

# Legal Gap and/or Lack of Analysis of Criminal Offences against the Croatian Armed Forces

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Ivan Trlin, Dijana Gracin

## Abstract

*Criminal offences committed against the Croatian Armed Forces constitute a special chapter of the Criminal Code, which consists of a total of 23 criminal offences. The specificity of these criminal acts lies in the possible circle of perpetrators and the conditioned state when the acts can be committed – a state of war or of immediate threat. This paper examines the available literature on the subject and analyses in detail the current state of affairs for the relevant chapter of the Criminal Code. The mentioned topic is not represented by other authors of criminal justice topics due to the low representation of the aforementioned criminal acts, as well as the under-representation of filed criminal reports concerning criminal offences from Chapter 34 of the Criminal Code of the Republic of Croatia. The paper provides an overview of criminal offences against the armed forces using the examples of Slovenia, Serbia, Hungary, Germany, and the USA. This paper is product of authors' efforts to investigate the topic and provide core basis for future research.*

## Keywords

*criminal acts, armed forces, Croatian armed forces, analysis, Criminal Code, comparative review*

## Introduction

The criminal offences, which constitute more serious forms of illicit behaviour and violations of personal freedoms, human and other rights, and social values prescribed by the Constitution and international law, are defined by the Criminal Code 2011 (HR). The purpose of punishment for the most severe unlawful acts, according to the Criminal Code 2011 (HR) is to socially condemn unlawful behaviour and to influence perpetrators not to commit the same or similar unlawful acts in the future. Punishment should “link crime, guilt, and punishment, and the fairness of punishment on which the effectiveness of special and general prevention depends” (Bojanić & Mrčela, 2006).

According to the provisions of Article 20 of the Criminal Code 2011 (HR), a criminal offence may be committed by an act or wrongful act, while the commission of a criminal offence, in accordance with Article 23 of the Criminal Code 2011 (HR), is the fault of the person who was “countable, who acted with intent or negligence, who was aware or was obliged and may have been aware that his or her behaviour was prohibited and there was not a single apologetic reason.”

On the other hand, the principle of legality is referred to in Article 2 of the Criminal Code 2011 (HR). It stipulates that a person cannot be punished for a crime that was not prescribed as a criminal offence at the time of the commission and cannot have a sanction imposed on them that was not prescribed at that time of commission.

Croatia’s Criminal Code 2011 is divided into chapters. Those chapters cover the basic provisions, the application of the criminal legislation of the Republic of Croatia, the crimes, the punishments, the confiscation of pecuniary gain and objects, the public announcement of the judgment, the meaning of the terms used in the Criminal Code 2011 (HR), the groups of criminal offences (the special part), and the transitory and closing provisions. The Criminal Code 2011 (HR) was written systematically in 35 chapters and 387 articles. In Chapter 34, criminal offences against the armed forces were elaborated in a total of 24 articles (Articles 357 to 380 of the Criminal Code 2011 (HR)).

## Criminal offences against the CAF of the RC

**Table 1. Criminal Offences against the Croatian Armed Forces (Criminal Code 211 (HR))**

	ARTICLE	
1	Article 357	Failure and Refusal to Execute an Order
2	Article 358	Refusal to Receive and Use Arms
3	Article 359	Resisting a Sentry or a Guard
4	Article 360	Resisting a Superior
5	Article 362	Maltreatment of a Subordinate or a Military Person of Lower Rank
6	Article 363	Violation of Sentry, Patrol or Other Similar Duty
7	Article 364	Submission of False Reports and Information and Failure to Submit Reports
8	Article 365	Failure to Undertake Measures for the Protection of a Military Unit
9	Article 366	Failure to Ensure Safety in Performing Military Exercises
10	Article 367	Defaulting Order and Evasion of Military Service
11	Article 368	Evasion of Military Service by Mutilation or Deception
12	Article 369	Illegal Exemption from Military Service
13	Article 370	Irregular and Careless Treatment of Entrusted Arms and Military Equipment and Other Means for Defence Purposes
14	Article 371	Trespass on Military Installations and Unauthorized Making of Sketches or Drawings of Military Installations or Means of Combat
15	Article 372	Defection and Surrender to the Enemy
16	Article 373	Failure to Carry out Duty During Combat or Combat Action
17	Article 374	Abandoning a Position Contrary to Orders

