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The *Militar Gränitz Rechten*: An 18th-Century Legal Reform of the Military Frontier¹

This article analyses one of the most important legal documents in the history of the Military Frontier in the 18th century, primarily from the social and legal point of view. The document in question was a medium of centralisation and legal modernisation carried out at the time by the court in Vienna.

Keywords: Military Frontier, *Military-Frontier Rights*, legal modernisation, enlightened-absolutist reform, centralisation

Introduction

During the reign of Empress Maria Theresa, the emphasis shifted from the imperial role of the Monarchy in the Holy Roman Empire to internal politics,² the main features of which included the Enlightenment ideas, inspired by reforms, due to which historiographers have associated Maria Theresa's absolutism with the Enlightenment or reformism. In that particular context, these attributes can be understood as synonyms. A central point in this series of reforms was the separation of judiciary and administrative authorities, and the codification of civil rights. The reforms may, above all, be understood as attempts at modernization

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¹ The term *Military-Frontier rights* will be used in the text. In Croatian historiography, the most typical term is *Krajiška prava*. K. Milković has investigated the problem of the Croatian translation of such acts in the articles quoted below.

² Henry E. Strakosch, *State Absolutism and the Rule of Law. The Struggle for the codification of civil law in Austria 1753-1811* (Sidney University Press, 1967), 17-19.

or proto-modernization, the result of which would be the creation of a modern state.³

Henry Strakosch has stated that in 1753 the compilation of a general law code started in the Austrian Heritage States – in Austria above and below the Enns river, in the Czech country, in Slovakia and Moravia, in Carinthia, Carniola, and Styria, and in the Austrian Vorland.⁴ It is evident that in this list there is no crown kingdom of Saint Stephen: Hungary and Croatia. However, even though Strakosch did not cite it, codification also began in another part of the Habsburg Monarchy, in its extreme southeast, namely in the Military Frontier territory, which in the formal sense was part of the Kingdom of Dalmatia, Croatia, and Slavonia (the Triple Kingdom). It can be assumed that the compilation of the *Military-Frontier Rights* (*Militar Gränitz Rechten*) was parallel to the so-called “Brünn Commission” (Brno Commission), to which the empress entrusted the task of drafting the above-mentioned code. The enactment of the *Rights* was a manifestation of power concentrated in the state. In this article, the said process of codification will be examined as part of the codification and reform process in the Habsburg Monarchy.

Although the Habsburg rulers continually recognized the territorial integrity of the Kingdom of Dalmatia, Croatia, and Slavonia, and the authority of the Croatian *ban* and Diet over the region that was within the Military Frontier, it was virtually separated from the legal system of the Triple Kingdom due to the fact that neither the *ban* nor the Diet effectively implemented their authority in that region (except in the Ban region, “Banska krajina”, the area around the Kupa river, and later between the Kupa and Una rivers, up to the time when the regiment units were formed).

The text *Military-Frontier Rights* is a reflection on the new concepts of statehood and rights during Maria Theresa’s period, which had not yet been theoretically dealt with, and Strakosch mentions “Maria Theresa’s compromise” as opposed to Joseph II’s radicalism. Likewise, in Croatian historiography the similarities and differences between the two rulers, mother and son, Maria Theresa and Joseph II, have been described by comparing their “conceptual schemes” and “governance systems.”⁵ The said compromise, as regarded by Strakosch, refers to the empress’s endeavour to ensure that the creation of new institutions, laws, etc. would not destroy the existing aspects.

³ This article integrates a part of the modified thesis written by Ivana Funda, “Stvaranje moderne države: vladavina Marije Terezije i Josipa II. u Habsburškoj Monarhiji (1740.-1790)” [The Creation of a Modern State: The Rule of Mary Theresa and Joseph II in the Habsburg Monarchy (1740-1790)] (Centre for Croatian Studies, University of Zagreb, 2016), under the mentorship of Assistant Prof. Kristina Milković.

⁴ Strakosch, *State Absolutism*, 50.

⁵ Igor Karaman, *Hrvatska na pragu modernizacije 1750–1918* [Croatia at the threshold of modernization, 1750-1918] (Zagreb: Naklada Ljevak, 2000), 46-89.

Strakosch has described the second half of the 18th century in the Habsburg Monarchy as a time of competition between the central government in Vienna and the traditional government authorities in the provinces. The Military Frontier in this sense represented a kind of *specificum*, due to the fact that the traditional representatives of the Croatian nobility in the Military Frontier, except in some regions, had disappeared. The Frontier, however, was not an “empty zone” in which the state would simply install new legal rules. Apart from the Croatian Diet, in which one could repeatedly hear, and always without success, requests to the ruler to “reincorporate” the territory into the Triple Kingdom, the population of the borderlands had developed a specific identity and lived on the basis of its custom law more or less independently, enjoying an extensive legal, judicial, and – as a result of these features – cultural autonomy. However, the Military Frontier was not the only area in the Habsburg Monarchy that was marked by specificities, since each individual province had its particular rights and characteristics. This was also the main reason, although not the only one, for the slow pace of the codification of rights in other provinces of the Monarchy. The Theresian compromise during the codification process ended when the State Council in 1772 rejected the legislative proposal, and the codification task was prolonged. The first codified civil law of the Monarchy was introduced in the newly acquired Habsburg area, in the easternmost part of the Empire, namely in Galicia – it was the *Westgalizisches Gesetzbuch*.⁶ Thus, although initiated in the Monarchy’s centre, the codification of laws was completed first in its eastern and south-eastern regions – in Galicia and in the Military Frontier.

With 394 legislative articles, the *Military-Frontier Rights* were a powerful intervention, not only in the Military Frontier system, but also in the social structure and everyday life. Their joint title is: ***The Military-Frontier Rights of Her Imperial-Royal Majesty for the Karlovac and Varaždin Generalates. Assigned in the year 1754.*** On the title page, information is given on the printing location and the printing press: Vienna, printed by Johann Peter Gehlen, the court printer of Her Imperial and Royal Majesty.⁷ The text was written in German as the official language of the Military-Frontier administration and military service, not as previously in Latin, which was the dominant language of legal acts, legislative disciplines, and political life.⁸

⁶ Strakosch, *State Absolutism*, 98.

⁷ Library of the Croatian Academy of Sciences and Arts (further: Library of HAZU), R-1579. MILITAR Gränitz-Rechten Von Ihro Kaiserl. Königl. Majestät Für das Carlstädter- Und Varasdiner – Generalat Vorgeschieden im Jahr 1754. Wien, gedruckt bey Johann Peter Ghelen, Ihrer Kaiserl. Königl. Majestät Hof Buchdruckern (further: *Militar Gränitz-Rechten*). We have already commented elsewhere on the problem of Croatian translations of the German titles of this act.

⁸ This topic and some of its aspects, which will also be mentioned, have already analysed by the first author of this text, in the articles: Kristina Milković, “Pravni akti i pravna povijest u djelu Franza Vaničeka i u vojnokrajiškoj historiografiji” [Legal acts and legal history in the work of Franz Vaniček

The *Military-Frontier Rights* were compiled by educated, professional lawyers. As for their content, they do not present data on the individual rights enjoyed by persons in the Frontier region, as would be implied by the Croatian translation of this legal act title or by the structure of the *Statuta Valachorum*, the only integral legal act that existed before these *Rights* were adopted; instead, this specific instruction concerns the way in which all legal sources should be applied in the Military Frontier and how civil and criminal proceedings should be conducted. The only exception is Chapter (*Titulus*) IV, which describes the specific rules regarding land assets in the Frontier. The *Military-Frontier Rights* were so specific that neither their content nor their structure allows for a comparison with any other legal acts related to this area.

Duško Vrban has cited three functions of law in general: to preserve peace and security, to ensure prosperity and progress, and to provide means with which to resolve conflicts.⁹ These laws were also a means of institutionalising interpersonal relations.¹⁰ In the *Military-Frontier Rights*, it can be seen that the legislator's intent was to fulfil all the mentioned functions. Maria Theresa's codification was immanent, and even today it has certain bearing, since it helps us understand the inseparability of the legal system from the totality of life in a region. The *Military-Frontier Rights* were inseparably linked to the changes in the Frontier societies, but they were above all an expression of the will of the ruler as explicitly stated in the prolegomena.

