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TORTURE AND DEGRADING PUNISHMENT IN THE MILITARY LAW OF THE POLISH-LITHUANIAN COMMONWEALTH IN COMPARISON WITH CENTRAL EUROPEAN COUNTRIES IN THE 17TH AND 18TH CENTURIES*

INTRODUCTION

In the second half of the 18th century, the spread of Enlightenment ideas and new military experience brought to an end the process of creating military law in Western and Central Europe. This process had begun in the mid-15th century. It did not proceed in parallel in all countries as it depended on many political and social factors, and in terms of the military, it was inextricably linked to changes in the organisation of armed forces and different methods of conducting war.¹ The impetus for the creation

* The article uses materials collected thanks to the scholarship of the Polish Historical Mission in 2016 and 2019 (funded by the Bavarian State Chancellery).

¹ Storrs: *Military Justice*, pp. 11–14, 29–30; Wilson: *Early Modern*, pp. 46–56; Spring: *The First*, pp. 109–114; Hochedlinger: *Austria's*, pp. 134–135; Duffy: *The Military Experience*, pp. 98–104; Corvisier *Armies and Societies*, 70; Lynn: *Giant*, pp. 398–400, 405–414 (France); Duffy: *The Army of Maria Theresa*, p. 56 (Habsburg Monarchy); Schuster et al.: *Geschichte der sächsischen Armee*, 1, pp. 83, 97; Kroll: *Soldaten*, pp. 201–205 (Saxony); Stadlinger: *Geschichte des Württembergischen*, pp. 387–388, 406 (*Kriegs Articul für die Herzoglich-Württembergische Troupes zu Pferd und zu Fuss*, Hauptstaatsarchiv Stuttgart, Sign. A 28); Staudinger: *Geschichte*, 1, pp. 370–377 (Bayern), 408–413 (2), 713–715 (3); Mitterecker: *Die Soldatesca*, pp. 286–297 (Salzburg); Heuke: *Ueber*, pp. 8–10 (Würzburg); Jany: *Geschichte*,

of military law was the transition in the military organisation systems of European countries from an army of knights to mercenaries, and then to a standing, professional army, based on various forms of conscription.² The basic goal was to develop armed forces that were properly prepared for war, unconditionally implementing the policy goals of the ruler and his state – “on the need for armies to be properly controlled and for the prince to punish soldiers who committed excesses.”³

DEVELOPMENT OF MILITARY LAW IN EUROPE

The sources of military law that emerged in the 15th–18th centuries were increasingly extensive and better edited. The direction of evolution in European countries was similar, reflected in the titles of the legal acts: *kriegsartikel*, *artikelbrief* or *kriegsordnung* in Holy Roman Empire (German states), *kriegsartiklar* in Sweden, *articles of war*, *articles (laws) and ordinance of war*, *rules and articles for the better government* in England, *ordinances militares* in France, *ordenanzas militares* in Spain, *vojenske rady* in Bohemia or *artykuły wojskowe* in the Polish-Lithuanian Commonwealth (Rzeczpospolita).⁴ The similarity was not limited only to titles, but also to the layout and, above all, to the catalogues of duties, offences, and punishments that could be imposed on insubordinate soldiers on the basis of identical issues and by drawing on existing sources of military law. In the case of the countries of Central Europe, these were references and sometimes even

pp. 245–246; Duffy: *The Army of Frederick the Great*, pp. 62–64; Möbius: *Prussian Army*, pp. 163–167; Burschel: *Die Erfindung*, pp. 72–85; Sikora: *Das 18. Jahrhundert*, pp. 76–111; Rischke-Neß: *Subjektivierungen*, pp. 200–398 (comments on the evolution of military law in Prussia in the light of the military articles of 1713 and 1749); Lohsträter: *Militär*, pp. 9–27 (Prussia). Interesting insights into the multi-normative system defining, in the mid-18th century, the limits of the use of violence in warfare in article by Ermakow. He listed international law, military articles and regulations and the custom of war as basic norms. In his analysis, he used Austrian and Russian military laws from the 18th century, which he juxtaposed with incidents of violence against civilians by soldiers of both armies – Ermakow: *Von rasenden Kriegsheeren*, pp. 159–164, 169–172, 179–181.

² Storrs: *Military Justice*, pp. 14–15; Łopatecki: *Discipline in Polish-Lithuanian*, pp. 51–52.

³ Ibidem, p. 14.

⁴ Łopatecki: “*Disciplina militaris*”, p. 10.

rewriting of legal solutions adopted in German countries, mainly about the imperial army. This should come as no surprise, as within Germany the origins of the codification of military law date back to the late 15th century. This process intensified before the middle of the 16th century and was significantly influenced by the establishment of Emperor Charles V of the criminal code – the *Constitutio Criminalis Carolina*. According to the eminent expert in German military history of the early modern era, Peter H. Wilson “later articles [of war] followed the *Carolina* by specifying punishments more precisely”⁵. The next phase of the development of military law was the Military Articles issued in 1570, which had a major impact on the development of military law throughout Europe. “The new articles departed from an earlier practice in that they were issued in peacetime as a permanent and comprehensive code”⁶. Further codes of military law were issued by emperors as well as German princes in the 17th and 18th century.⁷

INFLUENCE OF GERMAN MILITARY LAW ON THE POLISH-LITHUANIAN COMMONWEALTH

The development of German military law had a considerable impact on the evolution of military rule in the Polish-Lithuanian Commonwealth, which essentially ended in the first decades of the 17th century⁸. The military

⁵ Wilson: *Early Modern*, pp. 47–49 (quotation from p. 49).

⁶ Ibidem, pp. 51–52 (quotation from p. 51).

⁷ A significant number of *Kriegsartikel* or *Briefartikel* issued before 1721 by German emperors and princes were published in 1723 by the historian and jurist Johann Christoph Lünig: *Corpus*, pp. 1–2.