18	Article 375	Premature Abandonment of a Damaged Vessel or Aircraft
19	Article 376	Leaving Undamaged Means of Combat to the Enemy
20	Article 377	Weakening of Combative Morale and Military Situation
21	Article 378	Failure to Fulfil Material Obligations
22	Article 379	Failure to Perform Duty in Carrying Out Mobilization
23	Article 380	Responsibility for a Criminal Offence Committed on Superior Orders

As stated in the introduction, Chapter 34 of the Criminal Code 2011 (HR) contains 24 articles that define criminal offences against the armed forces. The Criminal Code 2011 (HR) consists of a total of 23 criminal offences in this chapter.

By analysing this chapter, it can be determined how these criminal offences can be committed by both military personnel and civilians (criminal offences referred to in Articles 367, 368, 369, 371, and 378). Military personnel are cadets, conscripts, active-duty military personnel, and contracted reservists (Croatia. *Act on Service in the Croatian Armed Forces* 2013 and amendments). When the provisions of these criminal offences are examined in depth, it is clear that the Criminal Code 2011 (HR) considers their commission to be an even more serious form of prohibited behaviour in the event of a state of war. As a result, it allows for harsher punishments to be imposed. For example, the criminal offence of **Failure and Refusal to Execute an Order** is defined as follows:

“(1) A military person who fails or refuses to execute the order of his superior given in the line of duty, thus causing serious harmful consequences for the service shall be punished by imprisonment up to three years.”

Furthermore, paragraph 2 states:

“(2) If the criminal offence referred to in paragraph 1 of this article was committed during a state of war or an immediate threat to the independence and indivisibility of the Republic of Croatia, the perpetrator will be punished with imprisonment from six months to five years.”

As a result, the punishment for breaking the law is expected to be increased by up to two years when compared to when the country is not at state of war. Similarly, criminal offences against the CAF constitute an extremely serious violation of the law, because prison sentences are prescribed as the most serious form of criminal sanction and restriction of human beings' fundamental freedoms for all crimes.

### *Statistical indicators*

By examining publicly available data from the Croatian Bureau of Statistics in relation to the number of convicts for criminal offences against the Armed Forces from 2016 to 2021, we concluded that nobody was convicted for criminal offences from Chapter 34.

Therefore, it can be concluded that in the near past no cases of such crimes have been prosecuted. On the other hand, the table shows the number of criminal complaints filed for criminal offences against the Armed Forces:

**Table 2. Statistical Data (2021-2016) (Source: Croatian Bureau of Statistics)**

<b>YEAR</b>	<b>CRIMINAL CHARGES</b>
2021	3
2020	2
2019	11
2018	1
2017	0
2016	0

In comparison to the number of complaints submitted in 2019, there has been a trend of decreasing number of complaints over the last three years. On the other hand, between 1993 and 1997 (when the old Criminal Code 1997 (HR) with a total of 33 criminal offences was in force), 1141 people were convicted (Horvatić, & Šeparović, 1999) and this was due to the state of war.

### *Croatian Court judgements that are publicly available*

The Supreme Court's Judgment no. KŽ 51/2018 (Croatia. Supreme Court of the Republic of Croatia, 2018), which addresses a prisoner I. D.'s request for parole after being found guilty of the crime listed in Article 362(1) – **Maltreatment of a Subordinate or a Military Person of Lower Rank** – is the only judgment pertaining to a criminal offence against the CAF that is publicly accessible. The following reasons are why the court denied the application:

“In this case, the court of first instance justified the contested ruling, so it determined that the special prevention component had not yet been met. It based this viewpoint on data on previous repeated convictions of prisoners for similar crimes, which speaks of the prisoners' earlier way of life and is thought to be correlated with the fact that, on the one hand, during the execution of the prison sentence, the prisoner seeks to present himself in a socially desirable light, while, on the other hand, he justifies his criminal activity by being susceptible to the bad influences of others (thus confirming that he has not developed criticality in relation to his actions). This, along with the opinion of the court of second instance, justifies the conclusion that special prevention has not yet been achieved and also indicates that previous convictions have not resulted in special prevention. Taking into account all of the above, the orderly course of serving the sentence does not call into question the correctness of such division.”

