decree dated May 1922, according to which the army had jurisdiction over 7 "mixed" brigades. The military detention facilities were established at the premises of these brigades' headquarters. In Budapest, two facilities operated under 1st Mixed Brigade: one in District VIII, at 41-41 Conti Street, while the other one in District I, 85-87 Margit blvd.[13] Military detention facilities were dedicated to the placement of people who under the jurisdiction of a military court had been sentenced to incarceration within strict, medium, light regime prison, a state detention houses or sanctioned with non-criminal detention. Prisoners on remand or those under investigative detention would be housed in one of these facilities as well. Only the Margit blvd. and the Szeged facilities could house strict regime inmates, and out of these two, only the Margit blvd. facility served as a state detention center-level housing. Those sentenced to 2 years or less (medium or light regime, or non-criminal detention) were housed within the military prison on the premises of the headquarters where the verdict would be made. On certain special occasions, the commanding officers of the mixed brigades could bring a justified petition to the attention of the Minister of Defense to request the transfer of a given person. Sentences longer than 2 years were to be served in either the Margit blvd. or the

[11] Only in cases, of course, where the strictness of Act no. II was regarded overly harsh and thus ignored, or when regular proceedings and the resulting "better" treatment could be balanced with immediate sentencing.

[12] SCHULTHEISZ, E., *A katonai büntetőtörvénykönyv zsebkönyve* (Pocketbook of the Military Penal Code). Budapest, 1943, p. 9.

[13] PALLO, J., A honi katonai büntetőjog és a végrehajtás karaktere a két világháború között (Hungarian military criminal law and the character of execution between the two world wars). In: *Scientia et Securitas,* vol. 3, 2023, p. 1-10.

Szeged facilities. The commanding officer once again could request the transfer of a given person to another military prison if the sentence to be served was less than 5 years, or the common offence committed did not refer to moral depravity or wickedness. The same way could commanders request permission from the Minister of Defense for an convict to spend his time in a civilian institution, something that usually involved sentences longer than 5 years for heinous offences. The Minister of Defense relayed the request to the Minister of Justice to secure the admission of the convict in question, which in the end meant that civilian facilities could also be used in certain cases.[14] D-4 had a limited influence on camp detention houses, which were to be involved in sentence enforcement when it was practical. The main purpose of such facilities was to provide secure detention for inmates placed there, to supervise them and to isolate them from the world outside. As a result, discipline was harsh since the facility focused on a most orderly conduct. Remand prisons with a need for medical attention or treatment could be housed in facilities with dedicated wards for the accommodation of these people. Generally, incarceration imposed upon the convict by military court were to be enforced in a military institution, but it was also possible to relegate sentence execution to civilian institutions. The legislator decided so because the military facilities were insufficient to enforce all the punishments imposed by military courts. They presumed that only shorter (less than a year) sentences would be served within the confines of military-managed institutions, while the rest would be handed over to civilian ones.[15] Based on their arrangements, cells were configured to either be single or multi-occupancy ones. Permission for the establishment of military prisons was given by the Minister of Defense in accordance with general dogmatic principles. The minimum expected capacity of these prisons was 100, with strict emphasis on the diligent classification of the inmates. Non-criminal detention was usually enforced in one of the holding cells available. It is apparent that even in this era, strict standards were applicable to these rooms. Single-occupancy cells had to have an internal height of 2,5 meters with 25 cubic meters of required air volume. In the case of multi-occupancy cells, the expectation was an average of 30 cubic meters. Usually, the conditions for light regime prisoners were better and thus more adequate for an overall less strict environment. Each of the cells were equipped with a rudimentary alarm system, using bells, doors were to be kept shut and equipped with peepholes. For security reasons, these doors were left-handed, with pre-determined railings, floor attributes, and detailed instructions on heating, light and ventilation.