⁸ The problem of the development of Polish military law up to the mid-17th century has so far been dealt with by several researchers. In the 1930s Stanisław Kutrzeba collected and published edicts, statutes, and military articles issued by Polish kings and commander-in-chief of the Polish and Lithuanian armies between 1453 and 1746, see. Kutrzeba (ed.): *Polskie ustawy*, pp. 1–312. A synthetic account of the development of Polish military legislation up to the end of the 17th century: Błaszczuk, *Artykuły*, pp. 410–429; Idem: *Ustawy*, pp. 436–477, 479–503. The most thorough study on the evolution of the Polish military law was made by Karol Łopatecki, see: Łopatecki: “*Disciplina militaris*”, pp. 124–601, 677–700. A valuable supplement to this work is J. J. Sowa’s monograph on military discipline and jurisdiction in the Polish (crown) army in the second half of the

articles developed then for the entire military became the basic interpretation of military law until the 1770s. This influence of German law on the creation and development of Polish military articles is not questioned, but it is underrepresented in Polish historiography. The possible use of imperial military articles of Maximilian I (1508), Charles V (1532), and Maximilian II (1570) was mentioned in their considerations on Polish military law by Stanisław Kutrzeba⁹ and Marek Wagner.¹⁰ Another historian, Jan Kamiński, believed that *Carolina* was used in the Polish army.¹¹ The author of the latest work on the creation and evolution of Polish military law until the mid-17th century, Karol Łopatecki, went the furthest in these considerations. In his opinion, the “German pattern” played a huge role in shaping Polish and Lithuanian military articles in the 16th century. This researcher even went so far as to state that German law could have had “a fundamental significance in the creation of the Crown military articles”, without questioning at the same time that their final shape was significantly influenced by domestic legal solutions.¹² However, this applies to that part of the army which was under the name of the *autorament narodowy* (national military contingent, composed mainly of noble-born cavalry units).

In other formations, developed military articles based on foreign military law regulations were in force. In the artillery, they were based on non-German legal solutions. On the other hand, the articles issued by King Władysław IV for the foreign-enlistment troops were strongly influenced by Swedish law – *Kriegsartikel* of Gustav II Adolf from 1621 (second edition from 1632), as Karol Koranyj proved in his work.¹³ The evolution of military law at the end of the 17th century and in 18th century, in the context of the attempt to develop new military articles in the times of August II (1698) and August III (1749), and above all the introduction of new military articles and the ordinance (regulations) of military courts in 1775, was dealt with by Wojciech Organiściak. In his opinion, these military articles were based on

17th century. It presents the military articles and other acts regulating military law in force during this period, see: Sowa: *Wojskowa Temida*, pp. 42–56.

⁹ Kutrzeba: *Wstęp*, in: Idem (ed.): *Polskie ustawy*, p. X.

¹⁰ Wagner: *Prawa*, p. 26.

¹¹ Kamiński: *Historia*, p. 74.

¹² Łopatecki: “*Disciplina militaris*”, pp. 147–158.

¹³ Koranyi: *Z badań*, pp. 273–282.

the old military law of the Polish-Lithuanian Commonwealth, as well as on the Saxon military articles (electors of Saxony Johann Georg III 1680 and Johann Georg IV 1692) and Prussian codifications of the same law.¹⁴

MILITARY OFFENCES AND PUNISHMENTS IN POLISH LAW

The historians mentioned above draw attention to the catalogue of offences in Polish military articles, but do not try to compare it (in a dynamic approach) with those developed for the armies of other European countries. They pay even less attention to the system of penalties applied in the Polish and Lithuanian armies in comparison with the background of European trends. This may be surprising because this problem was addressed already in the mid-18th century by Samuel Brodowski, an officer of the Lithuanian and Polish armies, who developed and published two compendiums of military legal knowledge. In the more extensive *Corpus iuris militaris Polonicum* officially issued in 1753 (in fact in 1755), he devoted much attention in comparing the military offences provided for in Polish law and the penalties for them with the solutions applied in other European countries – mainly German (Empire, Prussia, Saxony, Hanover and of other German princes' articles), but also Swedish, Dutch and Russian.¹⁵ It cannot be ruled out that in this way Brodowski indicated the need to update the penal provisions contained in Polish military law, which had not been modified in the case of national contingent since 1609, and for foreign formations and artillery since the 1630s. It should also be mentioned that Brodowski frequently refers to the criminal code of Emperor Charles V in his work, undoubtedly recognising *Carolina* as an important source of military law.¹⁶

The development of military law in Poland stopped when the widest possible catalogues of military offences were created, with a system of punishments that, through their severity, were to keep soldiers militarily disciplined and, in particular, obedient to the king and their superiors. At the same time, efforts were made to ensure that punishments did not pose a risk

¹⁴ Organiściak: *Kodeksy wojskowe*, pp. 21–22, 25, 29–41; Idem: *Artykuły wojskowe*, p. 166; Sowa: *Wojskowa Temida*, pp. 48–49.

¹⁵ Ciesielski: *Samuel Brodowski*, pp. 401–402, 414–417.