As a result, the court concluded that the conditions for early release were not met. It is correct to conclude that the lack of public disclosure of the case stems from the fact that no judgments have been rendered in the recent or distant past. As a result, the mentioned Criminal Code 2011 (HR) chapter is of no interest to other authors who study its application. It should be noted that there is a significant lack of literature covering this segment of the criminal law, and one of the possible reasons is that these criminal offences refer to a small group of citizens as potential perpetrators, while some acts can only be committed in a specific state (an imminent threat or a state of war).

### *Potential perpetrators and analysis of criminal offences*

Specifically, Chapter 34 refers to the majority of the military personnel as potential perpetrators. In accordance with the Act on Service in the Croatian Armed Forces 2013 (HR), military personnel are conscripts, cadets, reservists, and active-duty military personnel. When we examine all 23 crimes in detail, we can conclude that 18 of them involve military personnel as potential perpetrators, while only 5 criminal offences (Articles 367, 368, 369, 371, and 378) involve other persons (civilians). Similarly, only one of the five above-mentioned criminal offences – **Evasion of Military Service by Mutilation or Deception** – can be committed during a peacetime state.

Therefore, it is reasonable to conclude that the majority of criminal offences in relation to civilians cannot be committed since we have not been in a state of war in the recent past (for the past 30 years), while one crime assumes a mandatory call up to military service, which has been impossible since 2007, when Croatia abolished compulsory military service and introduced voluntary military training.

### *Criminal and disciplinary liability*

Criminal liability is prescribed by the Criminal Code 2011 (HR), while disciplinary liability is prescribed by the Act on Service in the Croatian Armed Forces 2013 (HR). Minor (disciplinary mistake) and more serious (disciplinary offence) breaches of duty may be subject to disciplinary action. Article 175 of this Act lists eight mistakes and 42 offences. We are interested in the disciplinary offence mentioned in Article 175(3) (1) – **Non-Execution or Refusal to Execute and Order, Decision or Order of a Superior** as well as a criminal offence of **Failure and Refusal to Execute an Order** which is covered by the provisions of Article 357(1) of the Criminal Code 2011 (HR).

Thus, the difference between disciplinary and criminal liability for refusing orders is found in the criminal offence definition, which reads: “A military person who fails to execute or refuses to obey a superior’s order in connection with the service and thus **gravely endangers the service**” (ibid.) As a result,

refusing orders can be characterized as a breach of discipline, but it can also be a criminal offence. On the other hand, there is a disciplinary offence titled **Perpetration of a Criminal Offence**, for which Procedure is instituted *ex officio* (Croatia. *Act on Service in the Croatian Armed Forces* 2013 and amendments).

According to the aforementioned definition, if a military person refuses to execute an order and thus jeopardizes the service, he is disciplinary liable for refusing the order. Nevertheless, he is also criminally liable for the commission of a criminal offence because he gravely endangered the service, which consequently leads to another disciplinary responsibility for committing the criminal offence. Thus, mentioned person will be charged with commission of two disciplinary offences and commission of a criminal offence.