The general framework – crises and reforms in the Habsburg Monarchy

Reforms in the mid-18th century were only connected to the question of the Habsburg Monarchy's survival. All these reforms, including legal ones, during the reign of Maria Theresa were still within the framework of ideological thoughts and institutional structures of the old regime. The reform "wave" that had it cen-

and in the historiography of the Military Frontier], in: *Franz Vaniček i vojnokrajiška historiografija, a collection of scientific papers with international participation held in Slavonski Brod on October 23–24, 2014*, ed. Robert Skenderović and Stanko Andrić (Slavonski Brod: Hrvatski institut za povijest, Podružnica za povijest Slavonije, Srijema i Baranje, 2017), 257-294; Marko Petrak, Kristina Milković, "Wie in unseren Erbbländern' – Krajiška prava (1754.) u kontekstu centralizacije i modernizacije u Vojnoj krajini" ["Wie in unseren Erbbländern' – Military-Frontier Rights (1754) in the context of centralization and modernization of the Military Frontier], in: *Hrvati i Srbi u Habsburškoj Monarhiji u 18. stoljeću. Interkulturni aspekti "prosvijećene" modernizacije: zbornik radova s hrvatsko-srpskog znanstvenog kolokvija 2011*, ed. Drago Roksančić (Zagreb: FF Press, Filozofski fakultet Sveučilišta u Zagrebu, 2014), 45-56.

⁹ Duško Vrban, *Sociologija prava. Uvod i izvorišne osnove* [Legal sociology: Introduction and sources] (Zagreb: Golden marketing, Tehnička knjiga, 2006), 7.

¹⁰ Duško Vrban, *Država i pravo* [The state and law] (Zagreb: Golden marketing, 2003), 19.

tre in Vienna expanded with different intensity to the Habsburg provinces and to the most distant borders of the Monarchy.

Under the influence of the Enlightenment, in terms of dominant European intellectual and cultural aspects, the reforms of “enlightened” absolutism were permeated by belief in reason and by rationalist perceptions of the world. In the political sphere, the Enlightenment would motivate liberal ideals such as the natural and inalienable rights of individuals, tolerance, equality of citizens before law, the rule of law, tripartite power, and freedom of religion. In these visions, works of authors such as John Locke, Charles-Louis Montesquieu, and Jean-Jacques Rousseau were particularly influential.¹¹ This tendency had a major impact on the reforms and rule of the only Habsburg sovereign in power, Maria Theresa. The Leitmotif of Theresianism and later also of Josephine reforms were the centralisation and empowerment of the state and the wellbeing of its subjects. We can recognise these measures as aiming at the creation of a modern state and its institutions, a process described in historiography as related to the (proto-) modernisation concept.

Maria Theresa’s ascension to the throne was truly dramatic. Her prolonged warfare against various European rulers and rivals transformed the first years of her rule into an effort to survive, both for her personally and for the Monarchy. The beginning of the rule marked by wars motivated the emphasis and the prolegomena of the *Military-Frontier Rights*, the topic we are dealing with here, as an evocation of events relatively recent at that time.

Already the First Silesian War (1740-1742) manifested the weakness of the Empire and the inefficiency of its administration. The last war against the Ottoman Empire in 1737-1739 destroyed the state finances and significantly reduced the number of soldiers in the Habsburg army.

Reform of the army became the primary task of the ruler and the state. Franz Moriz Lacy, President of the newly formed War Cabinet, especially emphasized the need to align the rules for the regiments. In 1769, a rulebook was printed for the infantry and the cavalry, precisely defining the obligations assigned to each military post. An army thus structured was a major problem for the financial capacities of the Monarchy. Maria Theresa accepted the “regulation of recruitment” and in 1770 implemented a resolution concerning the way in which to list the houses, the nobles, and the serfs, who were obliged to pay taxes and serve as soldiers.¹² The military reform of the Frontier, namely the unification of military

¹¹ “Prosvjetiteljstvo”, *Hrvatska enciklopedija / Croatian Encyclopedia*, Leksikografski zavod „Miroslav Krleža“, last accessed July 22, 2016, <http://www.enciklopedija.hr/natuknica.aspx?id=50722>.

¹² Ivana Horbec, “Nastanak jozefinskih zemljovida u okviru vojnih reformi” [The emergence of Josephine maps in the context of military reforms], *Lucius – collection of papers from the Society of Students of History [Društvo studenata povijesti] “Ivan Lučić Lucius”* (2002), 125.

organisation and the establishment of regiments (1745-1747), and also administrative and other, related reforms in the Frontier area, reached a high point by the mid-18th century. The degree to which the Military Frontier was important for the Monarchy, from the viewpoint of the court itself, can be seen in the fact that at first it was estimated that it would have to give 45,714 soldiers, or even 1/4 of the total military capacity to the Monarchy. The fact that this number was reduced ten years later to 1/5 or 39,600 – since the initially conceived figure could not be reached due with the available military human resources – does not change the final conclusion that the Military Frontier played a significant role in the total military power of the Monarchy.¹³

The war that marked the beginning of Maria Theresa's rule was also a time of crisis and a period of great restructuring. Reforming the Monarchy was a state imperative. In this regard, two counts were in charge: Wenzel Kaunitz and Fiedrich Haugwitz. Reforms were primarily directed at the state offices in Vienna, but also reached the institutions in provinces and counties.¹⁴

The most important reforms of Maria Theresa included the separation of the administration from the judiciary and the codification and standardisation of legal regulations in the area of internal Austrian countries. This is exactly what we will focus upon in regard to the Military Frontier. Although the codification process that began in 1753 in the Austrian lands did not achieve all the set goals, it nevertheless resulted in the publication of the Penal Code of Maria Theresa in 1768.

In addition to the Enlightenment and rationalist ideas, the reform policy of Maria Theresa was inspired by Cameralism, a political and economic doctrine based on the idea of interdependence between the welfare of rulers and the wellbeing of subjects. In this framework, a wide spectrum of legal, political, and economic measures was implemented, forming a crucial basis for that which later was recognised and defined as the state's social policy.¹⁵ The 18th century in the Habsburg Monarchy and the rule of the Enlightened monarchs, such as Maria Theresa and later her son Joseph II, are important to understand modern European history. With the help of narrower and wider groups from the military-bureaucratic hierarchy, the empress introduced numerous changes in the state order and administration of that time, and in fact created the structure of a modern state.

¹³ Karl Kaser, *Slobodan seljak i vojnik. Povojačenje agrarnog društva u Hrvatsko-slavonskoj Vojnoj krajini (1535.-1881.)*, vol. 2 (Zagreb: Naklada Ljevak, 1997), 28, 29. Originally published as: *Freier Bauer und Soldat: Die Militarisierung der agrarischen Gesellschaft in der kroatisch-slawnischen Militärgrenze (1535-1881)* (Graz, 1986).

¹⁴ Ernest Zöllner, Therese Schüssel, *Povijest Austrije* (Zagreb: Barbat, 1997), 200-208. Originally published as *Das Werden Österreichs* (Österreichischer Bundesverlag, 1964).

¹⁵ Igor Karaman, *Privredni život Banske Hrvatske od 1700. do 1850* [Economic life of Banal Croatia from 1700 until 1850] (Zagreb: Sveučilišna naklada Liber, 1990), 106-109.

It should be noted that in Croatian historiography, Maria Theresa is considered a wise ruler, unlike her son Joseph II, who abandoned the traditional principle of the divine origin of the ruler's rights and obligations, and adopted the contemporary teachings on the foundation of the state via social agreement, believing that monarchic authority and responsibility were exclusively connected to the state and its subjects. Maria Theresa, on the contrary, was still an empress "by the grace of God," which in her governing practice was manifested through the implementation of reforms, however advanced, that never questioned the existing ideological frameworks.

The *Military-Frontier Rights* in historiography

In the earlier and later historiography focusing on the issues related to the Military Frontier, legal acts have often been the subjects of textual analyses. In this sense, the *Military-Frontier Rights* have been frequently interpreted: however, still not thoroughly analysed. One of the reasons for this was probably, as Gunter E. Rothenberg has argued, that they were "a unique mixture of public and private rights."¹⁶ In other words, as a legal text, but with all the implications for the specific historical environment, both in the Monarchy's centre and in the Military Frontier, the *Rights* remain a demanding research task at the intersection of historiography and legal sciences. In this text, we will evaluate the current views in regard to this legal text.

As a research topic, the *Military-Frontier Rights* appeared already in some major 19th-century writings, primarily Carl von Hietzinger, *Statistik der Militärgrenze* (1823) and Franz Vaniček, *Spezialgeschichte der Militärgrenze*, published in Vienna in 1874.¹⁷ These two notable authors limited their presentation to describing the content of the *Military-Frontier Rights*, without a proper analysis.

In the second half of the 20th century, syntheses of the history of the Military Frontier appeared, written by professional historians. Peter Krajasich referred to the year 1754 and the proclamation of the *Military-Frontier Rights* in a legal and organizational sense, as the beginning of the most important epoch in the history of the Military Frontier, which reached its pinnacle in 1807, with the

¹⁶ Gunther E. Rothenberg, *Österreichische Militärgrenze in Kroatien 1522 bis 1881* (Vienna and Munich: Verlag Herold, 1970), 104.

