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Polygraph Examinations of Civil Servants in Poland

Полиграфное тестирование служащих силовых ведомств в Польше

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The first fairly credible description of a polygraph (lie detector) and the principles of its operation is found in *Kryminalistyka*, a course book written by Paweł Horoszowski and dating from 1958 (Horoszowski 1958). The description is accompanied by the statement that “a lie detector is practically nothing more than a device contributing to the intensification of the atmosphere of intimidation surrounding the interrogated individual” (Horoszowski 1958).

While visiting the US on a Ford Foundation scholarship in 1963, Professor Horoszowski purchased a three-channel Stoelting polygraph, brought it to Poland, and performed two examinations for the purpose of gathering evidence in criminal cases,

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and without any preparation or trial runs. He performed the first of these examinations in June 1963 in a homicide case conducted by the Regional Prosecutor's Office in Olsztyn (case II Ds. 25/63).

The literature includes a description of the two examinations and an analysis of the errors committed while carrying them out (Widacki 1981; Widacki 2014). What, however, remains true is that a polygraph examination was performed for the first time in Poland as evidence in an investigation conducted in 1963. Moreover, the two cases where polygraph examinations were used as evidence initiated a debate in legal and forensic science circles, and also resulted in the Supreme Court issuing an opinion on the matter. The Supreme Court ruling of 11 November 1964 (III K 177/64) was rather ambiguous and has been the subject of various interpretations. Nonetheless, firstly it was a ruling of the Supreme Court on polygraph examinations, and secondly, it did not expressly ban the use of such a method as a proof in criminal proceedings.

Late in the 1960s a polygraph (Keeler polygraph, model 6308) was purchased by the Military Intelligence Services (Wojskowa Służba Wewnętrzna, WSW), a body that combined the functions of military police and military counterintelligence. A little later, another polygraph was purchased by the Ministry of the Interior, within whose structures both Civil Intelligence (Department I) and Counterintelligence (Department II) functioned.

In both these institutions, polygraphs were primarily employed in the training of officers. Intelligence agents were probably also made familiar with such procedures, on the assumption that they might in the future be subjected to such examinations by American security services. The WSW used the polygraph in criminal cases and investigations conducted by military prosecutors, especially those concerning the theft of firearms.

WSW experts were also appointed by the offices of general (i.e. non-military) prosecutors to conduct polygraph examinations in the most serious criminal cases, including primarily murder and manslaughter.

Beginning in the mid-1970s, polygraph examinations – originally in experimental form (Widacki 1977), but later also applied in criminal cases – were performed in the Department of Criminology at the Jagiellonian University in Kraków, later moved to the Department of Criminology of the University of Silesia in Katowice. From 1977 to 1989, a few hundred examinations for criminal cases were conducted at the Department of Criminology at the University of Silesia. What is more, over 800 of people were tested in this way with the aim of eliminating suspects during an

investigation to find the perpetrator of a series of sexually-motivated murders. Polygraph examinations were also conducted, albeit on a lesser scale, in the Department of Criminology at the Nicolas Copernicus University (UMK) in Toruń (Widacki 2014). The departments at the Jagiellonian University and later at the University of Silesia carried out plenty of trials and maintained contacts with overseas academic institutions (notably the University of Utah, Michigan State University, and the Charles University in Prague), which among other things resulted in a number of joint publications (Widacki, Horvath 1978; Dufek, Valkowa, Widacki 1975; Dufek, Widacki, Valkowa 1975; Widacki, Romig 1975).

Until 1989, the Polish police force (*Milicja Obywatelska*, literally “civil militia”) had no polygraph examination unit at its disposal, and therefore had to make use of WSW and academic experts.

At this time no polygraph-based screening was performed during recruitment procedures for the country’s police and special forces.

More radical changes only occurred with the systemic transformations that followed the fall of communism in 1989.

The change in the political system, independence from the USSR, reforms of the special and police forces, and the establishment of open cooperation with Western states in different areas, notably with the United States, made it possible for Poland to use polygraph examinations on a more extensive scale and based on Western standards.

The *Milicja Obywatelska* was replaced at this time by the Police Force, which soon purchased its first polygraph devices and organised a central hub for polygraph testing in Warsaw and four field centres. Similarly, the Office for State Protection (*Urząd Ochrony Państwa, UOP*), founded in 1990, launched its own polygraph testing unit. Such units were also set up by the Border Guard (*Straż Graniczna*), the Military Police (*Żandarmeria Wojskowa*), and the Military Information Services (*Wojskowe Służby Informacyjne, WSI*). The qualification procedure for candidates for positions in the UOP that require special skills and/or predispositions could be augmented with psychophysiological tests. The regulations of the Minister of National Defence (Regulation of the Minister of National Defence 2004) concerning the Military Information Service stipulate that examinations of candidates for positions that require special skills and/or predispositions be conducted by psychologists who assist or are employed in WSI structures.