Lavatories were installed in the cells, with their parts built into the walls. Officers in light regime had their own fully equipped officers' bed, those in state detention houses could furnish their own accommodation. Even without going too much into the details we can see that the general characteristics on how to accommodate certain categories of inmates in certain cells is not a new concept, since they had been around decades before.Military prisons were supervised by the Minister of Interior. The institutions themselves answered to the prosecutors of the mixed brigades, through him the regional commander, or to the quartermaster in command, in certain cases, mostly involving fiscal matters. Direct leadership and maintaining discipline were taken care of by the *superintendent,* who was subordinated to the military prosecutor regarding judicial questions, or to the commander in charge of the mixed brigade regarding general matters. Regarding recruitment and HR, it can be said that the procedure was meticulous, with an array of qualifications, attributes and characteristics listed as necessary for being considered: *"They be disciplined and zealous, vigilant and cooperative, focused on good conduct, manly, calm and cool-headed."*[16] The head officer in the prison was the supervisor, who was the superior of prison guards and jailers. His tasks, as per the regulation, were: *"to raise the mood of his subordinates who might need attention for their work is challenging but important for the protection of law, order and general prosperity."*[17] His tasks mostly involved managing the inmates, including classifying them into certain categories, to ensure that they are employed and preferably educated. He was also responsible for performing checkups at times of the day, even at midnight. Other positions were that of Chief Officer, Officer, Assistant Officer and Cadet. These were granted to people who applied for them successfully, and most were available in larger military prisons. The examination of applicants was particularly thorough: a high level of literacy, education and general knowledge was expected, and even upon successfully completing them, a year of trial period followed. It is worth pointing out that in order to avoid the constraints and limitations that had been put on the military following the Trianon Peace Treaty, those soldiers who had to be let go due to the expected cutbacks were offered positions among the ranks of the police, the gendarmerie, the prisons or the customs authority. This means that the militarization of the prison service started not in the 1950 s by copying the Soviet patterns, but was the result of a much more systematic approach that started in the 1920s. The oath of prison officers solidifies this concept, as it goes: *"I will conduct myself as a patriot, loyal and true, living and dying with honor and virtue".*[18] Turnkeys were also the members of the staff, they had the responsibilities of a *"quasi-guard"*, under the direct supervision of their chief. Officers directly supervised remand prisoners in the larger institutions, Jailers in the smaller ones. Non-commissioned officers and Turnkeys were employed to support them in their duties, who answered to the Chief Jailor. Where providing constant supervision was unviable, daily

[14] Reg. no. D4 § 35.

[15] Before reaching this decision, it is likely that they had considered the fact that a certain part of soldiers serving sentences longer than a year would be removed from the army anyway on the grounds of unworthiness, based on §. 19 of the governing law of the army.

[16] Reg. no. D4 § 60.

[17] Reg. no. D4 § 61.

[18] PALLO, J., A honi katonai büntetőjog és a végrehajtás karaktere a két világháború között (Hungarian military criminal law and the character of execution between the two world wars). In: *Scientia et Securitas*, vol. 3, 2023, p. 1-10.

shifts were organized with soldiers. Incarceration was expected to remain lawful and orderly even in military circumstances, which called for an adequate and effective monitoring and controlling system. The commander in chief of the mixed brigades – along with the prosecutor – could perform visits without prior notice every 3 months, albeit only personally, without the right to relegate this responsibility to someone else.

The head of the regional military courts could also perform supervisory visits, with reports on the findings submitted to the commander in chief.

4. Special Questions Regarding Incarceration in Military Prisons

Remand prisoners were pre-trial detainees, *investigative detainees* were under investigative detention, convicted people in strict regime were called *convicts*, those in medium regime were called *prisoners*, those in state detention centers were *state detainees,* light regime prisoners were inmates, just like those under confinement. Convicts and prisoners were categorized into two groups: group A), which included former officers, or those of higher social status or education, plus junior and non-commissioned officers, who did not lose their rank by being convicted. Group B) was dedicated to the rest of the convicts and prisoners.