¹⁶ Brodowski: *Corpus*, part *Do Czytelnika* (without pagination), p. 42.

of reducing the often difficult-to-replace military staff and that they did not discourage people from taking up service in the Polish and Lithuanian armies. When they were written, common law was used, referring to both the legal tradition and the realities of the political and social system, i.e. the democracy of the nobility, as well as the unique organisation of the Polish and Lithuanian armies with their division into two separate infantry and cavalry regiments. As a result of the division of military law into officers' and other soldiers' regulations, which was the norm in different European countries, in the Polish-Lithuanian Commonwealth there were also regulations for the national and foreign contingent. The former took the need for a more lenient treatment of soldiers from the nobility, who dominated among officers and so-called comrades, constituting a significant percentage even among private soldiers in national cavalry units. This meant that already in the second half of the 16th century, punishments considered to be shameful and cruel disappeared from the catalogue of sanctions for military crimes. In addition to the death penalty that was likely in most cases, there appeared the possibility of severe punishment by the hetman or commander of the unit.¹⁷ Such criminal sanctions were also enshrined in the War Articles of Hetman ("Artykuły wojenne hetmańskie") approved at the Polish-Lithuanian Diet in 1609. Both parts regulated the behaviour of soldiers throughout military service and in wartime. In peacetime, capital punishment could be imposed for serious offences. These included disobedience to commanders, dismantling fortifications for timber, selling or pawning weapons, rape, duelling, and murder. It should be noted that the death penalty was imposed as a threatening sanction for officers and soldiers in only 8 of the 33 articles included in the first part, with two of them referring to behaviour in the face of a real threat of war. It is much more frequently mentioned in the 38-article section on the behaviour of soldiers in wartime. It is mentioned much more often in the 38-page section on the behaviour of soldiers and accompanying civilians (marketers, merchants, servants) during a war.¹⁸ The system of criminal sanctions was tightened in the articles for foreign troops and artillery issued by Władysław IV in 1633 (1634) and 1635. The Articles of 1633, in 88 paragraphs divided into 20 thematic sections, increased the catalogue of offences for which the death

¹⁷ Kutrzeba (ed.): *Polskie ustawy*, pp. 92–168, 341–354.

¹⁸ *Ibidem*, pp. 168–206.

penalty was more likely to be imposed. It also introduced prison sentences and heavy discipline, including sitting on a wooden horse. The Articles of 1635 contained, in 33 points, a catalogue of offences typical of an artilleryman's service, without distinguishing them specifically between those committed in war and in peace.¹⁹

The Polish-Lithuanian Commonwealth army was spared the tendency in Sweden and some of the German states to tighten the penal system by diversifying the manner of executing the death penalty, introducing severe corporal punishment and deprivation of liberty, as well as criminal sanctions resulting in the loss of honour and dignity. This was introduced to a limited extent from the end of the 17th century, but only concerning foreign-enlistment units. This was related to the strong reception of German military law in Poland during the Polish-Saxon Union. The military articles established by Augustus II and Augustus III, as well as the organisational regulations of infantry and dragoon regiments referring to them, extended the catalogue of crimes to include religious ones, penalising non-participation in services and other religious ceremonies.²⁰ They also expanded the catalogue of applicable sanctions for other crimes and offences to include the following penalties: demotion, imprisonment with hard labour, in chains or shackles, branding, and, above all, corporal penalties, differentiated mild disciplinary versions, such as beating with a baton or sword as corporal punishment (*Prügelstrafe*), as well as severe ones like flogging with sticks and running the gauntlet (a punishment where the convicted soldier walks between rows of fellow soldiers who strike him with rods).²¹ They

¹⁹ Ibidem, pp. 209–232

²⁰ Kutrzeba (ed.): *Polskie ustawy*, pp. 292–297, Lünig: *Corpus*, pp. 816–818; Brodowski: *Corpus*, pp. 450–454 (Arytykuły wojskowe Augusta II = The Military Articles of the King Augustus II, 1698); Ciesielski: *Artykuły wojenne*, pp. 107–113 (Artykuły wojenne dla artylerii Augusta III = The War Articles for Artillery of the King Augustus III, 1737); Organiściak (ed.): *Artykuły wojenne*, pp. 177–185 (Artykuły wojenne Augusta III = The War Articles of the King Augustus III, 1749); Organiściak: *Kodeksy wojskowe*, pp. 143–144. About organizational regulations during the reign of Augustus II and Augustus III: Archiwum Główne Akt Dawnych w Warszawie (further AGAD): *Archiwum Roskie*, Sign. *Militaria* box 6; Archiwum Narodowe w Krakowie: *Archiwum Sanguszków*, Sign. *Podhorce I*, ms. 93 and Sign. *Podhorce II*, ms. 70 and ms. 120; Ciesielski: *Armia*, pp. 398–399. Brodowski in his compendium of military law urged for stiffer penalties for religious crimes following the example of other European countries: Brodowski: *Corpus*, pp. 6–16.

²¹ Organiściak (ed.): *Artykuły wojenne*, pp. 178–183.

were then approved in the Military Articles (*Artykuły Wojskowe*) issued in 1775, which specified the catalogue of crimes and the penalties in the armies of the Polish-Lithuanian Commonwealth. A precise distinction was made between crimes of military nature and those committed by soldiers, and non-military transgressions subject to criminal sanctions in common law.

ENLIGHTENMENT AND LEGAL REFORM

The introduction of the principle of *nulla poena sine lege* (there is no punishment without law) is important, which proves that Poland's evolving military law was influenced not only by the almost universal desire in European military law to rationalise and mitigate the system of penalties but also by Enlightenment thought.²² However, it was not reflected in the exclusion of officers from the application of most articles and the establishment of regulations limiting the catalogue of penalties, significantly mitigating that system of penalties.²³

The Military Articles issued in 1775 organised the catalogue of military actions and crimes that had been in force since at least the first half of the 17th century (but many were found in military articles issued by kings and commanders of the Polish army as late as the 16th century), which did not differ from the European standards of that time.

COMPARATIVE PERSPECTIVE: EUROPEAN MILITARY JUSTICE

Military law in all countries served the same purpose – to preserve the best possible order, discipline, and combat readiness of entire armies and units, and the soldiers. In military legislation, particular importance was attached to maintaining soldiers' obedience to the reigning prince and superiors, as well as to respecting the lives and property of fellow soldiers. The latter was served by severe sanctions, most often the death penalty for actions insult-

²² *Artykuły Wojskowe*, pp. 1–44; Organiściak: *Kodeksy wojskowe*, pp. 30–41.