The special services were soon reorganised. On 29 June 2002, the UOP, responsible for civilian matters, was divided into the Internal Security Agency (*Agencja*

Bezpieczeństwa Wewnętrznego, ABW) and the Intelligence Agency (AW), as stipulated in the Internal Security Agency and Intelligence Agency Act (Internal Security Agency and Intelligence Agency Act, 2002). The Central Anticorruption Bureau (Centralne Biuro Antykorupcyjne, CBA) was set up in 2006 (Central Anticorruption Bureau Act 2006). In the same year, the Military Information Service was replaced by the Military Counterintelligence Service (Służba Kontrwywiadu Wojskowego, SKW) and the Military Intelligence Service (Służba Wywiadu Wojskowego, SWW) (Military Counterintelligence Service and Military Intelligence Service Act 2006).

All police and special services have at their disposal their own polygraph testing units. They all provide examinations for internal purposes, both in their investigations and operations.

Moreover, polygraph testing is used for pre-employment and screening procedures in most police and special forces. The recruitment procedures for individual services are specified by statute and stipulate that polygraph examinations are mandatory for all candidates. They are also used to test the loyalty of officers and employees and ensure the latter are keeping state and industrial secrets. The number of polygraph examinations conducted internally by police and special forces remains unknown, but is estimated to be many times more than in the case of examinations performed in criminal cases.

The admissibility of polygraph examinations in the case of candidates for positions in the Police Force, the Internal Security Agency, the Intelligence Agency, the Central Anticorruption Bureau, the Border Guard, and the Military Police is regulated by the appropriate legislative acts, while in the case of candidates for the Military Counterintelligence Service and Military Intelligence Service as well as for the Customs Services, the use of psychophysiological tests in recruitment procedures is determined by the appropriate regulations (Widacki 2014).

Candidates for the following services are required to undergo polygraph pre-employment examinations:

1. **The Police** – the rules and regulations governing the psychophysiological testing of candidates are set out in the Police Act of 6 April 1990 (Journal of Laws 2015, 355, consolidated text) and the Regulation of the Minister of Internal Affairs and Administration of 20 March 2007 regarding the methods and conditions for ascertaining the physical and psychological fitness of police officers to serve in specific positions and specific organisational units of the Polish Police (Journal of Laws of 10 April 2007).
2. **Central Anticorruption Bureau** – polygraph examinations for candidates and officers are regulated by the Central Anticorruption Bureau Act of 9 June 2006

and the Regulation of the President of the Council of Ministers of 20 July 2006 regarding the standard personal questionnaire and the detailed method for conducting recruitment procedures for candidates applying to serve in the Central Anticorruption Bureau. Art. 50 of the Act stipulates that “in the case of candidates applying to the Central Anticorruption Bureau for positions that require special skills and/or predispositions, the qualification procedure may be augmented with activities aimed at testing the candidate’s fitness to serve in such a position, including the conducting of a polygraph examination”, and Art. 63, section 2 of the Act concerns polygraph testing of Central Anticorruption Bureau officers authorised *ex officio* by the head of the Central Anticorruption Bureau and not requiring any further justification. Such decisions are based on internal reporting rules, and are therefore not subjected to any control.

3. **Customs Services** – the Customs Services Act (Journal of Laws of 2009, No. 168, item 1323) and the Regulation of the President of the Council of Ministers – conducting physical fitness tests, psychological tests, and psychophysiological tests on customs officers (Journal of Laws of 2010, No. 230, item 1515) stipulates that both candidates and officers might have to undergo a polygraph examination to determine their fitness to serve in a given position (article 102).
4. **Internal Security Agency** and
5. **Intelligence Agency** – polygraph examinations for Internal Security Agency and Intelligence Agency candidates are regulated by the provisions of the Internal Security Agency and Intelligence Agency Act of 24 May 2002 (consolidated text: Journal of Laws of 2010, No. 29, item 154) and relevant regulations: Regulation of the President of the Council of Ministers of 29 November 2002 concerning the personal questionnaire model and the specific rules and methodology for conducting qualification procedures for candidates for the Internal Security Agency, as well as the Regulation of the President of the Council of Ministers of 24 April 2003 concerning the standards for the personal questionnaire and the detailed rules and methodology for conducting qualification procedures for candidates for the Intelligence Agency service.

In this case, a polygraph examination is part of the qualification procedure, and it is aimed at ascertaining the physical and psychological fitness of a candidate, as well as whether a candidate is fit to serve in a position that requires special skills and/or predispositions.