¹⁷ Carl Bernhard Ritter von Hietzinger, *Statistik der Militärgrenze des österreichischen Kaiserthums, Zweiter Theil* (Vienna: Carl Gerold, 1823), 28-32. It is interesting that Hietzinger has also dealt with Chapter IV, using an incorrect name: "Militär-Gränzrechte"; Franz Vaniček, *Spezialgeschichte der Militärgrenze, aus Originalquellen und Quellenwerken geschöpft*, vol. II (Vienna: Kaiserlich-königliche Hof- und Staatsdruckerei, 1875), 1-39.

adoption of the *Basic Frontier Laws*.¹⁸ In his opinion, goals behind adopting the *Military-Frontier Rights* were the unification of military organisations, the establishment of a judicial system from the foundations, and the legal definition of the right to land.¹⁹ However, he did not see the *Military-Frontier Rights* as a novelty in legal life: according to him, they served the goal of “unifying and condensing former privileges and legal principles.”²⁰ On the other hand, he directly connected the 1755 insurrection to these changes, as the court resorted to the authorities of higher and lower officers.

G.E. Rothenberg has interpreted the assertion of the *Military-Frontier Rights* as a culmination of the “early reforms” of Maria Theresa.²¹ Same as Krajasich, he believes that this legal act was to serve the goal of state centralisation. He considers Chapter IV as its “core”, i.e. key section, and apart from this he has devoted somewhat more attention only to Chapter VI.²²

One of the best experts on the history of the Military Frontier, historian Fedor Moačanin, has emphasized the function of the *Military-Frontier Rights* in several of his studies, in the sense of unifying the structures of the Varaždin and Karlovac Generalates and the resulting abolition of the last relics of the Frontier’s self-government. Moačanin has correctly stated that, even though princes were still mentioned in the *Military-Frontier Rights*, they do not have any independent role, but emerge, as Moačanin supposes, just as the officers’ assistants in some unessential affairs.²³ Moačanin has especially stressed the significance of militarisation, which began intensively at that time, in regard to the lifestyle of the Frontier population: the military-bureaucratic hierarchy was present from then onwards in the everyday life of the Frontier population,²⁴ namely “an officer or non-commissioned officer arrives in every village, who lives there constantly and supervises not just public life, but also the private life of the Frontier people.”²⁵

Austrian historian Kaser, who has devoted a major part of his research career precisely to research to the military-frontier issues, produced a still unsurpassed, socio-economically based synthesis on the Military Frontier: *Free Peasant and Soldier: Militarisation of the Agrarian Society in the Croatian-Slavonian Military*

¹⁸ Peter Krajasich, *Die Militärgrenze in Kroatien* (Vienna: Verlag Verband der Wissenschaftlichen Gesellschaften Österreichs, 1974), 43.

¹⁹ *Ibid.*, 44.

²⁰ Krajasich, *Die Militärgrenze in Kroatien*, 44.

²¹ Rothenberg, *Österreichische Militärgrenze*, 104.

²² *Ibid.*, 104-106.

²³ Fedor Moačanin, *Radovi iz povijesti Vojne krajine* [Writings on the history of the Military Frontier], ed. Nataša Štefanec (Zagreb: Srpsko kulturno društvo Prosvjeta, 2016), 62.

²⁴ *Ibid.*, 74.

²⁵ *Ibid.*, 128.

Frontier (1535–1881). He has interpreted the *Military-Frontier Rights* “as an external mark (...) of the process of merging” military-frontier societies into “a single-reintegrated society,” which lasted twenty-five years, from 1745 to 1770. As is typical in present Military-Frontier historiography, Kaser sees the compilation and proclamation of this legal act as an important part of the wide-ranging reforms implemented in the Frontier.²⁶ These reforms were military, administrative, judicial, and also related to the ownership of land assets. All of them, however, resulted from the military reform, i.e. from the formation of regiments in order to integrate the Frontier people into the standing army of the Monarchy.²⁷ With the organization of a total of eleven regiments, the Frontier in the region of Croatia and Slavonia received its final physiognomy, which would continue into the last quarter of the 19th century.

In regard to the *Military-Frontier Rights*, Kaser wrote:

“The *Military-Frontier Rights* consisted of a single catalogue of regulations, by which the civilian judicial, criminal, and military judicial authority as well as land-ownership rights were singularly regulated. That mixture of judicial and land-ownership laws, parallel with the unification of the administration, did not occur synchronously by chance. New administrative organizations replaced the old administration. The Frontier rights replaced the old privileges and transformed the still remaining relics of the historical Frontier regions.”²⁸

Although he defined the *Military-Frontier Rights* as an external mark in regard to the changes that represented the “structural cut” in the Military Frontier, Kaser has also argued – totally in contrary to the concepts of F. Moačanin – “that the new regulation of the judiciary was irrelevant for the Frontier people” and that, on the other hand, the most important matter for them was the question of defining ownership over land.²⁹

The synthetic overview *History of the Croats* says the following on the *Military-Frontier Rights*: “This legal code was a collection of regulations related to the Military-Frontier courts, to civil and criminal proceedings, and to legal relations between the Frontier peoples (...) Most of these regulations were taken over from previous Frontier arrangements, but the military government skilfully ensured that they would be coordinated with the centralistic aspirations of the Court. Thus, soldiers in the Frontier region obtained free use of land as military fiefs,

²⁶ Kaser, *Slobodan seljak i vojnici*, 7.

²⁷ *Ibid.*, 13.

²⁸ *Ibid.*, 22-23.

²⁹ *Ibid.*, 23.

due to which the remaining provisions of that legal code definitively deleted the last remains of the former Frontier's self-government."³⁰

Another synthesis deals in its first part solely with the Military-Frontier area: *The Croatian-Slavonian Military Frontier and the Croats under the Ottoman rule during the Early Modern Period*. Here the *Military-Frontier rights* are mentioned only in relation to Chapter IV: "Land holdings, according to the *Frontier Rights* (...) of 1754, were considered as military fiefs owned by the state, and the Frontier people were their users." The status equalization among the Frontier people receives a negative evaluation: "By creating a levelled system of Frontier subjects, in the 18th century the Military Frontier was transformed into an all-inclusive institution of enforcement (*Zwanganstalt*), a dehumanised world, a system in which the individual had few rights and many obligations."³¹

According to the above noted texts, it is clear that, in historiography, interpretations of the *Military-Frontier Rights* rest on three fundamental theses: that these rights marked a turning point in the history of the Military Frontier, that all Frontier lands were defined solely as "military fiefs", and that their proclamation was the final end of the Frontier autonomy.

The *Military-Frontier Rights* – A textual analysis

Here we shall give an overview of the contents of the *Military-Frontier Rights* by extracting certain terms that, in our opinion, reflect the importance of individual chapters as well as the legal text in its entirety, since a detailed analysis of the contents would require a separate study.

The *Military-Frontier Rights* were published, as noted above, in the German language and German script, and they contained, besides the extensive prolegomena, 394 articles divided into seven chapters, making them the most comprehensive legal act pertaining to the Military-Frontier area. The details and dynamics in regard to the emergence of this legal act have not, so far, been investigated.

In the prolegomena, Maria Theresa reveals the methodology and principles for the establishment of the *Military-Frontier Rights*. The prolegomena is an extremely important section, since in it the empress explicitly describes the intention for compiling this legal act and explains to an imaginative reader how it came about. The text reflects the Enlightenment inspiration of the legislator, and Maria The-

³⁰ *Povijest Hrvata* [History of the Croats] vol. 2: *Od kraja 15. st. do kraja Prvoga svjetskog rata* [From the late 15th century until the end of World War I], ed. Mirko Valentić and Lovorka Čoralić (Zagreb: Školska knjiga, 2005), 278.

³¹ Željko Holjevac, Nenad Moačanin, *Hrvatsko-slavonska Vojna krajina i Hrvati pod vlašću Osman-skoga Carstva u ranome novom vijeku* [The Croatian-Slavonian Military Frontier and the Croats under the Ottoman rule during the Early Modern Period] (Zagreb: Leykam International, 2007), 49.

resa is presented as a truly enlightened ruler. The Frontier people (*Gränitz-Miliz*), as noted, had provided their faithful service to the empress and her monarchic predecessors over the previous two hundred years. Their lands (the *Gränz-Land-ern*) had been battlefields for centuries, and their inhabitants were descendants of the brave “Illyrians”, famous for their war activities. The empress’s motivation stems from her motherly concern (“Lands-Mütterliche Obsorge”) to provide swift, easy to maintain, and low-cost judiciary for her Frontier peoples (“... Unseren Gränitz-Völkern eine schleunige, leicht zu erhaltende – nicht kostbare *Justiz* verschaffet...”). This task is at the same time emotional and rational, based on the concept of general happiness/welfare (*allgemeine Glückseligkeit*) and on the idea of interdependence between rulers and subjects.