²³ *Artykuły Wojskowe*, pp. 46–52; Organiściak: *Kodeksy wojskowe*, pp. 117–124, 153–156.

ing the royalty or for treason to the state, including destroying a letter of protection or safe conduct issued by the prince (king, emperor). The specific military offences of communicating with the enemy, cowardice, initiating the looting of enemy property during battle, fleeing during battle and, in particular, surrendering a fortress or defended town at the front, unjustified cessation of hostilities, arbitrarily leaving a guard post during combat. The most severe punishment was also imposed for, during warfare and marches, destroying and plundering facilities important for the logistical support of one's army and for the civilian population, such as mills, forges, bakeries, hospitals, as well as churches, and public utility buildings, added over time. Equally severely fought and punishable by death were inciting and joining mutinies, slandering superiors and fellow soldiers, deliberately killing another soldier, as well as other crimes against military tradition and customs. The death penalty was also imposed in the case of some religious, moral, and criminal crimes, such as blasphemy, the use of witchcraft, bigamy, sodomy, assault and murder, rape, or other sexual offences. Slightly less serious, although some military articles in their cases also provided for the death penalty, were other crimes related to military service, such as duelling, intentionally wounding, or robbing another soldier, and desertion.²⁴ "In most states desertion remained the most important military offences, in terms of what proportion of all trials dealt with this particular offence".²⁵ However, in the 18th century, they were in some way "demoted" to the rank of administrative crimes and punishable offences, for which corporal punishment, imprisonment, property, and loss of honour were imposed.²⁶ These included: abandoning guard in peacetime, minor cases of insubordination, verbal abuse of superiors, selling or losing military equipment, unintentionally starting a fire, fighting and quarrelling with other soldiers as well as with civilians, alcohol abuse, and gambling, excessive debt, usually criminal offences such as theft or serious assault. In the 18th century, the group of crimes punished financially, and in extreme cases physically, included not

²⁴ Kania: *Przegląd i charakterystyka*, pp. 35–36, 45–50. For catalogues of crimes and punishments in German military law of the early modern era see Wilson: *Early Modern*, p. 54; Storrs: *Military Justice*, pp. 21, 24–27; in Sweden after 1682: Wołoszyn: *Specyfika kar*, pp. 98–108.

²⁵ Storrs: *Military Justice*, p. 21. See also Burschel: *Die Erfindung*, pp. 72–85; Duffy: *The Military Experience*, 172; Sikora: *Das 18. Jahrhundert*, pp. 76–111.

²⁶ Brodowski: *Corpus*, pp. 138, 140.

attending church and avoiding religious ceremonies, previously punished only verbally in Poland.²⁷

However, it should be noted that in Poland, as in most European countries²⁸, officers were treated differently than non-commissioned officers and men. In the case of officers committing administrative-military, moral, and criminal offences, punishments were usually limited to property and honour, in the worst case demotion and removal from service. More serious officer offences, like theft, were filed under “behaviour unbecoming”. As a result, the most dangerous sanctions in Polish military law against an officer involved the death penalty for treason against the ruler and country, murder, imprisonment for embezzlement of money intended for the maintenance of the unit and subordinates, as well as for failure to carry out an order from a superior.²⁹ In practice, however, military laws were often not enforced and Polish army officers escaped punishment for being arbitrarily absent from their unit’s location, quarrelling with other soldiers, or even for duelling.³⁰ In the Polish and Lithuanian armies, “towarzysze”³¹ serving in the cavalry of the national enlistment also belonged to a legally privileged group. In practice, they had even greater rights than officers of foreign enlistment, as evidenced by the rare instances of their judicial punishment.³²

European military law, including Polish law, provided for a wide range of punishments, but avoided excessive cruelty. First of all, it did not allow for the use of torture against soldiers of one’s army to force them to confess. The regulations concerning the procedures related to conducting investigations and then the trial in the court-martial required that voluntary confessions be obtained. In Prussia “the torture of soldiers was ruled out in most cases, there was no provision in either the Articles of War or the Criminal Court Regulations that fundamentally ruled out embarrassing interrogation”.

²⁷ Ibidem, p. 112; Organiściak: *Kodeksy wojskowe*, pp. 143–157.

²⁸ Storrs: *Military Justice*, pp. 23–24; Wilson: *Early Modern*, p. 50.

²⁹ *Artykuły Wojskowe*, pp. 46–52; *Artykuły Wojskowe*, pp. 46–52; Organiściak: *Kodeksy wojskowe*, pp. 117–124, 153–156.

³⁰ Ciesielski: *Armia*, pp. 402–407.

³¹ Towarzysz: a knight-officer in the national cavalry units in Polish and Lithuanian armies.

³² Dernałowicz (ed.): *Kitowicz: Opis obyczajów*, pp. 159, 171; Ciesielski: *Armia*, pp. 394–397; Łopatecki: *Discipline in Polish-Lithuanian*, pp. 52–56.

However, the *Corpus Iuris Militaris* of 1687 and the *Kriegsgerichtsordnung* (Court Martial Regulations) of 1712 allowed the auditor, in necessary cases, to use torture during interrogation, but “but in accordance with the recommendations from 1712 in hidden places, in the early morning, and in the presence of 4 officers. In fact, torture was only used in Prussia during judicial and disciplinary proceedings in a few cases at the behest of higher military authorities. They tended not to be used in regiments because officers wanted nothing to do with this form of interrogation, which stigmatised the soldier in the long run”.³³ But the law in force in Prussia and several other German states allowed the possibility of beating the suspect: one or two non-commissioned officers would hit him on the back or behind with sticks.³⁴ In a few cases, it was also permissible to use such a measure in Poland, but only under the Military Articles of 1775.³⁵ It should be emphasised that such treatment did not count as torture. The same was in place for corporal punishment imposed during court proceedings for perjury. However, it cannot be ruled out that in some countries, informally, referring to common law, torture was used when it came to the most severe moral punishments. This is evidenced by the introduction of a strict ban on torture in Saxony in 1730.³⁶ In Poland, torture was only permitted in the military inquisition in cases of insulting the majesty and treason, which was sanctioned by *Military Legal Procedure* (*Proceder prawny wojskowy*) of 1775.³⁷ However, there is no information about the use of torture in court proceedings conducted in Polish military courts in the 18th century.³⁸

CAPITAL PUNISHMENT AND ITS EXECUTION

Excessive cruelty was also avoided when executing the death penalty. Military articles did not specify how it was to be carried out, but in the case of non-commissioned officers and soldiers tried for crimes related

³³ Quotes there: Rischke-Neß: *Subjektivierungen*, pp. 81-82, 373, 410-411.