6. **Border Guard** – Article 31 of the Border Guard Act of 12 October 1990 (Journal of Laws of 2014, 1402, consolidated text) defines psychophysiological tests as part of the qualification procedure, while an Regulation specifies that a polygraph examination forms part of the first stage of the procedure and is conducted by an organisational unit from the Border Guard Headquarters responsible for personnel matters. Should the 12-month validity period of a polygraph examination

expire, the candidate is required to undergo another examination.

7. Military Police – Article 9, section 1a of the Military Police and Military Enforcement Authorities Act of 24 August 2001 stipulates that a candidate for the Military Police may be asked to undergo a psychophysiological test.

8. Military Intelligence Services and

9. Military Counterintelligence Services

The Military Counterintelligence Service and Military Intelligence Service Act of 9 June 2006 and the following regulations: Regulation of the Minister of National Defence of 26 July 2006 concerning the qualification procedure for soldiers applying for positions in the Military Intelligence Services, and the Regulation of the Minister of National Defence of 26 July 2006 regarding the qualification procedure for soldiers applying for positions in the Military Counterintelligence Services. A candidate applying for the Military Counterintelligence Services or Military Intelligence Service posts that require special skills or predispositions may be required to undergo psychophysiological tests at the request of the Head of the Military Counterintelligence Services or Head of the Military Intelligence Service, respectively.

During the recruitment process for the police force polygraph examinations are utilised to determine the predispositions of individual officers for specific positions and/or in specific organisational units, in particular their loyalty to the force and whether they have derived any undue benefits from their service up to that point, as well as to identify any pathologies or undesirable addictive tendencies.

Psychophysiological testing of candidates for positions in the police force consists of five stages:

- 1) filling in a personal questionnaire
- 2) detailed preparation for the examination
- 3) carrying out the tests: preliminary test, stimulation test, and the test proper
- 4) analysis of the results obtained in the examination
- 5) drafting the final opinion based on the examination.

Video and audio recordings are made of the course of the examination.

No questions regarding religion or the candidate's sexual and political preferences are asked during a polygraph examination. The examination is recorded (both image and sound). If the result of the examination is inconclusive, it can be repeated, yet only once within 30 days (Regulation of the Minister of Internal Affairs and Administration 2007).

The admissibility of polygraph testing both of candidates to the police force and of already serving officers has been reviewed by the Constitutional Court (Ruling of the Constitutional Court 2010) which ruled that the provisions of the Statute that allow such testing to be performed were not in violation of the Constitution.

Pre-employment examinations test the fitness of a given officer to serve in a given position or in a specific organisational unit, and rule out candidates who for specific and undisclosed reasons should be disqualified from joining the force or holding specific posts.

The main goal of follow-up tests is to assess whether officers have disclosed any state or business secrets since the previous examination, whether they might have made undesirable contacts, committed crimes, etc.

Only in the case of the Government Protection Bureau (Biuro Ochrony Rządu, BOR) are there no legal regulations introducing mandatory polygraph examinations for candidates and officers.

It is evident that while polygraph testing of candidates and officers are enshrined in legal regulations, no other state officials or civil servants for whom no polygraph testing is provided under the law can be required to undergo such an examination. Therefore, extending the scope of the procedure to other categories of officers and/or civil servants would require amending such Acts so as to introduce such a requirement.

Police and special forces may conduct operational and reconnaissance intelligence, and can perform polygraph examinations regarding confidential and secret personal sources of information, and also verify the veracity and loyalty of such sources.

The case is different when polygraph examinations used in the private sector, whether by detective agencies or for the pre-employment and screening of staff. As far as the use of polygraph examinations in private sector recruitment is concerned, they must be considered legally permissible, in accordance with the principle that private entities are permitted to do anything that is not legally prohibited, unlike in the case of state bodies, which are only allowed to do what a legislative act permits or instructs. There is no act of law that forbids polygraph testing of the employees of other than state companies, Nonetheless, such a procedure cannot exceed the scope of information that the employer is legally entitled to know (Cempura, Widacki 2012). This cannot include so-called “sensitive data”, such as sexual preferences, political views, information concerning the candidate’s private life, etc.

Polygraph examinations are also permitted in disciplinary procedures involving prosecutors. In Chapter 3 regarding the criminal, disciplinary, and official/business responsibility of persecutors/prosecutors (Prosecutor’s Office Law 2016), the provisions of the Prosecutor’s Office Law Act stipulate that a disciplinary officer may during the course of a disciplinary hearing, with the aim of narrowing down the number of people suspected of having committed a disciplinary offence involving the dis-

closure of information covered by criminal procedure, appoint an expert to employ certain technical means to monitor and examine the involuntary body reactions of a prosecutor granted access to such information, with the prosecutor's consent (art. 154 of the Law on Prosecution Act 2016).

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