In the prolegomena to the *Military-Frontier Rights*, there is a statement that no nation or country can sustain legislation and enjoy long-lasting happiness without good laws and legislation that is pleasing to God.³² The empress perceives the Frontier as a special legal system: it is claimed that the *War Articles* cannot be the only legal guideline for the activities of the Frontier population; laws that are common in the Inner Austrian regions are not applicable to the Frontier, and the new military system is not compatible with the previous, tolerated traditions. The function of the *Military-Frontier Rights* in maintaining peace and providing security, and the regulation of social relations is explicitly stated: the empress establishes this “comprehensive legal norm” in order to protect the blameless and to punish the perpetrators, save the innocent from oppression by their superiors, so that every individual could live on a peaceful estate that would be his own, and obedience would be strengthened for the correct implementation of services.

From a legal point of view, the *Military-Frontier Rights* were a modern juristic act, which originated as an effort by professional soldiers and legal experts who had an insight into the legal situation of the region and the population to which the act referred. The empress checked its composition, as is stated in the text, with the generals and advisers who were well acquainted with military service, military institutions and laws, and who had personal experience and knowledge about the Varaždin and Karlovac Generalates – their organizations and their

³² “Weilen aber kein Land, und kein Volk ohne guten Gesätzen, und ohne genauer *Administri* rung der GOtt gefälligen *Justiz* bey einer wahren, und dauerhaften Glückseligkeit erhalten werden kan, hingegen die Erfahrung bishero gezeigt, daß die Kriegs-*Articuls* für Unsere Gränitz-Soldaten, welche als zugleich angessene Haus-Vätter sich, und ihre *Familien* durch ihre Hauswürthschaft ernähren müssen, die alleinige Richtschnur ihrer Handlungen nicht seyn können, auch die in anderen Unseren Erb-Landen übliche Gesätze auf Unsere Gränitz-Völker, als welche zugleich Unseren Kriegs-Diensten obliegen müssen, sich nicht in allen Stücken *appliciren* lassen, anebst das neu eingeführte *Militar-Systema* mit denen vorhin geduldeten Gewohnheiten nicht allerdings vereinbahrlich, woraus in *Justiz*-Sachen aus Mangel nöthiger Anleitungen viele Zweifel und Irrungen entstanden, und ohnerachtet einiger darüber ertheilten Belehrungen, doch täglich neue Anfragen zum vorschein kommen: [...]” Library HAZU, R-1579, MILITAR Gränitz-Rechten.

population's customs, creative spirit and way of life ("... deren Verfassung, dann von deren Innwohner Sitten, Genie, and Lebens-Art aus eigener Erfahrunß gute Kantnuß besitzen..."). Already here a particular credo is expressed as to the Habsburg military-bureaucratic hierarchy of the 18th and 19th centuries, which implied a connection between theory and practice in the character of each civil servant. Although this undoubtedly shows a legal reform implemented "from above," the empress conducted it with a full appreciation of the Military-Frontier particularities.

Although its number of articles is the least, Chapter I is very crucial in regard to the consequences which the Military-Frontier society had. It prescribes the transfer of rights from the Inner Austrian regions, if compatible with the Military-Frontier structure, as until then they only knew the feudal custom law (the "Tripartitum"), which was applied in the Triple Kingdom, and the custom law that regulated the everyday life of the Frontier population. In this way, two very different legal systems and legal cultures met in the Frontier. As far as research has shown, the Frontier people did not look positively upon the state interfering with their way of life, whereas from the point of view of the state, the expansion of its powers in this period was connected to its primary mission, namely to ensure common welfare.³³

With the introduction of the *Military-Frontier Rights*, only persons who knew all the legal codes mentioned in the text, and who were therefore educated lawyers, could become judges and prosecutors. Almost all civil servants in the Monarchy had to have completed studies in philosophy and law. For the Military-Frontier society and its traditional leaders – judges and princes – this was an elusive condition. Thus, it is not surprising that when analysing the *Military-Frontier Rights*, F. Moaçanin came to the conclusion that the princes had lost their independent role. The predominantly illiterate society dominated by custom law and oral tradition now encountered written laws, the need for professional knowledge, and the fact that a large portion of legal undertakings now took place in writing instead of orally. In this sense, we can perceive this legal act as "an instrument for social change."³⁴ In the second half of the 18th century, the Habsburg Monarchy, according to Strakosch, was characterized by competition for power between the rulers and the "primary holders of power" who defended their autonomy, which in the Frontier region can be identified with the princes, judges, and dukes.

The heading of the first Chapter is: *About the Laws by which the Karlovac and Varaždin Generalates at the Frontier Should Live, and the Courts that Should Make Decisions*. Although this text is the shortest, with only eleven articles, this

³³ Vrban, *Država i pravo*, 45.

³⁴ Vrban, *Sociologija prava*, 205. This collocation has been borrowed from a chapter title in Vrban's book.

chapter is one of the most important within the entire act. Already its heading expresses the basic principle of the *Military-Frontier Rights*, which is also valid for the *Codex Theresianus*, namely the territorial principle instead of the previous personal validity law (on which, for example, the *Statuta Valachorum* is based). This actually means that all people who are located in the Frontier area, or primarily in the two generalates, are equal in status according to law.

The first article refers to natural law as immanent to all people, namely that which “God placed in the hearts of all people,” and the Ten Commandments of God, which are above all laws. Natural law in the *Military-Frontier Rights* – just as in the *Codex Theresianus* – is described as the basic orientation of the legislator.

In the first chapter, the legislator lists the legal regulations to be applied in the Military-Frontier area, specifically in the two generalates: these are primarily the *War Articles* (*Kriegs Articul*s), which focus exclusively on the so-called “enlisted soldiers,” namely those who are in military service and who are literally registered in the soldiers’ list, but just when in military service. The *War Articles* contain the law of war, which applies only to a part of the Frontier population. This was by far the most rigid aspect of the legal system in the Military Frontier and for this reason historiography has mostly regarded it as a repressive system. Apart from the *War Articles*, this section also grants validity to the military regulation of imperial linear regiments.

In general disputes that were not linked to military affairs (*in delictis communibus seu non militaribus*), the penal laws introduced by the emperors Charles V, Ferdinand III, and Joseph I were to be respected, as was the case in the German Hereditary Countries (Art. 5). These included edicts, constitutions, and novels issued by the rulers starting from Emperor Ferdinand III, as measures against criminal, military, and general offenses. In civil disputes, the general written law adopted in the Hereditary Countries was to be applied, except in cases when it was not compatible with the military system and with the laws currently allotted (Art. 7).

The first chapter confirms that there were many specific legal statuses in the Frontier. It proposes that the Catholic clergy should be subject to canon law, based likewise on the example of the Hereditary Countries, whereas the Orthodox clergy need not apply canon law if it is not in accord with the privileges these priests received from the empress and with the free practice of faith. This article, before the famous Patent of Toleration issued by Joseph II in 1781, also designated that no one should be persecuted due to his religion; in other words, it confirmed the freedom of religion (Art. 9).

The military regulation was beneficial both for officers and for legal soldiers (Art. 10). In this chapter, members of the military hierarchy are also ordered to expose laws to all those who need to know them, because – in accord with the rationalist-utilitarian perceptions – it is not sufficient just to prescribe a law: instead, a

law must be applied. In order to ensure that the population was informed and understood laws, the laws would have to be read in the “Illyrian language” during the inspection periods or on other occasions when the entire regiment population gathered together. Here an additional question arises, namely on the divide between the norms and the expectations of legislators on the one side, and the legal awareness of the population to which the law applied on the other.

The attitude towards custom law in the *Military-Frontier Rights* was a compromise, in line with the principle stated in the *Codex Theresianus*. Article 8, in this regard, is especially important. The first chapter, which emphasised an evident distinction between written and custom law, and defined the subsidiarity of custom law, in fact directly stated that the established customs were still valid if they were not “contra, but prior to the law.” Therefore: “It is not necessary to tolerate any widespread habits or, moreover, abusive practices that are in contrast to nature, to God’s law, to common sense, and to good practices, as well as nothing smaller in contrast to other of Our explicit laws, and these are even less regarded in a trial; but we do not want to abolish the particular traditional habits that are not contrary, but *praeter legem* and which, due to the specific condition of the country, are in constant use and are not inferior for Our service.” (Art. 8)³⁵

In this chapter, all legal sources were listed that had to be applied to the Military Frontier and that the members of the legal profession were supposed to know. Such professional legal knowledge was assumed in individuals who had completed the study of philosophy and law, which in the 18th century was the usual qualification of the civil servants.