This division was a result of a concept according to which: *"short-term incarceration is inherently more harmful for those of intelligent mind, which is important when it comes to individualization."*[19] Officers were to be separated from the others, junior and non-commissioned officers from the rest of the soldiers, remand prisoners and investigative detainees from those convicted, convicts and prisoners from the inmates. Investigative detainees were to be independently supervised and guarded until their interrogation by the authorities, and processed according to their directives. Even if providing accommodation that fulfilled these requirements proved to be difficult, accomplices were separated nevertheless. If conditions would allow, state detainees were separated for the night. Differentiation among the inmates was prevalent not only in the cells, but also in workshops, classrooms, chapels and even on the prison yard. Investigative detainees became convicted on the day they received the enforcement clause of the commander in chief. Regardless of the time of the day it was delivered, this day was counted as a full one for the duration of the sentence. Convicted people not yet admitted thus started serving their sentence when their actual admission happened. If sentence length was provided by months or years, then it was considered served on the same day of the respective month or year. If it was provided in weeks, 7 days would be counted for a week, with the sentence being served on the last day. On both occasions, release was to be performed at noon, the following day after serving a sentence. Sentence lengths given in days were calculated from noon to noon. If sentence interruption was authorized or clemency was granted, release had to happen immediately. Returning to the place of detention following sentence interruption was enforced by the military court. In this regard, a great emphasis was put on informing the relevant subjects of their fundamental rights. Sentences were interrupted upon escape; the day of the escape did not count towards the total time served. If the escapee was captured by a law enforcement agency or the military, then calculations on the time served – taking into account his status as an escapee – was calculated accordingly. The Margit blvd. and Szeged military prisons were mandated to periodically submit and forward statistics on the number of places available for housing convicts and prisoners and the actual number of people inside to the Minister of Defense, every month.[20] The convicted lived their lives according to the house rules and their daily schedule, and were subordinated to the personnel of the facility. Those of a higher rank were an exception, but even they had to show due respect. Cells had a cell boss, responsible for maintaining order and adherence to the house rules. Convicted were not allowed to engage in business with each other, bargaining, haggling and giving out gifts were prohibited in order to keep the system balanced. They were offered some "free time" they could use to participate in leisure activities or read. Books and other literature that would be considered harmful to the conduct of the people inside was not allowed. Coercive measures implemented in the case of soldiers to maintain order and discipline is a sensitive topic, since there was a chance that they could be utilized against officers as well. These measures were also included in the governing rules, and were to be used only in serious cases involving an antagonistic behavior, violence, or open defiance. Obviously, their role was to protect the facility and its orderly operation, but were flexible enough to be utilized in a proportionate manner, and on an as-needed basis. The use of firearms was only allowed in the case of escape, and only when attempts to have the perpetrator stop were disregarded by the subject. Even when the conditions for the lawful use of firearms were met, their use could not endanger the life of anyone else on the premises. Handcuffs could be used as a preventive measure, particularly when the security of others', preventing a possible escape attempt or the high risk of the subject called for their use. Fetters weighing 1,5 kilograms could be used in the case of enlisted soldiers and civilians in order to protect the dignity and respect of officers.

5. The Most Important Cornerstones of the Provisions Related to Soldiers

In this study, due to certain constraints and in order to avoid being too expansive, I could only focus on the most important questions of the proceedings. I picked the fields for further analysis from the aspect of correctional law, since they provide a good coverage on the cross-section of the practical and philosophical characteristics of the era. Despite this, and by reaching a bit further than the scope that would be dictated by the title of this essay, I find it necessary to offer an introduction to the crucial aspects of today's complex regulations. In my opinion,

[19] Explanation of Act no. II. p. 23.
[20] Reg. no. D4 § 3.

the current substantial law on the military and incarceration effective enough the satisfy the special requirements that extend to how soldiers are treated by the law. Also, rules regarding the criminal proceedings are set to adhere to the same standards and special requirements, providing a stable foundation for the application of the relevant provisions.