### **Where do we stand on the issue of criminal offences against the Croatian Armed Forces today?**

As already mentioned, criminal offences against the CAF are not represented in the work of the other authors because the circle of perpetrators is limited, and the majority of such offences can only be committed during times of war or an imminent threat. Nonetheless, there is a group of authors who dedicated only a small chapter to this section of the Criminal Code 2011 (HR). The notion that the offences in Chapter 34 of the Criminal Code 2011 (HR) are only committed in connection with the armed forces and that, in fact, these are general crimes prescribed in other parts of the Criminal Code (Horvatić & Šeparović, 1999; Bačić & Pavlović, 2004) is intriguing. The cited groups of authors listed 33 criminal offences because there were 33 of them in the Croatian Criminal Code 1997 (HR) at the time the books was written, but the Criminal Code 1997 (HR) amendments reduced that to 23 criminal offences, with the remaining 10 being transferred to other Criminal Code chapters. Those criminal offences are divided into seven categories:

1. Against the constitutionally required military service for defence
2. Against the security of the Republic of Croatia
3. Against the rules of service and discipline in the Armed Forces



4. Against the members of the Armed Forces
5. Against the assets of the Armed Forces
6. Against the Armed Forces members' actions against the general safety of people and property
7. Against the effective and combative action of the Armed Forces (Horvatić & Šeparović, 1999).

It should also be noted that “some of these crimes take a qualified form when committed during a state of war or direct war threat” (Horvatić & Šeparović, 1999). The old Criminal Code 1997 (HR) left open the possibility of substituting criminal for disciplinary liability, but the Criminal Code 2011 (HR) amendments omitted that possibility. This method represents “a special way of waiving the criminal sanction by substituting it with another extra-judicial sanction that we do not find in the other parts of the incrimination catalogue” (Horvatić & Šeparović, 1999).

### *Comparison with other criminal offences*

As concluded in the previous chapter, criminal offences against the CAF represent general criminal offences but they are specific because they are unique to their military application. **Mobbing**, for example, is defined as “insulting, humiliating, abusing, or otherwise harassing behaviour” at work or in connection with work in Article 133(1) of the Criminal Code 2011 (HR). The aforementioned criminal offence is listed in Chapter 34, Article 362(1), **Maltreatment of a Subordinate or a Military Person of Lower Rank**.

This criminal offence is defined as “maltreating a subordinate or junior<sup>1</sup>, or acting in a degrading manner and maliciously aggravating the service” (Croatia. *Criminal Code of the Republic of Croatia* 2011). The difference is in the perpetrator, who could be a civilian (i.e. a private person) or a military person. In terms of the impeded sentence, military personnel will face up to 3 years in prison, while private citizens will face up to 2 years in prison. The deviation is undoubtedly caused by the subordinate person's reliance on the

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1 A junior refers to the person of a lower rank.

superior or those acting in higher positions, such as the supervisor at work or the commander in the Armed Forces. These issues should also be taken into account. An important distinction is that, in the case of workplace abuse, persecution is initiated according to the proposal, whereas in the case of maltreatment of a subordinate or a military person of lower rank, persecution is initiated *ex officio*. This is due to the fact that the perpetrator is an official who, in some ways, represents the Republic of Croatia. Furthermore, **Service in the Enemy's Army** is considered a crime, as stated in Article 343 of the Criminal Code 2011 (HR). It is a situation in which a citizen of the Republic of Croatia serves in the enemy's army or other formations that are fighting against the Republic of Croatia or its allies during a war or armed conflict in which the Republic of Croatia is involved. The punishment is three to fifteen years in prison. Likewise, in Article 372(1) (**Defection and Surrender to the Enemy**) of the Criminal Code 2011 (HR), **criminal offences against CAF** are committed by military personnel when they join the ranks of the enemy during a war or armed conflict. Such individuals shall be punished by imprisonment for not less than five years or by long-term imprisonment. Again, a discrepancy can be encountered between the impeded punishment and the fact that the military personnel are trained in combat activities and have taken a solemn oath to defend the independence and territorial integrity of Croatia. On the other hand, a private citizen (civilian) may or may not have military training and skills required for military and combat activities. Similarly, every citizen is obligated to defend their country, but the weight of this obligation is much heavier with military personnel. The criminal offence referred to in Article 343 of the Criminal Code 2011 (HR), on the other hand, has been extended to a citizen who persuades or recruits other citizens to defect to the enemy. "Persuasion of potential defectors can be accepted as form of recruitment because recruitment seeks to persuade the other person to join the enemy army" (Garačić, 2013). There is a case of a particular defendant who was found not guilty of serving in the enemy army as the head of security at the Army of the Former Yugoslavia (JNA) at the Provincial Secretariat for National Defence in Novi Sad in 1992. He "was declared permanently unfit for active military service as early as July 22, 1992 and was absent from his job at all times incriminated by the