It appears that the “Theresian compromise,” as Strakosch has described it, was less strictly implemented in the Military Frontier than in the rest of the Monarchy. In the *Military-Frontier Rights*, as can be concluded based on the present insights into the literature and the sources, other principles were nevertheless accepted – entire legal acts were simply transferred from the Hereditary Countries to other regions, although the existing law was compiled or – in a slightly bolder variant – redefined. Due to this, one can also understand Kaser’s conclusion in regard to the 18th-century reform: “The changes were so fast and so radical that it is almost possible to talk about a structural cut.”³⁶ Legal sociology as a specific discipline primarily highlights the social and cultural conditionality of the laws.³⁷ Starting

³⁵ “Sollen keine wider die Natur, und Göttliche Rechten, wider die gesunde Vernunft, und gute Sitten, nicht minder andere Unsere ausdrückliche Gesätze etwa im Schwung gewesste Gewohnheiten oder vielmehr Mißbräuche geduldet, noch weniger darauf *in judicando attendiret* werden, doch wollen Wir diejenige hergebrachte Gewohnheiten, welche nicht *contra, sed praeter legem*, wegen besonderer Beschaffenheit des Lands in stäter Übung, und Unserem Dienst nicht nachtheilig seyend, nicht aufgehoben haben.” Library HAZU, R-1579, *Militar Gränitz-Rechten*.

³⁶ Kaser, *Slobodan seljak i vojniki*, vol. II, 7.

³⁷ Vrban, *Sociologija prava*.

also from this perspective, we can conclude that the *Military-Frontier Rights* were a reflection of the radical changes in the Military-Frontier societies.

Chapter II is entitled *About the Military-Frontier Courts and Jurisdiction*. In this text, the structure and organization of the courts in the Military-Frontier region are defined. The new legal system and the organization of courts could be realized solely in the regiments as new military-organisational and territorial units. The two generalates, around Karlovac and Varaždin, had a high generalate court, and in each regiment there was a regimental court. Court members were professional lawyers – auditors and syndics, and the assessors came from the higher and lower ranks of officers. Chapter II stipulated that a regimental court should be located in the place where the colonel's headquarters were located. The colonel's authority included not just the military, but also the civilian segment of the Military-Frontier society. In order to simplify the judicial process and ease the work of regimental courts, a part of the disputes was delegated to the captains and company commanders, although the scope of their jurisdiction was clearly defined; they could only make decisions in disputes defined as concerning minor assets (i.e. up to 10 forints), they could not judge in criminal offenses or impose financial fines, and the accused persons had the right to appeal to the regimental court.

In the last section of this chapter, in Article 22, the Enlightenment perception of the social structure and the tasks of specific social classes are described, according to which the “enlightened” classes have a duty i.e. responsibility to promote laws and order among the less educated ones; in fact, they are an extended hand of the state and its presence in everyday life:

“Since judicature is granted only to higher and regimental courts, also to a certain extent to staff officers and captains, whereas it is absolutely denied to others, these are nevertheless not free from the obligation to maintain good order, obedience, education, and administration, according to their specific ranks. The duty of the parents towards their children remains, or of the subalterns and the lower officers towards their subordinates, or of the clergy towards their spiritual children, and of all those who have greater esteem and reason to teach the lesser and the ignorant, discourage them from evil and injustice, and lead them to what is good; it is better to overcome mistrust and its burden by such good guidance and preventions than to punish the perpetrators.”³⁸ (Art. 22)

³⁸ “Andurch aber, daß die *Judicatur* alleine denen Ober- und Regiments-Gerichtern, auch in gewisser Maaß denen Staabs-*Officers* und Haupt-Leuten eingeräumt, denen übrigen aber durchaus untersaget wird, ist die Schuldigkeit bey denen übrigen nicht aufgehoben, gute Ordnung, Gehorsam, Zucht, und *Commando* nach Maaß ihrer aufhabenden *Chargen* zu halten: es bleibt noch immer die Pflicht, daß die Eltern ihre Kinder, die Subalternen und Unter-*Officers* ihre Untergebene, die Geistliche ihre geistliche Kinder, und alle, welche mit grösserem Ansehen und Vernunft begabet, die Geringere, und Unwissende belehren, von dem Ubel und Ungerechtigkeiten abhalten, und zu dem Guten anführen;

Chapter III bears the heading: *Civil Practice; How to Convey it to Our Military-Frontier Courts?* Civil practice, as described here, was largely formalised and professionalized. Justice was now less based on individual ties and contacts, and became less personal and more formal. The *laws* specified that a large part of the proceedings should be conducted in a written form, whereas previously – as can be claimed with great probability – the majority of court proceedings, especially in the case of those under the authority of Frontier rulers, were conducted orally. The transition from oral to written litigation was a significant formal and symbolic change in the Military-Frontier judicial practice and in legal culture, especially since it was directed to a previously prevalently illiterate society. This opposition between written law and written litigation on the one side, and the illiterate population on the other, had to be “overcome” in practice by various adjustments. Since the parties were almost regularly illiterate, the lawsuit, which existed in a written form, had to be also verbally presented by the defendant and the court (Art. 16).

The articles that we have reviewed contain comments in favour of the fact that the court wanted to protect the Frontier people from any form of arbitrariness. One such example can be found in Art. 24, in which it is stated that the auditors and syndics must faithfully register all witnesses in the records, especially the circumstances on which the verdict depends, so that afterwards, if necessary, it would be possible to see the motives behind the verdict (Art. 24).

The Military-Frontier judiciary became professionalised. Court members were auditors and syndics, and officers performed the function of assessors. A colonel was not allowed to influence the judicial proceeding, yet – if “slowness” and “needless” complexity was noted – it was necessary to introduce some changes to the court so that deficiencies in conducting the process could be eliminated (Art. 10). Court procedures also had some sort of control over extensive durations or delays; someone who would not arrive at the court at the agreed time would have to cover the travel costs of the other side, and in the situation when an accuser would twice be absent from a scheduled trial, the defendant would be formally acquitted from the lawsuit.

In defining civil proceedings, the extended family (*zadruga*) was also examined. In the articles that deal with this subject, it is evident that the legislator, in connection to formal rights, recognized this cooperative as a single legal person, since in one of the articles (Art. 31) it was defined that those people who live “in a community of goods” can represent one another, even without formal authority.

E. G. Rothenberg – just as F. Močanin – have interpreted the regulations of the *Military-Frontier Rights*, which were already partially anticipated in the so-

indeme besser ist, durch gute Anleitung und Ermahnungen der Unordnung, und denen Lastern vorzukommen, als die begangene zu bestrafen.” Library HAZU, R-1579, *Militar Gränitz-Rechten*.

called Hildburghausen statutes, as the end of the Frontier autonomy, or rather as a major increase in the duties of the Frontier people and at the same time a reduction of the authority of self-elected leaders, resulting in the replacement of domestic leaders by foreigners (mainly Germans, as Rothenberg observed), who for the most part were not familiar with the “customs, habits, and faiths of their subordinates.”³⁹ In other words, introducing new laws and a new judicial organisation necessarily led to the arrival of professionals in the Frontier, legal experts from other parts of the Monarchy. However, the introduction of legal norms and procedures that had not been present in the Military-Frontier culture had a much greater impact on the life of the Frontier community. Indeed, in many segments of social life, the imperial officials – in accordance with the rules of the *Military-Frontier Rights* – introduced legal rules taken from the Inner Austrian lands, which had been formed within a totally different legal culture and tradition.

Here there was no comment on the limitation of the legal powers of princes and dukes, but rather just a remark about the total abolition of the tradition of independent justice. Historians have already warned about this factor. Krajasich, for example, has stated that, before the implementation of the *Military-Frontier Rights*, conducting investigations and passing verdicts in matters linked to the military service belonged to the dukes and captains, and everything else entered into the domain of the princes. With the introduction of the *Military-Frontier Rights*, the judiciary took over the regimental courts, led by higher and lower officers.⁴⁰ But Krajasich’s assessment that the “absolute will of the military commanders” later become a general law⁴¹ does not reflect the Military-Frontier reality, since due to the same legal act that gave them authority in the judiciary – at least on the normative level – clear limitations were established. K. Kaser, in general, does not share Krajasich’s opinion. Kaser does not believe that the new judicial organisation was a significant change for the Frontier people, since, as he states, the Frontier privileges (as defined in the Varaždin Generalate) vanished in the judiciary after the disappearance of princes in the second half of the 17th century.⁴² But despite the dynamics that led to the disappearance of the Frontier’s judicial autonomy during the second half of the 17th and in the first half of the 18th century, we can conclude that after the adoption of the *Military-Frontier Rights* this element no longer existed.

The judiciary in the Military Frontier was arranged in three stages – the final court was represented by the Judicial college of the *Hofkriegsrat* (the Court War Council). Yet there was a precondition so that parties could contact the highest court of appeal – the value of litigation was not supposed to be less than 100

³⁹ Rothenberg, *Österreichische Militärgrenze*, 106.