³⁴ Wilson: *Early Modern*, pp. 64-65.

³⁵ Organiściak: *Kodeksy wojskowe*, pp. 211, 253.

³⁶ Wilson: *Early Modern*, p. 65.

³⁷ Brodowski: *Corpus*, p. 150; Organiściak: *Kodeksy wojskowe*, pp. 167, 209-211, 253.

³⁸ Organiściak: *Kodeksy wojskowe*, p. 253.

to military service, it was most often by firing squad or hanging. It was also common to consider death, first and foremost, as honourable for the soldier. In the case of moral and criminal crimes, for example, murder, rape, bigamy, and blasphemy, the penalty of beheading by sword and an axe was also imposed.³⁹ Brodowski recommended that death by hanging should be imposed on rebellious soldiers and deserters.⁴⁰ In his opinion, thieving soldiers also deserved to be hanged. However, they should not be hanged on the soldier's gallows, but on special gallows for thieves, from which the body was not taken down on the day of execution. Brodowski also described gallows for witchcraft.⁴¹

Importantly, in the case of most of the listed moral crimes, common law allowed the application of the penalty of burning resulting in significantly greater suffering of the convicted person. King Augustus III's Military Articles of 1749 provided for it in the case of sodomy and the Polish Military Articles of 1775 only proscribed it for deliberate arson.⁴² It is known that such a penalty was applied to a soldier serving in the private militia of Hieronim Florian Radziwiłł, who was proven to have committed sodomy. However, he was first beheaded with a sword and only then burned together with the mare.⁴³ On 29 September 1756 Grand Hetman Jan Klemens Branicki ordered that Corporal Mejer be hanged and his corpse burnt. This was a punishment for arbitrarily leaving his guard post, committing a double murder at that time, and burning the house of a certain Szymaszkiewicz.⁴⁴

In the catalogue of methods of executing the death penalty in Polish law, breaking on the wheel, quartering, and impaling were also known. The first was not used in the army, and quartering was punishable only for treason

³⁹ Brodowski: *Corpus*, pp. 54, 64, 118, 124–126, 132, 136, 188, 228, 232, 242, 252, 256, 280–282; Organiściak: *Kodeksy wojskowe*, pp. 91–99. In Sweden: Wołoszyn: *Specyfika kar*, pp. 99–101; in Prussia: Rischke-Neß: *Subjektivierungen*, pp.

⁴⁰ Brodowski: *Corpus*, pp. 68, 138.

⁴¹ Ibidem, pp. 188, 190.

⁴² Ibidem, p. 222; Organiściak (ed.): *Artykuły wojenne*, p. 182; Organiściak: *Kodeksy wojskowe*, p. 94.

⁴³ Brzezina (ed.): *Hieronima Florianiana*, p. 109; Organiściak: *Kodeksy wojskowe*, p. 94.

⁴⁴ AGAD: *Archiwum Roskie*, Sign. *Korespondencja*, Suplement, ms. 10, pp. 124–125, 173–175; Ciesielski: *Armia*, p. 411.

and an armed attack on a superior.⁴⁵ So in practice, such a punishment was administered and executed only a few times in the 17th century. The most notorious was the execution in 1620 of a civilian, Michal Piekarski, who had committed an assassination attempt on King Sigismund III Vasa.⁴⁶ Five years earlier, Crown Hetman Stefan Żółkiewski had sentenced two soldiers guilty of mutiny to death by quartering, and two more by impaling.⁴⁷ Half a century later, on 3. January 1665, Kazimierz Kotowski and Stefan Niewiarowski, who had murdered Hetman Wincenty Gosiewski three years earlier, were beheaded and then quartered their bodies in the Old Town Square of Warsaw.⁴⁸

From memoirs, it results that quartering was used alongside impaling concerning captured Cossacks and haidamaks. However, it was used, incidentally as a punishment for treason and earlier crimes against the Polish soldiers and civilians. Hence the cruel treatment of the Cossack Padubicz in 1648, who was impaled on a stake, and survived in the cold for allegedly 6 hours, retaining partial consciousness, insulted his executioners, demanding that they make toasts and prayers, as well as ring the bells. The perpetrator of the Uman massacre, Ivan Gonta, was tortured for three days in the summer of 1768, first flayed, his hands and feet cut off, and just only after this his heart torn out, his corpse quartered and the remains scattered in 14 locations.⁴⁹ Such cruel tortures were not used against soldiers of the Polish-Lithuanian Commonwealth army, but executions were carried out publicly. A soldier was led to the place of execution through the entire location. The execution had been used to involve all soldiers to achieve the appropriate disciplinary effect.⁵⁰ In addition to punishing a person guilty of an irreversible crime, it was about persuading soldiers in service to obey military law that was strict, but not cruel, as evidenced by how the death penalty was approached by the armies of most European countries. Outside of war, in the 17th century, capital punishment was abandoned,

⁴⁵ Kutrzeba (ed.): *Polskie ustawy*, pp. 131, 241.

⁴⁶ Wisner: *Zygmunt*, p. 168; Pietrzak: *Piekarski*, pp. 73–74.

⁴⁷ Kania: *Przegląd i charakterystyka*, p. 46.