indictment,” according to the court (Garačić, 2013). To better understand the specificity of criminal offences against the armed forces, the authors of this paper will provide analyses of the following countries: Serbia and Slovenia, the United States, Germany, and Hungary. Both Serbia and Slovenia were members of the Yugoslav Federation. Today, Slovenia is a member of NATO and the EU, while the United States is the leading NATO country. Germany and Hungary influenced Croatian legislation because Croatia had strong relations with them in the past (e.g. during the Habsburg Monarchy, known as the Austrian-Hungarian Empire after 1867).

### Crimes against the Serbian Armed Forces

In Serbia’s Criminal code 2005, in Chapter 35, crimes against the Serbian Armed Forces are contained in a total of 37 articles (Article 394 to Article 430).

**Table 3. Criminal offences against SAF**

	ARTICLE	NAME
1	Article 394	Evasion of Military Service
2	Article 395	Evasion of Registration and Inspection
3	Article 396	Failure to Provide Material Resources
4	Article 397	Evading Military Service by Self-disablement or Deceit
5	Article 398	Unlawful Exemption from Military Service
6	Article 399	Absence Without Leave and Desertion from the Army of Serbia
7	Article 400	Failure and Refusal to Obey Orders
8	Article 401	Opposing a Superior
9	Article 402	Resisting to Servicemen on Special Military Duty
10	Article 403	Compulsion against Servicemen on Duty
11	Article 404	Assault against a Serviceman on Duty

12	Article 406	Maltreating of Subordinate or Junior
13	Article 407	Violation of Special Military Duty
14	Article 408	Violation of Border Guard Duty
15	Article 409	Submission of False Reports
16	Article 410	Failure to Undertake Measures for Security of a Military Unit
17	Article 411	Unconscientious Manufacture and Acceptance of Weapons and Other Military Equipment
18	Article 412	Improper Care of Weapons
19	Article 413	Unlawful Disposal of Entrusted Weapons
20	Article 414	Theft of Weapons or Parts of Combat Equipment
21	Article 415	Disclosing Military Secrets
22	Article 416	Unauthorised Access to Military Facilities
23	Article 418	Failure of Duty to Conduct Mobilisation
24	Article 419	Undermining Defence and Military Power
25	Article 420	Preventing Opposition to the Enemy
26	Article 421	Defection and Surrender to the Enemy
27	Article 422	Service in the Forces of a Hostile Power
28	Article 423	Aiding the Enemy
29	Article 424	Failure to Discharge Duty and Abandoning of Post During Combat
30	Article 425	Abandoning of Post Contrary to Orders
31	Article 426	Early Abandoning a Damaged Vessel or Aircraft
32	Article 427	Weakening of Combat Morale
33	Article 428	Failure to Report to Military Bodies
34	Article 430	Offences Committed at Orders of a Superior