⁴⁰ Krajasich, *Die Militärgrenze in Kroatien*, 56-57.

⁴¹ *Ibid.*, p. 57.

⁴² Kaser, *Slobodan seljak i vojnik*, Vol. II, 23.

Guldens (Art. 51).

In the 16th and 17th centuries, the Military-Frontier judicial system derived came from self-government and the particular rights of the Frontier people, and the management of justice was the privilege of princes and dukes, linked as it was to an eminent social status in the community and to financial benefits, and based on custom law. The *Military-Frontier Rights* represented a shift in the sense that the princes and dukes would no longer had a judicial function, because this role would now pass over to professional judges – auditors and syndics, who not only had to understand positive law, but also had to strictly adhere to the existing regulations in order to avoid any form of arbitrariness in the court proceedings.

In regard to the previous Frontier judges, who originated from the ranks of the local Frontier communities, the abovementioned study of philosophy and law was not their only defect: they also did not know German or Latin. It has already been said that this was an illiterate society, which, just as every agrarian society, was characterised by social differences as was noted above, yet in addition showed cultural homogeneity.⁴³

In the legal court previously characterised by fluidity in all portions of the process, the *Military-Frontier Rights* brought in formality, procedurality, and systematics in accordance with the principles of enlightened absolutism.⁴⁴ With this legal reform, the entire authority of the local rulers, and thus also power, went to the state. The fact was that from the reform in the mid-18th century, the entire judiciary was in the hands of officers, but it should be stressed that their activity was legally strictly regulated and that a frontiersman, at least in theory, could also step before the Judicial college in the *Hofkriegsrat* as the highest court of appeal. Nevertheless, such a possibility for a serf subordinated to the magistrate's judiciary in the neighbouring Provincial did not exist as an idea in the 18th century.

The level of formalisation and bureaucratisation of the entire Military-Frontier life, namely the entire state administration frenzy that swooped down on the Frontier people from the mid-18th century, has been described by Kaser:

“Over the Military Frontier, in the 1750's and 1760's, a dense network of regulations was spread: regulations on health care, cordon services, company services, staff services, regimental services, education committees, construction, police and economics were supplemented by regulations for invalid officers, non-invalid officers, [...] regulations on uniforms, regulations on salaries, regulations on providing work, conducting conscription, troop movement, etc.

⁴³ Henri Mendras, *Seljačka društva* [Agrarian societies] (Zagreb: Globus, 1986), 117-124. Originally published as: *Sociétés paysannes: éléments pour une théorie de la paysannerie* (Paris: Armand Colin, 1976).

⁴⁴ Vrban, *Država i pravo*, 215.

The Frontier inhabitants were totally included in regular conscriptions from birth to death in all their life situations, in ownership and material circumstances.⁴⁵

Chapter IV, *About the Country and the Military-Frontier Fiefs*, which has generally received the greatest attention in Croatian historiography, was specifically written to provide an answer as to the Military-Frontier reality and the intentions of the state. In a brief introduction prior to the eighty-eight articles in this chapter, the total logic of the Military-Frontier system in the 18th century is described: if more soldiers could be maintained in the country, the ruler could hope for a larger military contingent. In this chapter, the entire landscape of the Frontier was proclaimed a Military-Frontier fief zone, which the Frontier people had the right to freely enjoy, but were in turn obliged to provide military service inside and outside the country. The Military-Frontier fiefs could not be taken away (Art. 1). Although this provision was not new in the Military-Frontier regulations (one finds it in the regulations pertaining to certain parts of the Frontier), yet for the first time it was proclaimed for the entire Military-Frontier area and it would become the main characteristic of the Military-Frontier system in the 18th and 19th centuries, until its very dissolution.

The definition of land assets in the Frontier as military fiefs was indeed a very significant change in regard to the previous state since, as Kaser stated, “the Frontier people [...] were *de facto* owners of their land assets, limited only by the obligation of military service.” The legal grounds on the basis of which the Frontier people had land assets in certain parts of the Frontier had been various or did not even exist (for example in the Karlovac Generalate and in Banska Krajina).⁴⁶ Yet Kaser believes that defining the land assets in the Frontier as military fiefs did not change the situation significantly, since the Frontier people – in his opinion – had been “the owners, rather than mere beneficiaries.”⁴⁷

High-ranking officers had the right to make Frontier land available, but under precise and legally defined conditions (Art. 11), which were in fact based on the wish to end infamous abuses by officers, mentioned in the sources. Both foreign and local commanders and officers were no longer members of a privileged group that had the right to acquire land. However, despite the fact that the professionalisation process of the officer service – which put an end to individual persons being both landowners and officers – was in progress, local officers (*Gränitz-Officiers*) still had the right to own land in the Frontier, since in comparison to the foreign officers (*Fremde*) they had lesser salaries. Until they acquired land of a certain size, they were pardoned from military service (according to the act) and if their land exceeded a certain size, they were required to recruit soldiers

⁴⁵ Kaser, *Slobodan seljak i vojnik*, vol. II, 19.

⁴⁶ *Ibid.*, 23.

⁴⁷ *Ibid.*, 24.

(Art. 23). Undoubtedly, the military fief system that existed from this time period everywhere in the Military Frontier, along with the legal system – as Kaser has already stated – contributed to the creation of an egalitarian society.

The articles in this Chapter sought to cover and standardize all legal situations that existed in the Frontier twenty years before the adoption of the act. It can be stated that in the Military Frontier there was great inconsistency in concepts related to land ownership, in terms of individual, collective, and the so-called double (supreme and beneficial) property, and in regard to the family members and relations between them, as in the cases: *Frucht-Niesser*, *Lehen-Trager*, *communio bonorum*, *gemeinschaftliche Würtschafftreibende*, *Caput Familiae*, *Haupt des Hauses*, *Principal-Lehen-Trager*. Defining the ownership of land assets, the *Military-Frontier Rights* show great conceptual diversity and inconsistency, which left room for numerous doubts in the context of the text itself. It can be assumed that the level of doubt was even greater in the application of this act in concrete legal practice.

In the Military Frontier, there was no possibility of inheriting acts, as was the case in the neighbouring areas: in the Dalmatian borderlands under the Venetian rule or in the northern Bosnian frontier under the Ottoman rule. This fact was specifically expressed also in Chapter IV, where it was stated that it was not possible to inherit land that was linked to a particular act (Art. 77).

This reform equally affected the “common” Frontier persons, who were no longer able to freely make dispositions in their country, but also leaders of the Frontier communities, who had lost their prominent social positions as judges or commanders, and who could no longer fit into the emerging military bureaucratic hierarchy based on professionalism and technical knowledge. At the same time, as emphasised above, the Frontier autonomies also vanished, yet they were able to persist from the beginning of the organisation of military institutions until the end of the 17th century, due to the fact that the ruler had neither interest nor mechanism to intervene more deeply into the lives of his subjects.

Chapter IV describes a compromise between the lifestyle of the local population and the imperative border region, which the authors of the article reconciled with the *military fief* concept, which was an inalienable land property by its nature. The same principle of inalienable land in a border area can also be seen in the so-called Grimani Act of 1755, which refers to the Dalmatian Military Border.⁴⁸

Chapter V is entitled *About Last Wills, Legal Inheritance, Succession Discussions, Pupils, and Curators*. Fiefs were excluded from last wills because they could not be freely disposed with (Art. 2). In this chapter, the concern of the enlightened-ab-

⁴⁸ Josip Ante Soldo, *Grimanijev zakon. Zakon za dalmatinske krajine iz 1755./56. godine* [The Grimani Act: A law for the Dalmatian Frontier (1755/56)], ed. Nikša Stančić (Zagreb: Golden marketing, Tehnička knjiga, FF Press, Filozofski fakultet Sveučilišta u Zagrebu, Zavod za hrvatsku povijest, 2005) 25, 54-57.

solutist state for its subjects is perhaps most visible, especially for children without parents. As the Frontier was an area of continuous warfare, there could be particularly many orphans in some periods. For now, more details cannot be said on this subject, because detailed research on this topic has not yet been conducted. Based on the legislator's intentions, it can be said that the state quite meticulously codified the situations linked to the custody of children who lost their parents. The question of guardianship for orphans was very important. It derived from the very heart of the state, and a procedure was formalised in the context of institutions, competencies, concrete actions, and necessary documents.

Here, too, it was specified that it would not be adequate if last wills were read out only before a priest or another spiritual person, since it was necessary that at least one other witness were present (Art. 5). Writing testaments, as can be deduced from the mentioned article, was a private law act that had already been regulated by the state, and the activities of priests or other spiritual dignities were not sufficient to ensure the legal validity of these wills. In this example, it is likewise possible to examine the process in which the state gradually detached from the Church the regulation and control of the private legal domain.