Chapter XII of the General Part of the Criminal Code contain the different reasons for excluding or terminating the perpetrators' liability to punishment,[21] and the provisions on the various penalties. Chapter XLV of the Special Part sets forth the military offences, of which there is 23[22]. The perpetrator of these offences can only be members of the military according to the Criminal Code, but[23] anyone can be an accessory (either an instigator or an abettor), which means civilians can also be charged with a crime if, for example, the also participate in a violent act against the superior of a soldier. It is also apparent that several acts are considered offences only when committed by soldiers. Their special situation and those who are regarded as such in the scope of the relevant regulations, however, urged the legislator to establish a unique set of rules that would apply to military offences, which would be considered stricter than that of their civilian counterparts. Procedural law is also different in the case of soldiers, as set by the provisions by Act no. XC of 2017 on the Code of Criminal Procedure[24], § 696 (1)[25] (hereinafter: CP). The court of first instance in the case of soldiers would be the military panel of the regional court with jurisdiction over the area. The court of second instance is the Budapest-Capital Regional Court. First and second instance courts are headed by one professional judge, and one lay judge.[26] The tasks of the prosecution service are carried out by a prosecution office designated by the prosecutor general.[27] The commander exercising the employer's rights over the soldier as a quasi-investigative authority carries out investigations. The disciplinary proceedings the offences bring about are also unique to the nature and status of the perpetrator. This involves not having to address the offence in criminal proceedings, but using disciplinary proceedings as the means to adequately sanction the perpetrator. The prosecution office shall dismiss a crime report or terminate a proceeding, and send all case documents to an entity with disciplinary powers if the objective of punishment for a military misdemeanor can also be achieved by disciplinary punishment.[28]

The use of this alternative was of approach is only justified in the case of smaller-scale military offences. If a military investigating authority considers it possible to assess a criminal offence in a disciplinary proceeding, it shall forward all case documents to the prosecution service for passing a decision pursuant to the paragraph. Within three days after receipt of the case documents, the proceeding prosecution office shall pass a decision, and take a measure, pursuant to paragraph (1) or send back the case documents to the commander with a view to continuing his investigation [CP § 710 (2)]. The Act on the enforcement of incarceration contains provisions on the soldiers in a general-special concept.[29] If a member of the army is deprived of his or her liberty, then the general rules would apple, with changes determined by the Act. If the court specifies a military detention facility as the place for enforcement, then the rules and conditions shall be set according to that of light regime (or low-security penal institution). Therefore, it is important to point out that military detention facilities are not exclusive for the placement of soldiers. Conditions that would give grounds for enforcement in a military detention facility are specified by the Criminal Code.[30] If the soldier may continue service, then the place of detention will be a military detention facility, if the length of light regime or confinement does not exceed a year. This means that soldiers may continue serving in active duty after completing their sentence. The rules of enforcement within a military detention facility adhere to the special requirements regarding order and discipline while on duty. The Prison Code gives the Minister responsible for corrections jurisdiction over designating the prison that would serve as the place of detention for soldiers deprived of their liberty.[31] Inmates considered as soldiers are to be separated from the rest of the prisoners, which means that certain conditions to allow their separation have to

[21] Act no. XC of 2017 on the Criminal Procedure.

[22] These offences are regulated by § 434- 457: desertion, arbitrary leave, evading service, refuse of service, breach of duty during service, evading a service duty, violation of reporting obligation, abuse of service authority, mutiny, failure to prevent mutiny, disobeying an order, violence against a military superior or a serving officer, violence against a person defending or required to defend a military superior or as serving officer, violation of service reputation, provoking dissatisfaction, insulting a subordinate, abuse of power by a military superior, failure of a military superior to provide care, failure of a military superior to take action, failure to carry out control, endangering an increase in the state of readiness, commander's breach of duty, evading combat obligation, undermining military morale.

[23] Based on § 127 (1) of the Criminal Code, these are: member of the Hungarian Defence Forces, a professional member of the police, the Parliamentary Guard, the prison service, the professional disaster management organ, or the civil national security services.

[24] Act no. XC of 2017 on the Criminal Procedure.

[25] Any offence committed by a member of the Hungarian Defence Forces, a professional member of the police, the Parliamentary Guard, the prison service, the professional disaster management organ, or the civil national security services during the period of their active duty, or other offences perpetrated in the place of service or related to the service; offences to be acted upon by the jurisdiction of Hungary committed, unless otherwise specified by an international treaty promulgated in an act, committed on vessels flying the flag of Hungary, on aircrafts flying the flag of Hungary, of otherwise committed in Hungary.

[26] CP § 698 (3).

[27] CP § 698 (1-2).

[28] CP § 710 (1).

[29] Act no. CCXL on the enforcement of sanctions, measures, certain coercive measures and confinement (hereinafter: Prison Code).

[30] Criminal Code § 127 (1), § 132.