### *Comparative review – Criminal Code of the Republic of Slovenia*

With the analysis carried out, it can be determined that a large number of criminal offences coincide with crimes in Croatia's Criminal Code 2011. It is indisputable that Serbia's Criminal Code 2005 also includes crimes that are in Croatia's Criminal Code 2011, however, amendments to the latter were transferred to other chapters. As a result, criminal attacks and coercion against military personnel are in the chapter containing public order offences. In other words, it can be correctly stated that criminal offences in the Criminal Code 2011 (HR) and the Criminal Code 2005 (RS) are almost identical. This equality stems from the base stationery of the Criminal Code 2011 (HR) and the Criminal Code 2005 (RS), which is former Yugoslavia's Criminal Code 1976, despite the fact that the Republic of Croatia made significant changes in order to depart from the form and regulations of the Criminal Code 1976 (YU). An important distinction is found in Article 429 of the Criminal Code, which states that disciplinary actions or disciplinary measures can be imposed for a crime if the crime carries a custodial sentence of up to three years. According to the positive legislation of the Republic of Croatia, disciplinary and criminal liability cannot be interchangeable, or "criminal liability does not preclude disciplinary liability" (Croatia. *Act on Service in the Croatian Armed Forces* 2013). In other words, CAF members are thus subject to disciplinary, material, misdemeanour, and criminal liability. Likewise, if we inspect Slovenia's Criminal Code 2008, we can see a very meagre number of criminal offences against the Army of Slovenia – only 10 of them. There is a link between felonies in the Republic of Croatia and felonies in the Republic of Slovenia, i.e., criminal offences are nearly identical, with minor structural differences. It can be concluded that the Republic of Slovenia, although it is a NATO and EU member like the Republic of Croatia, draws the basis for writing these criminal offences from the Criminal Code 1976 (YU), as well as Croatia and Serbia do.

## *Crimes against the Federal Armed Forces*

In Germany's Criminal Code 1872 (*Strafgesetzbuch*), offences against national defence are listed in Division 5. The Criminal Code 1872 (DE) recognizes a total of 7 crimes through 10 articles (109 to 109k), with two articles repealed.

**Table 4. Criminal offences against the Federal Armed Forces**

SECTION	CRIMINAL OFFENCE
109	Avoiding draft by mutilation
109a	Avoiding draft by deception
109d	Disruptive propaganda against Federal Armed Forces
109e	Sabotage against means of defence
109f	Intelligence activity endangering national security
109g	Images endangering national security
109h	Recruiting for foreign armed forces

For all criminal offences, the Criminal Code 1872 (DE) prescribes prison sentences as the most serious form of punishment. In Chapter 34 of Croatia's Criminal Code 2011, for the same criminal offence of **Defaulting Order and Evasion of Military Service**, an imprisonment sentence of 6 months to up to 5 years is prescribed, whereas Germany's Criminal Code 1872 prescribes up to five years in prison or a fine. For some other criminal offences in Germany, fines can be imposed (Articles 109, 109a, 109d, 109g), too. Thus, we conclude that Germany does not have such severe prison-only punishments, but they can be imposed.

On the other hand, if we look at Section 109i, it states that:

“In addition to a sentence of imprisonment for a term of at least one year for an offence under sections 109e and 109f, the court may order the loss of the ability to hold public office, and be elected in public elections, and vote on public matters (Sections 45 (2) and (5)).”

Furthermore, in Article 109k, the Criminal Code 1872 (DE) allows that all objects arising from the offence or used or intended for use in its commission

or preparation and images, descriptions and photographs relating to an offence under sections 109d and 109g may be confiscated.

Even though Germany has a small chapter related to crimes against the armed forces, it can be noted that in a way it imposes an even more severe punishment (the cancellation of voting rights) that is combined with a prison sentence and a fine. It is also important to point out that some criminal offences in Division 5 of the Criminal Code 1872 (DE) are similar to criminal offences under Chapter 32 (Criminal offences against Republic of Croatia) of the Criminal Code 2011 (HR).

### *Crimes against Hungarian National Defence*

Hungary's Criminal Code 2012 does not have a special chapter devoted to crimes against the armed forces or national defence. If we read through the Criminal Code 2012 (HU), in Chapter 14 (War Crimes), Section 146, we may identify a criminal offence of **Illegal Recruitment** that is similar to Article 343 of the Criminal Code 2011 (HR): **Service in the Enemy's Army**.

In Section 127 of the Criminal Code 2012 (HU), it is written:

“(1) For the purposes of this Act, members of the regular force of the Hungarian Armed Forces, and the professional staff members of the police, the Parliament Guard, the department of corrections, the professional disaster management body and the civilian national security services shall be deemed servicemen. (2) The provisions of this Act shall apply to military personnel subject to the exceptions set out in this Chapter. (3) A military offence may only be committed by military personnel as perpetrator.”