The articles in the *Military-Frontier Rights* indirectly refer to the Military-Frontier reality. For example, the text of the regulation act on the impossibility of inheriting Frontier houses in which the officers from this region lived during their service, implies that when this legal act was created, the separation of public and private places had already been completed (Art. 10).

When it comes to inheritance, all properties that did not belong to the fiefs had to be treated according to the *Line of Succession* of Charles VI from 1721 (Art. 12). Although the *Military-Frontier Rights* did not reject the common custom laws, except those that were in direct opposition to the positive legislation, in case of inheritance it was directly prescribed that customs should be abolished (Art. 9). In the Frontier society, which was a fully agrarian society, land use, intra-family relations, and inheritance were inseparable, and therefore it is difficult to estimate how this artificially introduced and totally unsuitable duality of the Frontier society may have affected everyday life and actual practice. Rules on inheritance did not apply to that section of the land which had the status of military fiefs and to which the military obligations of the Frontier people were linked, as regulated in Chapter IV.

Chapter VII is entitled *About Criminal Procedure*. In this chapter, the Enlightenment and rationalist bases of the *Laws* are apparent: all the residents of the Frontier are treated as equal before the law, and penalties for offences were assumed as equal, regardless of the social background or stratum to which an individual belonged, and only while carrying out the process was it necessary to emphasise the distinction that differentiated the officers from other Frontier men:

“During the trial, higher officers (or prominent persons – who are equal to them by their social reputation) – until they are convicted – must be differen-

tiated in such a way that until the end of the procedure, i.e. until the publication of the verdict, they must be treated in accordance with their dignity, i.e. they have the right to sit during the trial and to be addressed according to their rank. Lower officers are treated in the same way as ordinary soldiers, i.e. they have to stand before the court. All suspects, except for major perpetrators, have to have the chains removed when they come before the court.”⁴⁹ (Art. 16).

State counsellor Joseph von Sonnenfels has been highly credited because torture in the Monarchy was abolished in 1776.⁵⁰ The abolition of torture was not just the outcome of Enlightenment sensibility in the Habsburg regime, but also resulted from the prevailing attitude formulated mostly in the influential works of Cesare Beccaria. The criminal procedure described in the *Military-Frontier Rights* prescribes torture. French philosopher Michel Foucault has argued that torture during the pre-modern era was not uncontrolled violence, but a purposeful and controlled process. The *Military-Frontier Rights*, precisely in this chapter referring to criminal proceedings, confirm Foucault’s thesis.

That the primary task of the state was to maintain public order and peace can be deduced from the list of offenses that were considered the most serious crimes: murders, mass desertion, theft. In the Military Frontier, the *Military-Frontier Rights* established collective responsibility for public security: when a criminal offense was committed, residents of the region had to either capture the perpetrator or pay a hundred ducats to the judicial treasury (Art. 13). It is difficult to estimate how strictly this rule was applied, given the fact that the fine was very high.

The most severe form of punishment was punishment according to the law of war, due to which the Frontier is largely considered to have been a repressive system. Art. 25 in Chapter VII describes the penalties specified by the law of war, among them running the gauntlet, one of the most brutal penalties known by the Military-Frontier system and considered, in the legal text, along with several other punishments, as equal to death penalty:

“By the law of war, all those crimes have to be punished, which, due to their traits, incur death or punishment equal to it, no less running the gauntlet, 100 or more stick hits, one-year imprisonment or longer, trench digging, expulsion from the land, galleys, impaling a name on the gallows, confiscati-

⁴⁹ “Der Kriegs-Brauch bringet mit sich, daß die Ober-*Officers*, und Personen von *Distinction*, welche ihnen gleich geachtet werden, vor dem Gericht, so lang sie nicht condemniret seynd, von unten am Tisch einen Stuhl zum sitzen bekommen, sie auch bis zur *Publication des Sentenzen* mit ihrem gehörigen *Character*, Hauptmann, *Lieutenant*, &c. angedredet werden: die Gemeine aber, und Unter-*Officers*, auch alle Personen, so ihnen gleich geachtet werden, (ausser sie wären Alters, oder Schwachheit halber nicht im Stande) vor dem Gericht stehen müssen, auch ist gebräuchlich, daß denen geschlossenen *Arrestanten*, bevor sie vor daß Gericht treten, vor der Gerichts-Stuben die Eysen abgenommen werden, ausser das Gericht hätte bey verzweifleten Bößwichten Ursach, selbige samt denen Eysen vorkommen zu lassen.” Library HAZU, R-1579, *Militar Gränitz-Rechten*.

⁵⁰ Zöllner and Schüssel, *Povijest Austrije*, 206.

on of all or part of the property due to a criminal basis, likewise the temporary confiscation of wages with the retaining of acts and duties can never be commanded without the full or partial application of the law of war.”⁵¹

Owing to the influence that Beccaria’s widely known and appreciated book (*Dei delitti e delle pene*, 1764), in which torture was condemned, had on the European intellectual public at the time, torture was abolished in the Habsburg Monarchy, yet in the *Military-Frontier Rights* one still finds the pre-modern understanding of rights and punishment.

The criminal procedure was formalised and elaborated in detail, including torture. As Foucault claimed in regard to torture in the 18th century, it was not uncontrollable violence but rather a very deliberate, controlled, and systematic form of punishment. Accordingly, in the *Military-Frontier Rights* the way in which torture is performed is described very much in detail, and in the same article the Frontier is characterised as a place where particularly serious offenders can be found:

“Since in the Frontier there are especially corrupt and hardened criminals, and neither the torture imposed by the court, much less the stick hits can improve the situation, we consider it necessary that among such stubborn and robust delinquents, for whom the use of torture is foreseen, when this is necessary for the horror of their crimes, such as street raids, rebellion, uprising, domestic conspiracy, betrayal, murder by fire, treacherous murder, sacrilegious, sale of children or Christians to the enemies of the country – the Bamberg instrument should be used.

The Bamberg instrument is a strong, four-footed bench on which the one to be tortured sits with his arms and legs tied, the freeman hitting him over the naked humpback with a braided whip. Pict. B. Art. 39.

The Bamberg instrument must be used only on men, and the number of hits is determined according to the body constitution and can be performed on several occasions (mostly 36 hits and for the weaker constitutions less then 30). Art. 40.

The Bamberg instrument is the last and hardest degree of torture, which is used if binding does not yield results. Then other types of torture are no longer applied.” Art. 41.⁵²

⁵¹ “Es seynd aber alle jene Verbrechen durch Kriegs-Recht abzuurtheilen, welche ihrer Beschaffenheit nach die Todes- oder andere gleich- oder nahe kommende schwere Straff auf sich haben, nicht minder solle das Gassen-lauffen, 100. Stock-Streich, oder mehr, ein Jahr lang, oder darüber daurende Gefängnuß, und Schantz-Arbeit, Land-Verweisung, Galleren, Namen-Anschlagung an Galgen, Benehmung aller, oder eines grossen Theils der Grund-Stücke *ex causa Criminali*, gleichmäßig zeitliche Entzieh- oder Benemmung der Gage mit Beybehaltung der Charge, und *Caracters* niemahls ohne gantz, oder wenigst halben Kriegs-Recht *andictiret* werden.” Library HAZU, R-1579, *Militar Gränitz-Rechten*.

⁵² “§. 39 Weilen aber sonderlich in denen Gränitz-Districten öfters so verböste, und erhartete *Inquisiten* einkommen, daß weder die in denen peinlichen Hals-Gerichts-Ordnungen vorgeschriebene

It is a historical irony that the only illustration contained in the *Military-Frontier Rights* shows precisely the so-called Bamberg instrument, in reality a bench on which the beating was done, which as the most common form of punishment became a symbol of state repression in the Frontier region. Also, by listing a series of details from the inquiry or criminal process, the *Military-Frontier Rights* revealed all the painful facts of pre-modern torture. However, the tendency of the *Military-Frontier Rights* was, in fact, contrary – i.e. to restrain violence and especially arbitrariness in punishing the Frontier people in a society that at that time was in the state of “small war”, affected by ceaseless conflicts in the border region. And so, in fact, the display of torture equipment represents the opposite – limiting and controlling torture. In other words, due to this historical irony, the legal act that introduced the rule of law in the Military Frontier is illustrated by this torture instrument, as the only pictorial representation.