[31] Ministry of Interior Decree no. 16/2018 (VI. 7.) on the rules concerning the designation of facilities to enforce sanctions, measures, certain coercive measures and confinement. (Tökől National Prison currently serves as the place of accommodation for soldiers).

be met by the place designated, through an independent section. There is also a unique internal classification in place, aimed at dividing them based on their status. The reason for this lies in the structure of the military hierarchy, which draws a strong dividing line between officers and enlisted. However, the same regulation also allows for other forms of classification, for example due to military interests, but the purpose of this measure has to be pre-determined and should not be used to provide unjust benefits for the soldiers involved. There are also limitations in place on how to exercise rights and obligations stemming from the duty, since the regulations provide that these can only reach as far as the sanctions or the pertaining regulations would allow, and observing them would not endanger the chief purpose of the sanction. For the duration of the deprivation of liberty, soldiers are temporarily removed from the chain of command to ensure the proper enforcement of the sanction and the achievement of its purpose. In practice, this means that according to the Prison Code, the soldiers' rights to exercise command and the powers of a higher authority are temporarily revoked, their right to bear arms is suspended, cannot perform service-related duties and they must wear uniforms without ranks and insignia. This shows that despite the position and rank of the soldiers deprived from their liberty, for the duration of the punishment they are in a unique situation in which obligations and rights stemming from their service are over written by the sanctions imposed upon them by the verdict. Convicts regarded as soldiers shall include among their contact persons the commander exercising employer's rights or his or her delegate, as per the Prison Code. Considering the fact that soldiers may return to their duties after serving a sentence, it is of paramount importance that this occurs seamlessly. The commanding officer has extensive influence over shaping the environment the soldiers return to after having served their sentence, and for this endeavor, staying in touch with them is beneficial. It is the obligation of the commanding officer to act as a *quasi-probation officer* in leading these people back to service and active duty. During enforcement, the soldiers have to be provided opportunities to maintain and preferably develop the professional skills associated with their service position. Ensuring this is vital to the successful reinsertion into the service they had been performing before being convicted. The Act also sets fort that the soldiers are expected to stay in contact with their corps.[32]

6. Closing Thoughts

As a summery, it can be emphasized that creating Act no. II provided a legal was to prove that focusing only on the punitive and retributive side of punishments is not a proper way, even in the case of those who willingly violate a system based on order and discipline. Contemporary legislators recognized the fact that having a system that is more effective in preventing offences was absolutely necessary, which paved the way for a more pragmatical approach. The point of this approach was that even the smallest, most minuscule form of punishment can be adequate (and just) to achieve the intended effect. In other words: they did not wish exceed than what was necessary to protect society. In a sense, this philosophy broke away with the sometimes overly strict and proportionate approach with the Csemegi Code. The general explanation for Act no II. pointed out this fact, and – albeit cautiously – stated the following: *"Harsh rigidity is not always beneficial to keeping discipline. However, one cannot shy away from the fact that sometimes, military needs would require a punishment to be harsher than what is already there."*[33] In my opinion, the current system meets the expectations of the legislator. The issue is well-regulated in a way that satisfies the most peculiar of needs in a state of law, which also underlines the adaptability and professional quality of the relevant regulations. From a practical approach, having the Prison Code provide the system and rules on the procedure is also advantageous, since it eliminates needless redundance and the resulting excess costs. Finally, it has to be noted that nowadays, the Hungarian Defence Forces is undergoing various developments in connection to the challenges in national security, which will in the end provide a new foundation for the military status que. The volume, philosophy and direction of these changes brings forward the question whether independent instruments shall be drafted on the substantive and procedural side of military justice, which is – as we have seen it already – something we are not entirely unfamiliar with. We can state one thing for certain, knowing the relevant material: first of all, we have to credit where credit's due: our predecessors, with their codification performance, drafted something on par even with the Csemegi Code. We also see an eternal truth: *Nihil sub sole novum,* meaning that here is nothing new under the sun. Regardless of the field, thoughts, solutions and practices from the past keep emerging, and are sometimes dusted off, re-interpreted according to the era they are studied in and then re-introduced as novelties. In the end, these will always remain the refurbished versions of old ideas, and will never be real novelties. This results in an exciting question: keeping its framework of interpretation, how can criminal law, as a profession and science develop further and which penological directions can it expand with its subject.

[32] Prison Code § 206.
[33] Explanation of Act no. II, p.1.