

Book I.  
Title XLVI.

Concerning the office of military judges.  
(De officio iudicum militarium.)

Bas. 6.1.93-97.

1.46.1. Emperors Valentinian, Theodosius and Arcadius to the counts and magistrates of both military forces.

Military force shall never be employed in connection with private transactions of men, either as a guard or to enforce any order.

Given at Constantinople, February 12 (393).

C. Th. 1.21.1.

Note.

The rule stated in C. 3.12.5. It did not apply in connection with collection of taxes. C. 1.37.1.

1.46.2. Emperors Honorius and Theodosius to Monaxius, Praetorian Prefect.

We direct that no curials or men in private station shall be summoned before a military court, or be compelled to answer any accusations of suitors or litigate therein. The threat of a fine of 50 pounds of gold hangs over the officials of the count if they attempt anything contrary hereto.

Given at Eudoxiopolis, August 27 (416).

Note.

Jurisdiction of Military Judges. The highest military power, aside from the emperor, was, generally speaking, vested in Masters of the Forces, one for the infantry and one for the cavalry, although the control over both divisions was frequently vested in one man. Counts and dukes were under them. These officers constituted the military judges. 3 Bethmann-Hollweg 85. They had jurisdiction over cases between soldiers or where a soldier was a defendant. C. 3.13.6. But they had no jurisdiction in cases between private persons, or where a private person was the defendant in a suit by a soldier, as stated in the foregoing law, and as also stated in c. 23 of the so-called pragmatic sanction (appendix VII of the Novels), as follows: Lawsuits between two Romans or where a Roman is sued shall be heard by civil judges, since good order does not permit that military judges should have anything to do with such transactions.”

So in C. 1.26.4 it was stated in a rescript addressed to a count and master of forces that an ordinary judge, i.e. governor of a province, was under the jurisdiction of the praetorian prefect, and that cases against him, even as to wrongs committed against a soldier, should be brought before such praetorian prefect. On the other hand, civil authorities had no jurisdiction, as already said, where a soldier was defendant and that was true even in criminal cases. C. 9.3.1; C. 1.29.1.

The masters of the forces doubtless had jurisdiction over the counts and dukes under them. C. Th. 1.7.2; 3 Bethmann-Hollweg 85. But the emperor Leo gave jurisdiction over the dukes, provosts, apparitors and soldiers on the borders to the master of the forces, reserving to the masters of the forces their customary authority exercised in the Orient, Illyria, and Thrace. Boak, Master of Offices 93; see note C. 1.31.14.

Contrary to the usual rule, appeals from counts and dukes were not heard by the masters of the forces, but by the master of the offices and the quaestor. C. 7.62.38.

In some cases it happened that civil and military power was vested in one man, as in Isauria, Arabia, and Maurentania. 3 Bethmann-Hollweg 80. In that court, of course, the distinction above mentioned, as to cases in which soldiers and civilians were parties, did not apply.

#### 1.46.3. Emperors Theodosius and Valentinian to Anatolius, Master of the Forces.

No person who has served in the offices of the worshipful dukes shall, after completed service, join by stealth the corps of imperial messengers, lest he receive the power to act as chief (*vices viri principis*). If anyone should attempt to go contrary to these decrees of Our Perpetuity, he shall be deprived of his office and punished by the confiscation of a third part of his goods.

Given at Constantinople, January 28 (443).

Note.

It was shown in headnote to C. 1.27 (see also headnote C. 12.20) that imperial messengers were sent out to act as chiefs of many official staffs. That was true, for instance, in the case of official staffs of dukes. These imperial messengers so officiating as chiefs were intermediaries between the central government and the office in which they acted as chiefs. They were, accordingly, in a measure, a part of the official staff, and yet in a measure, separated from it. The thought evidently was to keep them somewhat independent of the official staff. Because of that, a man who had served in the office of the duke could not become an imperial messenger, since in the latter capacity he might be sent back to the duke's office to act as chief of his staff, and his former leanings might not make him the efficient officer which he was expected to be, failing to inform the central government of any delinquencies that might happen in the office of the duke.

#### 1.46.4. The same emperors to Nomus, Master of Offices.

The dukes of the borders, and particularly those to whom people that need watching are neighbors, shall dwell on their borders, recruit their troops to full strength—upon which the master of the soldiers shall insist—and engage them in daily military exercises. They shall take care to repair the camps and fortresses. We assign to them, and their chief (*principe*), and the provosts of the camps, on account of the different labors, the twelfth part of the salary of the order troops, to be distributed among them according to the discretion of the master of forces.

Given at Constantinople, September 12 (443).

Nov. Th. 24.

Note.

Bas. 6.1.95 differs from the Code in that it leaves out the provision of the distribution of the twelfth part of the salary (*annonarum*), and instead of the provides that a portion of the lands taken from the enemy should be distributed. The next law provides that the duke should have the twelfth part of the things captured from the enemy.

#### 1.46.5. (In Greek)

The duke shall be content with the customary pay and the twelfth part of the things taken from enemies, to be paid in gold by the illustrious prefects; nor shall he receive anything else either by asking for it, or by voluntary contribution.

Note.

Lands were distributed among the border troops. See C. 11.60.3 and note.