⁴⁸ Rachuba: *Konfederacja*, p. 375.

⁴⁹ Niemcewicz (ed.): *Dyaryusz*, p. 82; Kraszewski (ed.): *Pamiętniki*, p. 108; Raczyński (ed.): *Bunt*, pp. 115, 145; Ciesielski: *Okrucieństwo*, pp. 363, 368.

⁵⁰ Brodowski: *Corpus*, p. 58; Wilson: *Early Modern*, p. 83.

replacing it with other chastisements, primarily corporal punishment and imprisonment. When the military court had already issued a death sentence, the punishment was often mitigated by military commanders with such powers.⁵¹ This was even in the case of a musketeer named Ignacy Rudzki sentenced in 1757 to beheading by sword for the crime of sodomy, whose sentence was commuted to life imprisonment by Grand Hetman Jan Klemens Branicki. At the same time, however, the Hetman sentenced two soldiers who had failed to stop Rudzki from sodomy. One was sentenced to 12 gauntlet runs, and the other to a month's imprisonment in chains⁵² In the acts of clemency issued, Branicki sometimes recommended that the person sentenced to death be led by the law and custom to the execution square. In 1757, musketeer Rowiński was prepared by a priest for death by firing squad, and only then was the court decree sentencing him read out and, finally, the hetman's act of grace. The Hetman commuted his death sentence to 2 runs and a year and 6 weeks' imprisonment combined with hard labour.⁵³

Not only Branicki but also other Polish and Lithuanian army commanders in the 18th century several times mitigated the death sentences imposed for repeated thefts or forgery of coins to running the gauntlet. It was almost a practice to exchange the death penalty by hanging for desertion for running the gauntlet and dismissal from the military service or not (e.g., Hetman's orders mitigating Józef Potocki's execution on 24 November 1735, Jan Klemens Branicki 1 November 1756, 1 December 1756, 2 March 1758)⁵⁴. This led to a situation in which, although the death penalty was often imposed in Poland in the mid-18th century, it was carried out very rarely, especially for soldiers who had committed murder or an armed attack on a superior, or for murder.⁵⁵

Throughout Europe, the death penalty was abandoned for the most common, and therefore particularly severely targeted crime – desertion.

⁵¹ Wilson: *Early Modern*, pp. 71–75, 84–85. See also Sowa: *Kara i łaska*, pp. 1145–1146.

⁵² AGAD: *Archiwum Roskie*, Sign. *Korespondencja*, Suplement, ms. 13, pp. 243–244; Ciesielski: *Armia*, p. 411.

⁵³ AGAD: *Archiwum Roskie*, Sign. *Korespondencja*, box 19, ms. 1, p. 48; Ciesielski: *Armia*, p. 419.

⁵⁴ AGAD: *Archiwum Roskie*, Sign. *Korespondencja*, Suplement, ms. 11, pp. 50–51, 102–103; ms. 14, pp. 64–65. Brodowski: *Corpus*, p. 142.

⁵⁵ Ciesielski: *Armia*, pp. 396–397, 411.

This had long been included among the most serious crimes punishable by death, but during the 18th century in some countries, including the Polish-Lithuanian Commonwealth and even in Prussia, the death penalty was imposed and carried out only in the case of recidivists, usually after their third desertion. For the first, and usually the second, time it would be replaced by severe corporal punishment, imprisonment combined with hard labour or chaining (such punishment was not only for desertion but also for a soldier's failure to fulfil his duties during the war⁵⁶), and in Mediterranean countries, Austria and Bavaria were also exiled to the galleys.⁵⁷ "Another alternative, especially in eighteenth-century Britain, was transportation to the colonies."⁵⁸

These recent cruel penalties (galleys and exile to colonies) were unheard in Poland, and long-term imprisonment combined with chaining and forced labour in fortification work was also relatively rarely imposed. It was introduced as a mandatory punishment for disobedience to superiors, wounding another soldier in a duel, causing a mutiny or even a riot in the city, and giving aid to a criminal by the Military Articles of 1775. In the case of a third attempt at desertion or a third attempt to sell military equipment, it was to be punished by life imprisonment. For lighter offences such as arbitrary substitution of duty time, gambling, or alcohol abuse, the punishment of temporary arrest was applied, but sometimes also in chains.⁵⁹ There was no problem with the punishment of detention, as all major garrisons had dedicated rooms in the main guardhouse. In the case of long-term imprisonment – to which murderers, thieves, arsonists, and those guilty of road and house robberies were also sentenced – the most important reason for the infrequent use of this form of punishment in the Polish-Lithuanian Commonwealth might have been the lack of appropriate places to carry it out. Furthermore, the civil courts sentenced murderers, thieves, arsonists, and people guilty of assault and domestic robberies to the same punish-

⁵⁶ Wilson: *Early Modern*, pp. 68–70.

⁵⁷ Brodowski: *Corpus*, pp. 54, 142; Storrs: *Military Justice*, pp. 20–21; Wilson: *Early Modern*, p. 68; Corvisier: *Armies and Societies*, pp. 70–71, 139, 178–179; Rischke-Neß: *Subjektivierungen*, pp. 239–245, 252–254, 369–371, 388–392, 413–415; Winter: *Desertionsprozesse*, pp. 187–207

⁵⁸ Storrs: *Military Justice*, p. 21.