Despite the lack of a separate chapter referring to the armed forces as an organization, Chapter 12 of the Criminal Code 2012 (HU) includes provisions for military personnel who commit criminal offences.

For comparison, a military person is designated as an “official person” in the Criminal Code 2011 (HR), and any criminal offence against military personnel is considered a criminal offence against police and other official

persons. **An Assault on an Official Person**, and **Compulsion against an Official Person**, and so on, are examples of such criminal offences. Military personnel take criminal and disciplinary liability.

To conclude, Hungary does not have a special chapter devoted to crimes against the armed forces, but its Criminal Code 2012 regulates punishments for military personnel who commit such crimes. In Croatia, this matter is regulated mostly by the Act on Service in the Croatian Armed Forces 2013 (HR).

### *The United States Military Justice*

In the USA, certain criminal offences are considered federal offences and are outlined in the federal criminal code (United States of America. *U.S. Code* 1926). These are crimes comparable to those committed against the Republic of Croatia. **Photographing and sketching defense installations** is a crime under Title 18, Chapter 37, and Section 795 (*ibid.*). **Espionage and censorship** are discussed in Chapter 37 (*ibid.*). However, the Uniform Code of Military Justice in the United States mandates a court martial system (Military.com, 2022):

1. A summary court-martial
2. A special court-martial deals with minor offences (similar to misdemeanours in a civilian criminal court)
3. A general court-martial is held for serious offences (similar to civilian felonies).

The court-martial can issue the following convictions as stated in Title 2, Chapter 10 of the U.S. Code 1926 (US):

1. bad conduct discharge
2. imprisonment
3. reduction in grade
4. dishonourable discharge
5. capital punishment

Therefore, it can be concluded that in the USA, court-martial has a broader jurisdiction in the United States than in Croatia, where court-martial is only permitted to determine disciplinary and material liability. All offences are



specified in Article 134 of the Uniform Code of Military Justice (Military.com, 2022). Because of the differences in norms, procedures, and principles, the American legal system and criminal justice system cannot be compared to the European legal system.

## Discussion

As stated in the Introduction section, the topic of criminal offences against CAF is underrepresented in the literature, and many criminal justice authors do not consider it relevant. This is because there has recently been a shortage of field criminal charges and court verdicts. It is because of the small number of people capable of committing those crimes, as well as the fact that the majority of crimes can be committed while the Republic of Croatia is at the state of war or in immediate danger. The authors of this paper find this topic extremely important and relevant since Croatian Military Police is primarily responsible for investigating crimes listed in Chapter 34 of the Criminal Code 2011 (HR). Furthermore, military police trainees are unable to study this field due to a lack of literature on the subject. It is worth noting that the authors of this paper recommend changing a specific chapter because the CAF is dealing with a variety of crimes, some of which are committed by military personnel and cannot be treated as crimes committed by civilians. For example, criminal offence against property *theft* cannot be treated as a civilian case if it was committed on the military installation due to the greater responsibility of military personnel. To gain a better understanding of the subject, the authors of this paper recommend studying the criminal codes of other relevant EU and NATO countries. The overview of different approaches to this matter in Serbia, Slovenia, Germany, Hungary, and the USA reveals significant differences. While some countries do not have specific crimes in their criminal codes, others allow the court martial system to prosecute criminal offences and even issue capital punishments. Should Croatia remain as it is, or should significant changes be made to the crimes committed against the Armed Forces?