According to Rothenberg’s interpretation, the cruel methods of imprisonment, which were in part introduced by Hildburghausen, were revoked from the *Military-Frontier Rights*.⁵³ It seems that Art. 57 of this chapter refers precisely to this Military-Frontier penal extravagance mentioned by Rothenberg. Thus, this article prohibited the Military-Frontier law courts from imposing unusual penalties, except when they served as an addition to death penalty. Such penalties included cutting off the nose, face branding, cutting off the tongue, arms, or feet (Art. 57). Only the commanders in the Karlovac and Varaždin Generalates had the right to impose death penalty and the right to issue pardons so as to speed up the procedure (Art. 62). This provision had even ten conditions / limitations, which

Peinigungs-Arten, noch weniger die Stock-Streich an ihnen etwas verfangen, so finden Wir nöthig, bey solchen hartnäckig, und *robusten Delinquenten*, von welchen man die *Eludiring* der *ordinari Tortur* vorsehen kan, wann die *atrocitas Criminis* darzu kommt, als: Strassen-Raub, *Rebellion*, Aufruhr, heimliche *Complot*, Land-Verrätherey, Mord-Brennen, Meuchel-Mord, *Sacrilegium*, Kinder- oder anderer Christen-Verkauff an den Erb-Feind, daß das so genannte Bambergische *Instrument* in solchen Fällen auch bey Unseren Gränitz-Gerichtern eingeführet, und gebrauchet, doch Anfangs, was es vor eine Wirkung an denen hartnäckigen *Delinquenten* zur Bekanntnuß der Wahrheit gemacht, jederzeit einberichtet werden solle;

Das Bambergische *Instrument* ist eine starke 4. füßige Banck, worauf der *Torquendus* sitzend, an Hand, und Füßen gebunden, und über den blossen Buckel mit einer geflochtenen Peitschen, durch den Freymann gehauen wird, wie solches in der *Figur* unten *lit. B.* zu sehen.

§. 40. Jetzt beschriebene Peinigungs-Art, solle nur bey Manns-Personen gebrauchet, und die Anzahl der Peitschen-Streich in dem Bey-Urtheil *exprimirt*, solche nicht leichtlich über 30. Streich *dictiret*, nur bey denen *Robustisten* bis auf 36. erstrecket, bey anderen aber nach Maaß ihrer Leibes-Stärke, und Beschaffenheit, auch unter 30. herunter gesetzt, und nach vernünftiger Ermessung des Gerichts, entweder auf einmal, oder *intercalariter*, mit zwey, oder dreymaligen Absetzen, angebracht werden.

§. 41. Das Bambergische *Instrument* solle als der letzte, und schärfste Grad der *Tortur* zuerkannt, und folglich nach dem Schnüren, wann solches nichts verfangete, vorgenommen, auch solchen Falls die Folter, und alle übrige Peinigungs-Arten, ausser jetzt besagter Schnürung, ausgelassen werden.”

Library HAZU, R-1579, *Militar Gränitz-Rechten*.

⁵³ Rothenberg, *Österreichische Militärgrenze*, 105.

affirmed that an increased level of caution was needed in the application of the “right of the sword” [*ius gladii*]. In some cases, the empress retained for herself the right to make decisions – these cases were: betrayal of the country, offence of the majesty, and duels. Investigations of these cases were conducted by the commanding generals, who would send investigation reports to the Judicial college of the *Hofkriegsrat*, where it would be decided whether the investigation would be conducted by the board or left to the commanding general. Undoubtedly, this indicates that the mentioned cases were considered very difficult from the ruler’s viewpoint, since the decision to conduct the process was directly given to the Judicial college, the highest court in the Habsburg Monarchy (Art. 62 ad I.).

The criminal and judicial procedure in the Military-Frontier has been analysed in detail by Alexander Buczynski in his extensive monograph *Towns and Cities of the Military Frontier*.⁵⁴

An integral part of the *Military-Frontier Rights* manuscript, with the heading: *The Duty Rate for the Regimental and Higher Courts in the Karlovac and Varaždin Generalates*, is the special Chapter VII. Unlike the previous section, here the fees for individual court proceedings are strictly regulated and defined. All other forms of payment to the court officials were unacceptable, and a separate article in this text specifies that the court staff and trustees must not receive royalties from the parties neither directly nor indirectly – neither before nor after the committee’s meeting (Art. 35). Also, commissioners should never stay in any of the party locations, nor receive food from the parties (Art. 36). The intention of the state as noted in these articles was to ensure professionalism in trials and to prevent bribery and corruption.

* * *

From the linguistic and conceptual viewpoint, the *Military-Frontier Rights* were totally incomprehensible to the legal clients, and therefore to all persons except to the members of the military-bureaucratic hierarchy. Roman legal terms dominate the text. The *Military-Frontier Rights* were an enlightened-absolutist intervention into the Military-Frontier society, the ruler’s vision of the life of her subjects.

At the end of the document, we can see the signatures of its compilers, von Jenco and Cordova, who proved to be excellent scholars of Austrian legal traditions and positive laws. The way in which this transfer and adaptation of legal sources and traditions from the Hereditary Countries affected the Military Frontier still has to be investigated. The deliberate and unintentional consequences of this legal act in concrete practices are a very interesting, yet also highly under-investigated topic in the historiography of the Military-Frontier region.

⁵⁴ Alexander Buczynski, *Gradovi Vojne krajine* [Towns and cities of the Military Frontier], vol. I-II (Zagreb: Hrvatski institut za povijest, 1997). This specific issue is dealt with in vol. I, in the chapter “Organizacija policije i sudstva” [Organization of police and judiciary].

Conclusion

The legal reform reflected in the *Military-Frontier Rights* text was enabled but also motivated by military reform. The power of the European states in that period was based, above all, on their military force, as was clearly shown in the Seven Years' War conducted by the Habsburg Monarchy in the mid-18th century. Therefore, it is only logical that the central reform activity, not only in the Monarchy, but also in other European countries, should focus on the military.

Two essential features of the previous Military-Frontier society were reflected in the *Military-Frontier Rights*: the diversity of laws and obligations relating to individual social groups, a characteristic of the "old regime," and the tendency of the ruler / the state to unify laws and to equate subjects before the law. Despite this fundamental effort to unify laws, the *Military-Frontier Rights* implemented a relatively large number of diverse legal sources that were valid in this region. Therefore, contrary to their intent, the *Military-Frontier Rights* were a complicated legal act using a large number of legal sources and special statuses, the application of which in legal practice is still an under-researched topic.

The last great uprising in the Frontier in 1755, according to our historiographical studies, was linked directly to the proclamation of the *Military-Frontier Rights*. Resistance of the Frontier people against the new legal rules derived from their self-identity as privileged imperial soldiers in the border area next to the Ottoman Empire, and from the special rights which they derived from that status.

In regard to the codification of laws in the Military Frontier, it is most often associated with the repression of the Military-Frontier system, which the historiography of this region has repeatedly emphasized. Yet the intention of proclaiming the *Military-Frontier Rights* was exactly the opposite – due to its promulgation, members of the Habsburg military-bureaucratic hierarchy were given wide powers, but also clear limitations were set up and a system of control was introduced. Therefore, taking into consideration the lawmaker's aims and guidelines, the *Military-Frontier Rights* should be understood as a factor towards the creation of legal state in the Military-Frontier region.

Just as the Peace Treaty of Karlowitz (1699) brought about a shift in experiencing the landscape and a new understanding of the border, when instead of the previously fluid boundary zone a new borderline was set up, which clearly separated the two empires, thus also the *Military-Frontier Rights* became a turning point in the legal system of the Frontier. After their proclamation in the context of the previously informal and mainly oral judicial proceedings, distinct rules were introduced, while the legal culture, and also the everyday life of the Frontier population, acquired completely new outlines.

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Militar Gränitz Rechten: pravna reforma Vojne krajine u 18. stoljeću

Sažetak

Militar Gränitz Rechten jedan je od, premda u historiografiji poznatih, ipak nedovoljno istraženih pravnih akata koji su se odnosili isprva na Varaždinski i Karlovački generalat, a potom na čitavu Hrvatsko-slavonsku vojnu krajinu. Donesen je 1754. godine, na samom početku marijaterezijanske pravne reforme i kodifikacijskoga procesa u unutrašnjoaustrijskim zemljama. U Vojnoj krajini izdavanje *Vojnokrajiških prava* podudara se s uvođenjem pukovnija i satnija u Vojnoj krajini kao teritorijalnih i vojno-organizacijskih jedinica. Ishodište ove obuhvatne pravne, ali i društvene reforme, treba gledati s jedne strane u povećanju vojnokrajiškoga teritorija nakon mira u Srijemskim Karlovcima sklopljenog nakon habsburško-osmanskoga rata 1683. – 1699. godine, a s druge strane u procesu oblikovanja Habsburške Monarhije kao moderne države čiji se modernizacijski odjek na specifičan način ostvario na prostoru Hrvatsko-slavonske vojne krajine. *Vojnokrajiška prava* bitno su promijenila fizionomiju društva, ali i svakodnevni život krajišnika. U članku je dan pregled svih sedam titula *Prava*.

Ključne riječi: Vojna krajina, *Vojnokrajiška prava*, modernizacija prava, reforme, centralizacija

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