⁵⁹ *Artykuły wojskowe*, pp. 6, 8, 14, 26, 28, 32, 36; Organiściak: *Kodeksy wojskowe*, pp. 100–102, 104–106, 112–113; Kania: *Przegląd i charakterystyka*, p. 50.

ment. Meanwhile, they could only be imprisoned in Kamieniec Podolski, rarely in other state fortresses and major garrisons, and temporarily in the 1750s in Dubno.⁶⁰ In Saxony, there were more such prisons in fortresses and hence the frequent use of imprisonment combined with chaining and forced labour in fortification work.⁶¹

CORPORAL AND DEGRADING PUNISHMENTS

Corporal punishment was most frequently applied. In the cases of minor offences, usually, the punishment was administered by sword or a non-commissioned officer's cane (Stock). A more serious punishment by flogging consisted of between 10 and 100 strikes with a stick or a bundle of rods (Prügelstrafe).⁶² The most severe of these was running with the gauntlet, a punishment used in the armies of the Polish-Lithuanian Commonwealth probably as late as the 18th century and not legally described until the Articles of King Augustus III of 1749. The Polish Military Articles of 1775 made gauntlet runs the primary disciplinary punishment for soldiers. This, contrary to its name, consisted of the convicted person not running but slowly walking through a line of 100–300 soldiers administering blows with a rod. From 3 to 36 gauntlet runs were imposed, and sometimes several such punishments were imposed at intervals of several weeks. In the case of one, the execution of 24 or 36 gauntlet runs was spread over several days.⁶³ Despite such leniency, it was an exceptionally severe punishment. Its full-scale execution usually resulted in the loss of health and, according to Prussian historians dealing with the army of Frederick II, the death of the condemned.⁶⁴ However, such cases were not recorded in Polish sources. Often the sentence was mitigated while still being carried out, and most of

⁶⁰ Ciesielski: *Armia*, p. 408–419.

⁶¹ Sächsische Staatsarchiv, Hauptstaatsarchiv Dresden, Sign. 11254, ms. 504 – Rola derer Feltzungs Bau-Gefangenen Anno 1735.

⁶² Brodowski: *Corpus*, p. 54.

⁶³ *Artykuły wojskowe*, pp. 4–52; Organiściak: *Kodeksy wojskowe*, pp. 137–138, 258–259; Kania: *Przegląd i charakterystyka*, p. 48.

⁶⁴ Wilson: *Early Modern*, pp. 70–71; Spring: *The First*, p. 113; Duffy: *The Army of Maria Theresa*, p. 56; Rischke-Neß: *Subjektivierungen*, pp. 377–380.

those convicted after running the gauntlet were expelled from the army.⁶⁵ Another important fact is that flogging punishments for soldiers were relatively rare in Poland. The situation was different in Prussia, where flogging was the basis for maintaining discipline, used not only frequently but also abused. It was punishable for desertion, disobedience to superiors, starting a quarrel, drunkenness or theft, and even for talking or coughing during a military parade. According to contemporaries who encountered Prussian military discipline, “soldiers seemed in terror” and “for the least fault were beaten like dogs”, and at the same time with such cruelty and ferocity on the part of officers and non-commissioned officers that “even the toughest couldn’t help becoming half-crippled”.⁶⁶

In Prussia and the armies of other German states, severe punishments, aimed at humiliating the soldier, included standing on stakes and sitting on a wooden horse. They consisted of the punished soldier standing on wooden stakes in a straight position, often tied to a stake, for several or dozen hours, sometimes several days in a row, or sitting on a wooden horse with his hands tied behind his back, sometimes with weights tied to his legs, for example, a rifle or all his equipment. These punishments were imposed for insubordination, drunkenness, and other offences against the service, and were carried out in a public place.⁶⁷ Such punishments were provided for in Polish military penal procedure (in the Articles of 1633 threatened for avoiding work in building fortifications), but only a few pieces of information about their application have survived. In 1686, one artilleryman was demoted for attacking the town hall, and sentenced to march in shackles through Lviv and sit for three weeks, 3 hours a day, on a cannon with less than 14 kg of weight on one leg.⁶⁸ However, this was not in line with either the military laws in force at the time or the customary penalties applied. According to J.J. Sowa, the commander of the artillery corps at the time, General Marcin Kątski, sentenced artillerymen to punishments not given by other military courts, such as public shackling or sitting on a cannon.⁶⁹

⁶⁵ Ciesielski: *Armia*, p. 409.

⁶⁶ Wilson: *Early Modern*, p. 67. See also Rischke-Neß: *Subjektivierungen*, pp. 158-160; Duffy: *The Military Experience*, pp. 98, 103-104, 123-124, 129.

⁶⁷ Wilson: *Early Modern*, p. 68; Rischke-Neß: *Subjektivierungen*, pp. 367-369; Organ-
iściak: *Kodeksy wojskowe*, pp. 114, 131-132.

⁶⁸ Łopatecki: *Disciplina*, p. 583.

⁶⁹ Sowa: *Wojskowa Temida*, pp. 160, 162.

For example, the punishment of standing on stakes was only introduced by the Polish Military Articles of 1775 for not attending mass and religious blasphemy, gambling and alcohol abuse.⁷⁰

Among other corporal punishments, the mutilation penalty, which appeared in the military articles of some German countries (also in Prussia) and Sweden (was introduced in 1683) but disappeared in the Polish army probably already in the 16th century.⁷¹ Branding was still allowed in articles from 1775, but only in combination with a life sentence of hard imprisonment.⁷²

Mutilation, branding or expulsion from service, combined with loss of honour, were punishments that might be considered degrading today, as was the way in which some of the humiliating punishments were carried out, including all the flogging punishments, and especially running the gauntlet. However, in the military law of early modern Europe, they were not seen as such. Indeed, the public execution of such punishments was regarded as a very important factor in the formation of discipline in the military. They were also penalties awarded by civil courts. They were also punishments awarded by the civil courts as being within the standards of the perception of human dignity at the time. This state of affairs was only changed by the spread of Enlightenment ideas, which opposed the use of torture and degrading punishments. This led to a certain softening of the system of punishment in European armies, but not to the complete disappearance of torture and degrading punishment. Some corporal punishment, such as running the gauntlet or sitting on a wooden horse, was still used in the 19th century, and not only in European armies.⁷³

In Polish military law, the death penalty was admissible for most crimes, and for less serious offences, severe punishments on the body and honour, which were issued by army and unit commanders, as well as military courts. In practice, however, the death penalty was avoided and corporal

⁷⁰ *Artykuły Wojskowe*, p. 2–52; Organiściak: *Kodeksy wojskowe*, p. 114.