## Conclusion

Chapter 34 of the Criminal Code 2011 (HR) combines specific crimes against the Croatian Armed Forces, totalling 23 criminal offences divided into seven groups. The most recent amendment to the Criminal Code 2011 (HR) reduced the number of crimes by ten and - from 33 to the previously mentioned 23. The ten missing offences have been moved to other chapters of the Criminal Code or combined with other civilian crimes. The crimes, i.e. criminal offences against the Armed Forces are specific in the possible circle of perpetrators as well as the circumstances when they can occur, and this is during the Republic of Croatia's state of war or imminent threat. Overall, the criminal offences in this chapter are variations on other general criminal offences that have been tailored to the Armed Forces. By analysing the statistical indicators of the Croatian Bureau of Statistics, we see a trend of decreasing the number of criminal complaints filed over the last 3 years as well as the fact that in the last 5 years no verdicts have been issued in relation to crimes against the Armed Forces. Given the lack of convictions, reports as well as the specific characteristics of potential perpetrators, the chapter itself is not of interest to the other authors, so we have found only a few papers and books in which this chapter has been processed in relation to crimes against life and bodies, property, and so on.

A comparison of different approaches to this issue in Serbia, Slovenia, Germany, Hungary, and the United States reveals significant differences. While some countries' Criminal codes do not include specific crimes, others allow the court martial system to prosecute criminal offences and even issue capital punishment.

In conclusion, it is reasonable to conclude that the criminal laws of those close to us and the former states of the former Yugoslavia (Serbia, Slovenia) have an almost identical chapter structure relating to punitive acts against the armed forces or army, and that this is the same base basis for writing the criminal codes - and that base basis comes from the former Yugoslavia.

Consequently, the authors suggest, *de lege ferenda*, revising Chapter 34 of the Criminal Code 2011 (HR) to meet modern trends and impose greater punishment for military personnel who commit crimes while in service.

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## About the authors

Cadet staff sergeant IVAN TRLIN (ivan.trlin@unizg.hr) is a senior student of Military Leadership and Management, Military Police branch, at the Croatian Defence Academy. In 2018, Trlin joined the Trnje Volunteer Fire Department and has been serving ever since. He also participated in calls after the massive earthquake in Zagreb in 2021. In 2020, he was awarded a Medal for Help and Sacrifice by the Croatian Fire Commander. In 2018, he was elected a Benjamin Franklin Fellowship scholar by the U.S. Government at Wake Forest University (class of summer 2018). In September 2022, he was awarded the Rector's (President's) Award at the University of Zagreb.

DIJANA GRACIN PhD. (gdijana39@gmail.com), Assistant Professor at the Military Studies of the University of Zagreb, and the Vice-Dean for Science, Development, and Quality Management at the Croatian Defence Academy "Dr. Franjo Tuđman". She teaches Criminal law, Criminal procedural law, and Criminology. Also, she is the author and co-author of several professional and scientific papers, mostly in the fields of criminal law, criminology, penology, and defence. Ms. Gracin is a member of the Croatian Association of Criminal Sciences and Practice. She has participated in several domestic and international scientific and professional conferences.

## **Pravna praznina i/ili nedostatak analize kaznenih djela protiv Oružanih snaga Republike Hrvatske**

### **Sažetak**

*Kaznena djela protiv Oružanih snaga Republike Hrvatske čine posebnu glavu Kaznenog zakona, koja je sačinjena od ukupno 23 kaznena djela. Specifičnost ovih kaznenih djela leži u mogućem krugu počinitelja i uvjetovanim stanju kada se djela mogu počinuti – ratnom stanju ili stanju neposredne ugroženosti. Ovaj rad analizira dostupnu literaturu o navedenoj problematici i detaljno analizira trenutno stanje za navedenu glavu Kaznenog zakona s obzirom na to da navedena tema nije zastupljena kod autora iz područja kaznenog prava. Mogući razlozi su niska zastupljenost navedenih kaznenih djela, kao i mali broj podnesenih kaznenih prijava u odnosu prema kaznenim djelima iz glave 34. Kaznenog zakona. Autori u radu daju usporedni prikaz kaznenih djela protiv Oružanih snaga Republike Hrvatske na primjeru Slovenije, Srbije, Mađarske, Njemačke i SAD-a.*

*Ovaj rad rezultat je želje autorâ za istraživanjem teme i stvaranje osnove za daljnja istraživanja.*

### **Ključne riječi**

*kaznena djela, oružane snage, Hrvatska vojska, analiza, poredbeni prikaz, Kazneni zakon*