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Military Justice in Russia

Stanislaw Romanov and Max Dranzhevsky

**E.R. Fidell, E.L. Hillman, D.H. Sullivan,
Military Justice: Cases and Materials,
Lexis/Nexis, 2006, 1076 pages.**

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- 1 Eugene R. Fidell (President of the National Institute of Military Justice), Elizabeth L. Hillman (Professor of Law at Rutgers University), and Dwight H. Sullivan (Colonel of the United States Marine Corps, Reserve) have published a comprehensive study of military justice in the United States.
- 2 As the United States is currently involved in a number of armed conflicts around the world, in recent years there has been growing global interest in American military law and justice. Generally speaking, the book is a successful attempt to meet the growing interest in military justice.
- 3 The authors do not intend to draw an exhaustive picture of the U.S. military justice system or to perform a detailed worldwide comparative analysis. Rather, based on several years of experience in teaching military law, their goal is to present the most significant and most useful documents that can be used as teaching materials. Therefore, the study is based primarily on American legal materials, but foreign legislations and practices are also included. In particular, there are a number of references to the case law of the European Court of Human Rights. This makes the book especially attractive for European legal experts interested in human rights issues and comparative legal research.
- 4 Some of the key concerns of military justice may be derived from the term itself. On the one hand is it possible for justice to be 'military'? If it is, should it exist as a separate jurisdiction or as a branch of a more general jurisdiction? On the other hand, can military justice really be fair? These questions are of crucial importance and the book provides rich and diverse material to answer them.
- 5 Questions surrounding the very existence of military are a starting point of the book. A lively debate concerning its probable abolition and its relationship with civilian courts is outlined briefly. The reasons for keeping separate systems of military and civil justices in the United States bears resemblance to the arguments advanced in Russian academia since the 19th century: maintenance of discipline in the military, the strengthening of the role of military commander, the necessity of handling special military crimes alien to civil justice and the need to deliver justice for the forces deployed outside their country of origin. The last point seems hardly disputable. The rest of the arguments, however, have gathered much criticism but these criticisms are unfortunately unaccounted for in the text.
- 6 Another set of issues, touching upon the fairness of military justice, are however dealt with thoroughly in the book. Fairness of military justice has several components: martial law (the existence of special military offences or special treatment for the servicemen committed general offences), judicial organisation (ensuring of the independence of military judiciary) and procedural sphere (securing the right to due process trial with the inevitable specific character of military service).
- 7 An approach to military justice as a separate area of law enforcement in order to maintain the discipline of the troops requires a specialised military criminal system of law. The "American way", reflected in the Uniform Code of Military Justice, is to establish not only a set of military crimes but also to impose penalties for general crimes and other wrongdoings military service even if they are not expressly mentioned in the Code. The latter makes it difficult for a serviceman to know whether he is criminally liable for some conduct or not. That is why the Russian way, which instead of separate codes of military crimes, imposes a single Criminal Code on both general crimes and special military crimes, seems to be more comprehensible for military personnel.

- 8 The independence of the judiciary is addressed extensively in the book. This should not come as a surprise since ensuring the independence of the judiciary in the military subordinate system is a problem that cannot be resolved easily. That is why many readers will find it useful to learn of the experience of European countries, of which many have already abolished military justice as a separate system of justice.
- 9 The authors present a number of measures designed to establish the independence of the military judiciary from military command. Despite these measures, the latter goal seems to be difficultly attainable inasmuch as a commander has ample powers towards courts-martial. As is known, military courts in the USA are ad hoc courts convened by a commanding officer that empowers them with a great deal of discretion in selecting the trial bench for each case (taking into account the rank of the accused). A commander appoints an investigator and confirms his functions. Military justice also replaces a jury - considered as one of the main guarantees of independence of judiciary - with a panel of judges and non-professionals dealing with questions of guilt and penalty.
- 10 The concept of due process in military justice varies greatly from one case to the next. This effect is illustrated with a wide range of examples: application of particular evidentiary rules in courts-martial, special interpretation of Miranda's rule and denial of a defendant's right to a randomly selected panel.
- 11 Moreover, some general legal institutions may get additional features in the scope of military law. For instance the right to a speedy and public trial is explained not only as a fundamental human right but also as a measure to strengthen military discipline and consolidate the role of the commander in its maintenance.
- 12 As for the law of evidence, the overview presented in the book is an interesting one. It also attracts attention to another aspect of the independence of military justice. It is clear that its sovereignty from the executive is relatively undermined because of the substantial role of executive acts in the regulation of military justice.
- 13 In sum, this book is a detailed and helpful guide to military justice. It should be of interest to scholars, practitioners and lawmakers. This is especially true in Russia where military justice reform has become a topical issue.

References

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