⁷¹ Brodowski: *Corpus*, p. 124, 142, 170; Wilson: *Early Modern*, p. 68; Duffy: *The Military Experience*, p. 98; Wołoszyn: *Specyfika kar*, 104; Rischke-Neß: *Subjektivierungen*, pp. 247, 369–376.

⁷² Kutrzeba (ed.): *Polskie ustawy*, pp. 73, 87, 124, 146, 178, 190, 214, 224; Brodowski: *Corpus*, pp. 54, 65; *Artykuły Wojskowe*, pp. 20, 26, 28; Organiściak: *Kodeksy wojskowe*, pp. 134–135.

⁷³ Wilson: *Early*, p. 68.

punishment was used sparingly. As early as the second half of the 17th century, they were replaced by imprisonment, dismissal from service or honour punishments.⁷⁴ These included nailing a board with the name of the punished soldier written on it to the gallows, which were sought to be erected in the 18th century by commanders of larger garrisons in Poland.⁷⁵ However, it was not only a tool of execution but a reminder of the obligation to observe military discipline. The role of the rod or non-commissioned officers stick in the Polish and Lithuanian armies was replaced by reading military articles to soldiers. The almost practical elimination of torture and the moderate use of severe prison and corporal punishment meant that the seemingly harsh military jurisdiction in Poland was milder than in other European armies, and even than the legal provisions applied in civil courts in the Polish-Lithuanian Commonwealth. However, it should be noted that also in this respect the Polish practice did not differ from that of other European countries, such as Great Britain, where the “military courts in the eighteenth century were less severe than civilian courts where there were trying men for similar, nonmilitary, offences”.⁷⁶

CONCLUSION

In concluding my reflections on the punishment system in Polish military law against the background of European practice, I must fully agree with a statement by Christopher Storrs: “A Europe-wide, comparative project on the problem of military justice in early modern, ancien régime Europe is therefore need”.⁷⁷ One element of such research must be made with a comparison of the system of penalties provided for in the military law of various European countries, and their similarities and differences.

⁷⁴ Brodowski: *Corpus*, p. 54; Organiściak: *Kodeksy wojskowe*, pp. 117–130, 133, 139–140; Sowa: *Wojskowa Temida*, pp. 309–310.

⁷⁵ Brodowski: *Corpus*, pp. 146–148; Ciesielski: *Armia*, p. 408.

⁷⁶ Storrs: *Military Justice*, pp. 23.

⁷⁷ *Ibidem*, pp. 40–41.

TORTURY I PONIŻAJĄCE KARY W PRAWIE WOJSKOWYM
W RZECZYPOSPOLITEJ OBOJGA NARODÓW NA TLE KRAJÓW
ŚRODKOWOEUROPEJSKICH W XVII I XVIII WIEKU

STRESZCZENIE

W XVIII wieku zakończył się proces tworzenia i ewolucji prawa wojskowego w Europie. We wszystkich krajach europejskich, także w Polsce, opracowano regulacje, które zawierały identyczne lub zbliżone do siebie katalogi typowych przestępstw oraz grożących za nie kar. Dopuszczały one możliwość stosowania tortur w trakcie prowadzenia postępowania i przy wymierzaniu kar. Wiele z nich – na przykład kara śmierci połączona z ćwiartowaniem i paleniem, mutylacja, piętnowanie oraz różne formy chłosty – miały charakter kar okrutnych i poniżających.

FOLTER UND ERNIEDRIGENDE STRAFEN IM MILITÄRRECHT
DER POLNISCH-LITAUISCHEN AEDELSREPUBLIK (RZECZPOSPOLITA)
IM VERGLEICH ZU DEN LÄNDERN MITTELEUROPAS
IM 17. UND 18. JAHRHUNDERT

ZUSAMMENFASSUNG

Im 18. Jahrhundert endete der Prozess der Entstehung und Evolution des Militärrechts in Europa. In allen europäischen Ländern, auch in Polen, wurden Vorschriften ausgearbeitet, die identische oder ähnliche Kataloge typischer Verbrechen sowie der dafür drohenden Strafen enthielten. Sie erlaubten die Anwendung von Folter während des Verfahrens und bei der Strafzumessung. Einige von ihnen – zum Beispiel Todesstrafe kombiniert mit Vierteilung und Verbrennung, Verstümmelung, Brandmarkung und verschiedene Formen der Auspeitschung – hatten den Charakter grausamer und erniedrigender Strafen.

Übersetzt
von Renata Skowrońska

TORTURE AND DEGRADING PUNISHMENT IN THE MILITARY LAW
OF THE POLISH-LITHUANIAN COMMONWEALTH IN COMPARISON
WITH CENTRAL EUROPEAN COUNTRIES IN THE 17th AND 18th
CENTURIES

ABSTRACT

In the 18th century, the process of creating and developing military law in Europe ended. In all European countries, including Poland, articles were written, which contained, if not identical, then similar catalogs of typical crimes and their pen-

alties. They allowed the possibility of using torture during proceedings and when imposing penalties. Some – for example, the death penalties combined with quartering and burning, mutilation, branding, or various forms of flogging – were cruel and degrading.

SŁOWA KLUCZOWE / SCHLAGWORTE / KEYWORDS

- Rzeczpospolita Obojga Narodów; Święte Cesarstwo Rzymskie Narodu Niemieckiego; prawo wojskowe; tortury; kary poniżające
- Polnisch-Litauische Adelsrepublik Rzeczpospolita; Heiliges Römisches Reich Deutscher Nation; Militärrecht; Folter; erniedrigende Strafen
- Polish-Lithuanian Commonwealth; Holy Roman Empire of the German Nation; military law; torture; degrading punishment

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